

# 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

February 1, 2019

**TO:** All Commissioners and Alternates

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

## **SUBJECT: Draft Minutes of January 17, 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 Ahn, Butt (represented by Alternate Arreguin), Chan (represented by Alternate Gilmore), Gioia, Gorin, Resources (represented by Alternate Eckerle), Lucchesi (represented by Alternate Pemberton), McGrath, Peskin, Pine, Ranchod, Randolph, Sears, Skinner (represented by Alternate McCoy), Spering (represented by Alternate Vasquez), Tavares (represented by Alternate Nguyen), Techel (represented by Alternate Hillmer), Wagenknecht and Zwissler (represented by Alternate Holzman).

Chair Wasserman announced that a quorum was present.

Not present were Commissioners: Association of Bay Area Governments (Addiego), Senate Rules Committee (Alvarado), U.S. Army Corps of Engineers (Bottoms), Santa Clara County (Cortese), Department of Finance (Finn) and U.S. Environmental Protection Agency (Ziegler)

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

Ms. Nancy Rieser addressed the Commission: The Rodeo Phillips 66 Refinery is projected to become a fully, Tar-Sands-capable and ready refinery based on the refineries three, concurrent, heavy-crude capacity projects.

It is set to increase the ship traffic from 59 to 135 ships per year bringing in Canadian tar-sands. The marine terminal has had two spills in a row. There is no spill-response plan for tar sands.

If there is a spill, experts have said that it will be far worse than the Cosco Busan spill.

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Currently there is a projected 160-percent expansion of the wharf, crude delivery for a full increase since 2012. The agenda for this meeting said that this agency only has jurisdiction over five seaports yet according to the 2012 San Francisco Bay Area Seaport Plan there is a sixth seaport listed and that is Selby which is the site of the marine terminal expansion.

I would like to have your assurance today that discussions and decisions be limited to the five seaports that were listed in your public notice and is not inclusive of Selby. Thank you.

Chair Wasserman explained: As you may know at Public Comment which is intended for items not on the agenda we cannot respond. Your item is actually on the agenda later, Item 10. If there are any other public speakers intending to address the same issue, I would ask that you wait until Item 10 because the Seaport Plan is on the agenda. Thank you.

There are some Brown Act issues I try to be careful about. That concludes the public speakers. The next item is approval of the minutes of our January 3, 2019 meeting.

Chair Wasserman moved to Approval of the Minutes.

**4. Approval of Minutes of the January 3, 2019 Meeting.** Chair Wasserman asked for a motion and a second to adopt the minutes of January 3, 2019.

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

**VOTE:** The motion carried with a vote of 18-0-2 with Commissioners Arreguin, Eckerle, Gilmore, Gioia, Gorin, Hillmer, Holzman, Pemberton, McGrath, Peskin, Pine, Ranchod, Randolph, Sears, Vasquez, Wagenknecht, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO", votes and Commissioners Eckerle and Peskin abstaining.

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

a. We continue to be faced with fear and hope. There have been a number of scientific reports and news articles since our last meeting about the continued melting and disappearance of the ice sheets. There was a headline in the Wall Street Journal that read, "Over the past five years there has been a sextuplet reduction in the ice sheet."

This is a six times reduction; that is scary and particularly if you know or think about the scientific reports and the underpinnings that as that melts it is going to accelerate.

On the other hand there have been a number of reports about an increasing awareness not only about climate change but about the challenges presented by sea level rise. In Wired magazine I noted that not only in the most recent issue but in a number of issues they have been covering the consequences and dangers of rising sea level.

That means that the word, the concern is getting out there which creates a better basis for us to hope that the decision makers here in the Bay Area as well as across the state and the country will start to take even more look at and concern and action at it and lays the underpinning for some of the actions that will be necessary to pay for what we are going to have to do to preserve our built and natural environment.

I do want to note that Governor Newsom has appointed Wade Crowfoot as the new director of natural resources. He was very active in Governor Brown's Administration and is well known to everybody and is a former BCDC Commissioner.

b. I have appointed Vice Chair Halsted and Commissioner McGrath to represent us on the Seaport Plan Advisory Committee that will be a necessary part of the legally-required revision to the Seaport Plan overall. And both of them have accepted.

c. I would like to ask Commissioner McGrath to fill in for Commissioner Nelson to report on the Fill for Habitat Workgroup meeting that was held this morning.

Commissioner McGrath reported the following: today's meeting was successful. We are beginning to drill down into the existing policies and how we might want to change them. The fundamental change that everyone has in mind is removing the restriction of "minor fill" for habitat as a general limitation that is over everything and replace it with something that requires a robust, scientifically-grounded, planning effort so that projects that might have more than minor fill can still come forward for evaluation so long as we are confident that such projects, if approved, will be in the public interest.

That discussion got detailed and I don't want to bore you with those details. You will have a chance to look at that and what staff is proposing. We expect to have a series of briefings before the Commission beginning on February 7th to make sure that we have an educational process for the Commission and all the stakeholders as we go along.

Chair Wasserman continued: Thank you. Any questions on that report? (No questions were voiced)

d. **Next BCDC Meeting.** Our next meeting will be on February 7th and at that meeting we expect to:

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e. Hold a closed session on potential litigation concerning the Alameda Hotel issue. And hold a public session discussion on whether to require a permit for the Alameda Hotel.

f. Hold a public hearing on the Solano County Suisun Marsh Local Protection Program Update.

g. Hold a short science briefing on specific fill for habitat issues.

h. Consider adoption of the 2017 & 2018 Annual Reports.

i. Have a staff briefing on Live-aboards on the Bay.

j. **Ex-Parte Communications.** That brings us to ex-parte communications. If anyone wishes to disclose them at the present time but as always you need to disclose them in writing but you can do that on the website. Anybody eager to report? (No communications were reported)

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

a. **Budget and Staffing.** First, I want to introduce Karen Donovan. Karen can you stand up please. (Stood and was recognized) Karen is our new attorney who is taking over from Marc our enforcement workload. She has been with us now for about two weeks and continues to smile so I am cautiously optimistic that she will stick with us.

Samantha Cohen will start next month as a planner in the Adapting to Rising Tides program. Sam is a true Engineer – she earned her B.S. in Civil and Environmental Engineering and a Master’s Degree in City Planning – from MIT. So we have our second MIT alum with us. She has a broad range of experience in green infrastructure, climate resiliency, integrated water management and she currently works for Brown and Caldwell in their San Francisco office.

The permitting team has selected Yuriko Jewett to fill the position Hanna Miller vacated to go to graduate school. Yuriko earned her undergraduate degree from San Francisco State University in Creative Writing which should help our permit staff reports and recommendations. She also received a Master’s degree in Urban Design from City College of New York – that makes her both a Gator and a Beaver. Yuriko has about 15 years’ experience as a consultant in the architecture and planning industry in the Bay Area including as a project manager for M.I.G. and she played a key role in creating the San Francisco Bay Area Water Trail Accessibility Plan. We plan to hire both individuals unless we hear from you otherwise.

Also, our legal team is thrilled to have two third-year Hastings law students with us part-time. Asha Shahani (stood as was recognized) is a Ram from Colorado State University, from which she earned her Bachelor's Degree in Liberal Arts. Sophie Kaineg (stood as was recognized) is a Maroon from the University of Chicago, home of Robert Maynard Hutchins, from which she earned her undergraduate degree in English Language and Literature.

We have included in your packet the e-mail to each of you describing Governor Newsom's first, proposed budget - a very good one for BCDC. Under the Governor's proposal BCDC would receive an additional 1.841 million dollars in baseline funding through the Greenhouse Gas Reduction Fund to help support existing planning staff and add new permanent staff to help BCDC lead the Bay Area's response to future impacts of rising sea level and extreme storms and prepare a Regional Shoreline Adaptation Plan and enable the regulatory team to expand and increase our permitting throughput.

In addition the governor's proposal provides BCDC with the additional funding necessary to pay for the rent at the San Francisco Bay Area Metro Center Regional Headquarters Building. And we look forward to moving late summer of this year. I want to thank the staff members who have worked on these proposals since we began to develop them in the spring. Of equal importance was the willingness of Chair Wasserman to advocate personally with the Department of Finance on BCDC's behalf.

Many times my father the doctor told me in the presence of his brother-in-law who owned a very successful bank in Chicago, that "a bank is a place that will lend you money if you can prove that you don't need it." Thankfully, the Department of Finance takes adaptation seriously, does not consider itself a bank and we should thank its staff.

b. **Policy.** You have each received a memo outlining the requirements for your 2018 Annual Statement of Economic Interests, Form 700 from the FPPC. They are due on April 2nd. Please do not be late.

We have included in your packet a letter from the chairs of the three coastal zone management agencies to Governor Newsom asking the governor to appoint a diverse, statewide group of private sector and non-profit leaders to work with the governor and his staff to confirm the fact that it is almost impossible to recruit and retain great staff in the Bay Area due to the cost of living here and therefore the state should implement geographic disparity pay.

We are very happy with this letter. We want to thank Chair Wasserman and his peers for signing it. We look forward to hearing from the Governor's Office and working with them.

This is a picture taken by Brad McCrea last week as he entered San Francisco. On this side of the picture is the new ferry terminal under construction in San Francisco and take a look at the difference in elevation between it and the older building next to it.

And today Brad sent a photograph of the water lapping up at the base of the older building. It is a good reminder of what our climate change policies can accomplish.

Finally, 17 Commissioners and Alternates have not completed their state ethics training. I have been assured by the Chair that he is going to go to KTVU with the names. (Laughter) Take it as a warning. Please get it done. Thank you very much and I am 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 announced: That brings us to Item 7. Brad McCrea is here if you have questions. Any questions on Administrative Matters? (No questions were voiced)

**8. Public Hearing and Possible Vote on Issuing a Brief Descriptive Notice to Initiate Changes to San Francisco Bay Plan and Seaport Plan, Bay Plan Amendment No. 1-19.** Chair Wasserman announced: Item 8 is a public hearing and vote on whether to initiate the process of considering a proposed amendment to update the San Francisco Bay Plan and Seaport Plan. Linda Scourtis will present the staff recommendation on this item.

Ms. Scourtis presented the following: Today I am presenting to you background on proposed Bay Plan Amendment No. 1-19 which would allow staff to initiate a review and update of the San Francisco Bay Plan Port policies and the San Francisco Bay Area Seaport Plan.

The Seaport Plan expands on and provides more detail for the Commission's Bay Plan policies related to ports and port priority use areas.

There is no statutory or regulatory requirement to update the Plan on a regular basis.

We have five public ports in the Bay Area. We also have two additional sites designated by the Commission for potential, future port use.

We have the Port of Benicia in the north, Richmond, Oakland, Redwood City and San Francisco. I believe the Commission is familiar with those five ports.

Selby is an area that is not currently used for port use but is designated in the plan for potential, future use. The same goes for MOTCO at the Concord Naval Weapons Station because it is a military port; the designation is there until such time the space may be vacated.

These are the stated goals of the Plan (shown on slide). The Commission assumes a thriving Bay Area port economy while ensuring habitat protection.

By reserving adequate shoreline areas for cargo handling, the Commission reduces the need for large-scale filling of the Bay for maritime uses.

Please note the cargo forecast sunsets in 2020. To respond to potential future, amendment requests the Commission requires an updated forecast as well as other information.

To accomplish GOAL 4: BCDC and MTC staff will work together. The Seaport Plan relies on MTC's Regional Goods Movement Study.

The Plan is prepared by the staffs of BCDC and MTC with the Seaport Planning Advisory Committee, or SPAC. We have here today staff from MTC who will be on our planning team primarily for their expertise on the landside access points to and from the ports.

The Seaport Plan is the basis for the Commission's port policies and informs MTC's Plan Bay Area. The Plan includes land use designations and enforceable policies that are used in regulatory decisions and features policies specific to designated areas that include tables identifying the types of marine terminals operating now and designated by the Plan for future activity.

The types of cargo addressed in the plan include container and bulk cargoes which include dry bulk such as scrap-metal exports, imported sand-not Bay sand, non-petroleum liquid cargo which would be food oils, neo-bulk cargo which are primarily automobiles in the Bay and break-bulk commodities.

Because much of the background information is dated, several elements require revision including the cargo forecast as well as an assessment of the ports' cargo-handling capacities. MTC has provided funding for much of the staff work required to initiate the plan update in the current fiscal year. The update will rely on the work of the Adapting to Rising Tides program for the rising sea level discussion and on the Commission's Environmental Justice process for that discussion.

If the Commission votes to adopt the brief descriptive notice today, technical information, including an updated cargo forecast and capacity study as well as a preliminary staff recommendation, will be reviewed by the Seaport Planning Committee. The Committee will deliberate and forward its recommendations within a staff report to the full Commission later this year.

Staff does NOT plan to hold a Commission workshop for the plan review but will if the Commission desires to do so.

We are proposing three recommendations today. With Agenda Item 8 the recommendation is to initiate an update to the overall plan and bring it up to date. Most of the background information is 25 years old and the cargo forecast sunsets next year.

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Following the Commission discussion and deliberation on Bay Plan 1-19, Cody of our staff will present for your consideration initiating a separate amendment for possibly removing the port designation from Howard Terminal in Oakland and that is Item 9, BPA 2-19.

If the Commission approves moving forward with the second recommendation, we would also request the Commission allow the Executive Director to enter into an agreement with the Oakland Athletics to pay for the Commission's costs to process the request.

We are bringing these recommendations on the two amendments to you today because much of the foundational information would inform both processes.

But they are not one and the same. They will run concurrently and share some background information, but they are two separate amendments and recommendations for your consideration

The staff recommends for Item 8 that the Commission (1) adopt the Brief Descriptive Notice to initiate the process of considering a possible amendment of the San Francisco Bay Plan Port policies and the San Francisco Bay Area Seaport Plan to review and possibly revise the Commission's Port findings, policies and land-use designations; and (2) schedule a public hearing for December 5, 2019 to consider the proposed amendment.

Chair Wasserman announced: We will open the public hearing. I will recognize speakers and then Commissioners can ask questions or make comments.

Ms. Maureen Brennan was recognized: I am from Rodeo, California. I am here to ask that the Selby site be removed from the BCDC Seaport Plan as a potential site. There is too much petroleum coming on to this Bay. The Selby site is adjacent to Phillips 66. And the proposal and the 2012 Plan is to build a five-berth terminal and it is designated specifically for liquid-bulk cargo that is petroleum.

There are so many health concerns in my community. I will be talking at the environmental justice workshop later. We have Phillips 66 and we have a Petco plant. We have lots of cumulative problems.

I would really hope that we import less oil. It is not even oil it is bitumen. It is very thick and it is very toxic. It releases benzene and xylene into my community.

It is not an appropriate site any longer to be importing more oil into my community. Thank you.

Mr. Davidson addressed the Commission: One thing that should be mentioned is the Selby slag site is a heavy-metal containing site that is leaking cadmium, arsenic, nickel and lead. So they would be building upon a toxic site that is fused 66 acres of toxic slag that has been leaking into the Bay for the last 150 years. The area around there is full of toxic metals.

It is rather preposterous that they are building on top of a toxic site. That needs to be addressed more appropriately.

I would like to talk about the delivery of bitumen at the Phillips 66 Marine Terminal. As publicly stated on their website, Phillip's 66 refinery investments in heavy-crude processing equipment make them among the most capable in the U.S. of refining tar sands, bitumen and other heavy crude such Kern County crude.

Phillips 66 has already a very heavy-crude refining capacity refinery given their capabilities before these three projects, which are very high, greenhouse projects: the Propane Recovery Project – the 4,000 barrel-per-day, high-pressure, reactor train project and before the Marine Terminal Expansion Project. Therefore the above-three projects when they are complete would make the Phillips 66 Refinery one of the most tar-sands-capable refineries in the world equivalent to the Detroit Marathon Refinery that had tar sands loaded along the Detroit River.

The Wharf Expansion Project should be challenged on the basis that there is spill response plan for non-floating oils such as bitumen according to the California Office of Spill Preparedness and Response and the National Oceanic and Atmospheric Administration.

It is highly likely that a dilbit spill with simultaneous release from the spilled dilbit or diluted bitumen mixture, a low-flying, gaseous cloud of toxic, solvent diluent to float over the Bay surface towards the nearby communities of Rodeo, Crockett and Vallejo.

As testimony to potential communities impacts scenario, the 2016 Phillips 66 Marine Terminal spill sent nearly 150 persons in Vallejo to the emergency room due to respiratory distress needing medical attention. Moreover, a solvent cloud from a dilbit spill would initially be flammable in the immediate vicinity of the wharf. Thank you.

Chair Wasserman announced: That concludes our speakers. Do we have questions or comments from the Commissioners?

Commissioner Gioia made clarifying statements: I want to make sure I clarify the process that we are going through since there were some speakers addressing a site in Contra Costa. Just to confirm: this process that we are starting today isn't making any decisions about whether these remain in port priority – it is to start the process and to come back with possible plan changes.

All of these sites potentially could have a plan change one way or another. In fact, for the speakers who have said, "we don't think they should have a port there," the only way to change that, if that is an outcome, and I'm not saying that is the eventual outcome – would be to go through a process like this.

So the process we are starting today is to consider whether to have amendments on any of these sites. I wanted to clarify that. If you don't change anything the status quo on all the sites remains.

Chair Wasserman agreed: Absolutely correct. This is simply starting a legally-required process.

Commissioner McGrath commented: And following that up: there will be ample opportunity for the public to discuss the health aspects, the nature of the Commission's authority, the criteria for making decisions as well as the input of agencies with expertise and direct jurisdiction over public health and water quality, correct?

Chair Wasserman answered: Correct. Comments about those subjects can certainly be submitted in writing at any time and there will be a public hearing assuming this recommendation passes on December 5th.

Commissioner McGrath added: And we'll make sure they are considered.

Chair Wasserman replied: Yes.

Commissioner Pine had questions: The December 2019 hearing – are we confident in that schedule? How is that determined? Should that be the public's expectation?

Ms. Scourtis responded: We do have to set a date at this time. I'm not going to say it is a tentative date but that is what we are going to shoot for. It is a public process.

The Seaport Committee will hold at least one and possibly two public meetings as well several months before the public hearing occurs before the Commission when it will consider the recommendations from the Seaport Committee. And the vote would follow any public hearing.

Commissioner Pine continued: And my second question – later in our agenda we will be considering a proposal to potentially start a process to reassess this Howard Terminal port designation. As I understand these are two, completely, distinct matters. Is it coincidental that they are both coming at us on the same day? Why is this matter in front of us? Is it because the cargo predictions will run out in 2020?

I am trying to understand if this is coincidental.

Ms. Scourtis replied: Yes, Commissioner. Staff recognized for some time that our current plan's information is 25 years old, and it was adopted by the Commission in 1996 with minor, individual amendments that did not look at the Plan as a whole except where we need to for an individual amendment request. As for the cargo forecast, its sunsets in 2020. It has been tweaked a couple of times with some of the individual requests, but it was first developed in 1988.

So yes, it is coincidental but some of that important, foundational update would inform the second amendment proposal should they both go forward.

Mr. Goldbeck added: We are doing this with MTC and it is a joint document and they are interested in better linking this up with Plan Bay Area. So we are trying to get on the schedule to be with Plan Bay Area with them.

Commissioner Randolph commented: I was asking for the same clarification Mr. Chairman that right now we are considering only Agenda Item 8 and it will be a separate conversation on Item 9.

Chair Wasserman answered: Correct. A motion to close the public hearing please.

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

Chair Wasserman asked: Are there any additional questions or comments from Commissioners? (No additional comments were voiced) I would then ask for a motion and second on the staff recommendation.

**MOTION:** Commissioner Vasquez moved approval of the staff recommendation, seconded by Commissioner Wagenknecht.

Commissioner Gilmore commented: For this item the only recommendation is to initiate the update to the Seaport Plan which is BPA 1-19.

Chair Wasserman added: And set a tentative date of December 5, 2019 for the hearing.

Commissioner Gilmore continued: And then the other two recommendations will go with the other items?

Chair Wasserman answered: Correct.

**VOTE:** The motion carried with a vote of 20-0-0 with Commissioners Ahn, Arrequin, Gilmore, Gioia, Gorin, Eckerle, Pemberton, McGrath, Peskin, Pine, Ranchod, Randolph, Sears, Vasquez, Nguyen, Hillmer, Wagenknecht, and Holzman, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO", votes and no "ABSTENTIONS".

Chair Wasserman announced: I am going to recuse myself on the next two items because my firm represents the Oakland A's, not on the Howard Terminal but on the Coliseum. (The Chair exited the room)

**9. Public Hearing and Possible Vote on Issuing a Brief Descriptive Notice to Possibly Remove the Bay Plan and Seaport Plan Priority Use Area Designations from Howard Terminal, Bay Plan Amendment No. 2-19.** Acting Chair Halsted announced: Item 9 is a public hearing and vote on whether to initiate the process of considering a proposed amendment to the San

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Francisco Bay Plan and Seaport Plan to delete the Port Priority Use Area designation from Howard Terminal at the Port of Oakland. Cody Aichele-Rothman will present the staff recommendation on this item.

Ms. Aichele-Rothman presented the following: I am presenting the proposed Bay Plan Amendment for Howard Terminal, BPA 2-19.

Currently the San Francisco Bay Plan designates Howard Terminal in Oakland for port priority use.

The Oakland Athletics have proposed to construct a ballpark and mixed-use development at Howard Terminal in Oakland. This development is inconsistent with the designation. Therefore, the Commission would need to remove the designation to allow the A's to proceed with a non-port development on Howard Terminal.

As you can see, the Terminal, which is deepened to-50 feet is located at the Port of Oakland and is owned by the Port.

Current uses by the Port include maritime storage, truck parking and occasional vessel berthing.

The area seen on this slide through the inner-harbor channel is where it is deepened to 50 feet and then in this area is where the ship turning basin is located. This area is Howard Terminal which is the area that is proposed to be deleted.

Currently ships do dock in this area but this is the turning basin which can provide some challenges.

The proposed development is not consistent with the port priority designation. If the Commission chooses to consider the proposed amendment, the applicant will be required to demonstrate that the proposed removal: will not detract from the regional capability to meet the projected growth in cargo, will provide alternative locations for maritime uses displaced from the property and that those locations will not result in large-scale filling of the Bay.

As discussed in Linda's presentation, the regional cargo forecast sunsets in 2020. For the Seaport Plan overall a study of current and anticipated terminal capacity is needed. The Oakland A's have agreed to fund these consultation studies which will be conducted with BCDC staff oversight.

The Howard Terminal amendment process will run concurrently with the Seaport Plan update Bay Plan Amendment process, which will include a public hearing in December of this year.

Therefore I would like to offer the first recommendation for this particular agenda item which is: The staff recommends that the Commission: (1) Adopt the Brief Descriptive Notice to initiate the process of considering a possible amendment to the San Francisco Bay

Plan and the San Francisco Bay Area Seaport Plan to remove the Howard Terminal port priority use area designation from the Port of Oakland, and (2) To schedule a public hearing for December 5, 2019 to consider the proposed amendment.

With us today we have representatives from the Oakland A's and the Port of Oakland.

David Kaval, president of the Oakland Athletics, will now present the team's reasons for requesting a Bay Plan and Seaport Plan amendment. These representatives will be able to respond to any questions the Commission may have.

Mr. Dave Kaval addressed the Commission: I am Dave Kaval, president of the Oakland A's. We are embarking on a very exciting opportunity for Oakland and the Bay Area to construct a new, privately-financed stadium at the waterfront at Howard Terminal. Back in December we had the first affirmative vision of that plan. I want to share with you what we are thinking and work together to kick off a process to evaluate that and make sure it is done in an appropriate way.

This slide is an overview of the Howard Terminal site with the new ballpark. It is a beautiful, jewel-box design that is inspired by our original home in Philadelphia Shibe Park. It has an amazing green loop which is a public park that will be open 365 days a year and allow more access to the waterfront to people in the community and the East Bay regionally.

You see there is a lot of public realm and open space in and around the new ballpark including the retention of the historic cranes that are really connected to Oakland's history and provide a great connection to our past and the maritime history.

With the actual ballpark, which is on the eastern side of the site, we have proposed a mixed-use development around the ballpark itself. We also have additional uses in and around the waterfront and accessibility to and from the main part of Oakland.

Here you see the approach on Water Street. This is a great way to get a sense of the openness of the location to make sure that it is not something that is going to be there the 81 days that we play baseball but that it is a public amenity all 365 days a year.

This is a location you can't access right now on the waterfront. This will open that up and provide an opportunity for people to reach the waterfront in an amazing way.

Inside the stadium there will be incredible views of the water and of the cranes. It gives you a sense of where you are in Oakland and in the Bay Area. You have views of downtown Oakland and an incredible backdrop.

This is our plan for a new, privately-financed stadium in Oakland. We are very excited about it. We are excited to take the next step with the Commission and with the community to make sure it is done in a responsible way and that we weigh all of the competing concerns and observations and make sure we work together this year to do that.

I am happy to answer any questions and thank you for the time today.

Mr. Richard Sinkoff addressed the Commission: I am the Director of Environmental Programs and Planning for the Port of Oakland. We are very happy to be here to answer any questions you have. I am here with my colleague Delphine Prevost who is in charge of maritime finance and administration.

We are looking at this proposal very much from the way the Port looks at all proposals. We run three lines of business at the Port of Oakland. We have an airport, a real estate operation and a maritime operation. And we will be considering this proposal in light of the Port's overall strategic business interests.

I am happy to take any questions.

Commissioner Gioia asked: Has the Port taken any position yet? There was a letter from the Pacific Merchant Shipping Association saying that it is premature to start this process now. I am interested to hear the Port's position on this.

Mr. Sinkoff replied: No. We don't have a position.

Commissioner Gioia clarified: Not necessarily on the stadium but do you have a position on whether this process should start?

Mr. Sinkoff asked: The process before BCDC?

Commissioner Gioia answered: Yes, the item to start the process.

Mr. Sinkoff continued: Yes. The position on that is that we are supportive of the inquiry into the project itself, the project proposal. So to the extent that BCDC is considering today not the merits of the project but whether to move forward and study the merits of the project – we support studying the merits of the project.

Acting Chair Halsted continued: Next we have the public hearing and we have one person who submitted a card and that is Mike Jacob.

Mr. Jacob made public comment: I am Mike Jacob with the Pacific Merchant Shipping Association. We represent ocean carriers and marine terminal operators at the Port.

As Supervisor Gioia pointed out, we have submitted letters, and thank you for working with us and providing us with information.

We do think the application is premature for several reasons. Primarily the A's and the Port haven't concluded their exclusive negotiating agreement. The A's have no right to the property right now. They can't describe what the project is because they don't have any rights to the terminal.

The application itself that was provided BCDC acknowledges that because it is conditional. It actually says, we'd like you to amend the Plan but wait – if we don't get the rights to the property don't amend the Plan. That is not how planning works. That is not how conditional entitlements work. Almost everyone in this body is very familiar with CEQA and how the EIR process works.

There are some significant concerns with the CEQA process right now having to do with that issue as well. There is no presently-defined project to analyze. There is no initial study that has been done for the existing CEQA process that is just getting underway with a NOP at the City.

It is premature in those respects.

The bigger issue for us is that in the context of the Plan amendment the understanding that the A's are providing to you is that because Howard Terminal is no longer under a long-term lease with the Port of Oakland it is no longer necessary to be a part of the Seaport Plan.

And that is certainly not the case. It is true that there is no long-term lease for traditional, marine-terminal operations at Howard Terminal. But just because you aren't using the ship-to-shore cranes at present doesn't mean it's not being used.

Between late 2016 and 2017 there were over 300,000 gate moves at Howard Terminal for intermodal trucking support. That is a critical component of what we do and it is a critical component of why you designate this property to be part of the Seaport Plan.

What we would ask you to do today is to ask the A's to come back at a proper time with an application after they have concluded their ENA with the Port. They have some vestige of rights, conditional as they may be, to come and ask you to go forward with the project. They won't be prejudiced in any way, shape or form if they withdraw the application on their own or if you say no to the application now and they come back at a future time.

But the correct process is to wait until the application is mature and you move forward with that process. Just for the record, we do look forward to working with the Commission and staff on the Seaport Plan amendments in general. We don't think that this item should move forward at this point in time.

Acting Chair Halsted asked: Thank you. Are there any further members of the public who would like to speak on this matter? (No further comments were voiced) Being none I would welcome a motion to close the public hearing.

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

Acting Chair Halsted continued: Is there any objection – seeing none, the public hearing is closed. Now we can take questions from Commissioners.

Commissioner Randolph expounded on the issue of ripeness: I had read the letter from PMSA pretty carefully and it does raise a legitimate question of what in legal parlance is the issue of ripe – do we actually have something that is at a level of maturity that we should consider to the point of initiating a process?

It does appear that there aren't vested rights to the property so there is not a project yet. I guess my concern or question would be whether this is actually sufficiently actionable to begin a process to amend the Seaport Plan now or whether we defer it until actually there is an agreement in place with the Port.

Mr. Marc Zeppetello explained: The Commission's regulations for amending the Bay Plan or the Seaport Plan provide that anyone other than the Commission that the Executive Director may propose an amendment. So there is no requirement in the regulations for a property interest.

I'd also just mention that the issue here as has been discussed is whether to study this issue. The A's project is not before you and whether or not that project ever comes to fruition, or before the EIR process, that's all totally separate. The question that this Bay Plan Amendment is asking is, whether this area is necessary for Port use? And that would be determined as a result of the study.

To directly answer your comment, Commissioner, the property interest is not required, and the A's have a right as an interested party to file an application and ask the question. It is up to the Commission to decide whether they care to go forward.

Commissioner McGrath offered historical perspectives: I have some background in cargo throughput the Port of Oakland. I would remind the Commission that when I was working for the Port we did amend the Seaport Plan to delete 40 acres of fill from Outer Harbor and reuse the Fleet Industrial Supply Center and contemplate using the Oakland Army Base to have a more efficient set-up.

We re-did the cargo forecasts and the like as part of developing a 50-foot project. The Corps of Engineers did the bulk of that work. It is now very long in the tooth – roughly 20 years and we've got operating terminals.

So it is absolutely appropriate to look at what we thought the capacity was going to be and what the capacity actually is. I am strongly in favor of going forward with that portion.

However, one of the issues raised by PMSA does give me some heartburn and that is the question of CEQA. We can initiate a planning process but I will put Marc on the spot again and I don't want to initiate a planning process that then puts BCDC as the lead agency for CEQA for a plan change.

And while I don't know that this means that we cannot initiate a planning process at this time it may well mean that the schedule is entirely too ambitious.

I want to understand what this organization's CEQA responsibilities are and if it would have to entertain a change.

Mr. Zeppetello counseled: The regulations, the planning process, the Bay Plan and the Bay Plan Amendment process is certified as a certified, regulatory program by the Resources Agency. And so going through the planning process will comply with CEQA with respect to the project being whether or not to amend the Plan.

Again, the proposed development of a ballpark or mixed-use project is not the project for purposes of the Bay Plan Amendment.

Commissioner McGrath noted a caveat: But to be valid as – that's a good point that it is an equivalent process to be valid it has to carry forward the necessary level of detail. We want to make sure that whatever work is scoped is able to take that.

And whatever negotiated agreement is able to accomplish that I don't want this organization on the hook for endless CEQA battles.

Executive Director Goldzband commented: Speaking for the Chief Counsel I am sure he would agree. (Mr. Zeppetello not in the room)

Commissioner Vasquez offered a different perspective: In my world I view this as more like a general plan update. When people know that there is going to be maybe changes to a general plan they'll come and make requests for changes.

This really doesn't give anybody any vested rights in this process. And one of the other things that we have tried to do is encourage people to come in early in here rather than negotiating with staff. It is going to be in the public view. And you have had the Port and the A's talk about what they would like to see.

So I just see it as an opportunity to continue to have the public involved in it.

Commissioner Gilmore addressed process: I am trying to see if I can straighten this out in my own mind between this and the prior item. Leaving aside this item for a minute, if all we had was the prior item, we would go through the technical studies scheduled from February through August or something like that. And during the course of that for this particular piece of property, the Port of Oakland, through their various studies, would come to a determination as to whether or not they needed that particular piece of property for their operations.

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Is that the way the process is supposed to work? Is that sort of the point of the studies?

Executive Director Goldzband responded: Almost – with a friendly amendment. The Port of Oakland would not be doing the studies.

Commissioner Gilmore stated: They are on the team that provides input to doing the study.

Executive Director Goldzband agreed: Correct. And it is the SPAC (Seaport Planning Advisory Committee) that will be looking at that analysis.

Commissioner Gilmore continued: So at the end of that analysis the SPAC is going to put forward a recommendation as to whether or not this particular piece of property is necessary for the Port's operations. Is that correct?

Mr. Goldbeck replied: Yes. The Seaport Plan looks at all the available sites for processing throughput of cargo and makes sure that there is enough on land so that we don't need major fills in the Bay.

If a particular port requests a change, then we consider that in light of the need for the regional capacity and also the throughput potential through the various ports to make sure that if we are going to take something off that we still have enough on-land capacity.

So, we don't necessarily look at the Plan to say, is this needed, and we are going to delete it – we are going to consider it as part of the area that we have on land unless somebody specifically asks to remove it.

Commissioner Gilmore had questions regarding funding allotments: My second question was, during one of the presentations there was a comment about a recommendation for the Oakland A's to be paying for what exactly? Is it BCDC staff on the SPAC? Is it the SPAC? What is the proposal for the payment?

Mr. Goldbeck explained: The Commission's law and regulations require that if someone other than the Commission requests an amendment to the Seaport Plan or the Bay Plan they have to pay the costs for the staff to process the amendment. So, they would be paying for those, not for the overall Seaport Plan update costs, but for that aspect looking at the Howard Terminal.

But that does include looking at cargo forecasts in terms of capacity and also needs. So, there is overlap, as Linda mentioned a couple of times.

Executive Director Goldzband noted: And you will notice that the next item on the agenda is Commission consideration of that contract.

Commissioner Gioia had questions: Clearly at some point this process would be necessary before Oakland or the Port could proceed with the project because this process would have to occur – the question is the timing.

We also received a letter from Save San Francisco Bay Association making similar arguments to that of the Pacific Merchant Shipping Association, that this is premature.

They have a comment here. They say, the City of Oakland has incorrectly designated itself as the lead EIR agency. The Save San Francisco Bay Association is saying that the Port of Oakland has that responsibility for the Howard Terminal site and therefore must be designated a lead agency.

So how is that issue relevant? And what has been the position of Oakland or the Port? Is there a reason why Oakland or the Port of Oakland haven't joined in on this application since they are a real party and have interest here? It is their land.

Mr. Zeppetello suggested: Commissioner, most of your questions should be directed to the Port representatives or the A's. But I would say that with respect to who is the appropriate lead agency, that is really their concern and not ours for purposes of this proposed amendment to the Seaport Plan.

Commissioner Gioia explored the issue of potential indemnification: The next item is a possible contract if we move forward for the A's to pay for the costs. Typically you also get a project applicant indemnifying the agency if there is a challenge to the agency on CEQA because potentially that cost is much greater than just the cost to process.

Was it anticipated that if this went forward that the A's or Oakland or someone would indemnify BCDC if there were a challenge to CEQA?

Mr. Zeppetello replied: That issue has not yet come up but I would say that it could well be premature. We could face that issue and have that discussion when and if there were a CEQA challenge.

Commissioner Gioia continued: But wouldn't you have that discussion at the outset? Normally cities and counties have that going forward not at the end because if we've taken action and we are sued we're not in a very strong bargaining position later on to say, well we want you to pay for us to defend the action.

Mr. Zeppetello explained: The Commission hasn't been in the role of being a lead on a CEQA project so we don't have the same breadth of experience as cities and counties but that is certainly something that we could look at.

Commissioner Gioia opined: We could get challenged under CEQA to any action we take. And if we don't have an agreement in place to start that we would be indemnified – for example, in Contra Costa, when there was a project approved at an oil refinery and there was a

challenge under CEQA there was an agreement in place where the oil company indemnified the county for that CEQA challenge.

Mr. Zeppetello responded: We could certainly include that in the contract that is the subject of the next agenda item or certainly raise that with the A's if that is the direction, which it sounds like, we could certainly consider that.

Commissioner Gioia had questions for the applicants: Could folks from the A's and the Port just come up for a second.

So first, is there a reason (to the Port) why you didn't join in on this application since it is your property? And then second, what is the A's position with regard to indemnification if there is a challenge?

Mr. Kaval replied: Well I think on indemnification you know the next item is to go through the actual agreement that we put in place. And I think we would consider that one of the things that we could negotiate and potentially include in there.

Commissioner Gioia interjected: Normally, an agency won't often go forward unless there is an agreement to indemnify if there is a CEQA challenge.

Mr. Kaval responded: Yes, I am hopeful that we could negotiate that, and this would then give the Commission the confidence and assurances that there would be no risk for your organization. I think we are very open to that and negotiating that in that type of manner. Absolutely.

Mr. Sinkoff commented: To the question about the application – as some of you may know, the Port also has a real estate arm that is now in conversation with the A's on the use of that site.

So, for that reason alone-that we have different interests here-we encourage the A's to submit the application. It is really their project and we want to preserve our ability to talk to the A's on the real estate matter.

And regarding CEQA, one of the first steps that will be required as we understand it, will be a general plan amendment by the City of Oakland. And as you know under CEQA, agencies have some ability to make a decision about who will be the lead agency. So that was discussed and the City took the first step to be the lead agency.

Commissioner Gioia asked: Has the Port had any position on that issue?

Mr. Sinkoff answered: Well, again – we discussed this with the City. So the fact that the City is serving as lead agency is an indication of the Port's discussions with the City.

Commissioner Gioia posed a hypothetical: So presumably if the Port didn't come to agreement with the A's then this process that we are embarking on would potentially stop midway because then there is no interest – no one is going to want to pay pursuing that process if the A's realize that the Port is not willing to provide the land.

Mr. Sinkoff asked for clarification: In other words, if those other negotiations are not fruitful?

Commissioner Gioia replied: If the negotiations between the Port of Oakland and the A's are not fruitful and that happens while this process is going forward then this process would stop.

Mr. Sinkoff answered: I think that is a possibility. It is hard to know exactly how things are going. I mean we are committed to very fruitful discussions with the A's but it remains to be seen.

Commissioner Gioia noted the following: It seems to me then if we are going to approve going forward with this it would really need to be contingent on passing the next item that has an indemnification because it seems like we are putting the cart before the horse if we are saying, we are going to start this process and then we don't come to the terms that we want to agree on in the next item.

It seems that any motion here should be contingent on whatever the Commission wants to see under the next item.

Wouldn't we want to do it that way?

Acting Chair Halsted opined: It seems reasonable to me.

Commissioner Arrequin addressed procedural issues: Admittedly this is a bit confusing because there is the request for the Plan Amendment and then there is also the process of negotiating the property rights with the Port of Oakland as well as the planning process with the Port of Oakland. But the question before us this afternoon is whether to begin the process of studying a plan amendment. And if it so happens that this project does not proceed then I am assuming the process will stop or alternatively we will not have to approve a plan amendment when this comes back in December.

I do think it is worthy of moving forward and I am sure that all of these other issues that we were raised in the public record will be discussed and hopefully, potentially addressed as this process moves forward.

But speaking for myself, I am the representative of Alameda County cities and I think it is important that we do move forward with this process which will be a public process and there are specific issues and findings that have to be made as to whether this will detract from the regional capability to meet projected growth of cargo.

It is not automatically going to green light necessarily a plan amendment but start the analysis for this project.

There will have to be a general plan change with the City of Oakland as well. We will see when this comes back in December whether all of those steps are actually met. I support moving forward.

Commissioner Pemberton had questions: I was just curious, when was the last time BCDC amended the Seaport Plan and removed a port priority area?

Ms. Scourtis replied: In 2011 the then-San Francisco Redevelopment Agency removed the bulk-cargo designations from Hunter's Point in San Francisco. That amendment was approved by the Commission in early 2012.

Commissioner Pemberton continued her inquiry: I have one more question on the process. I was wondering – will the full Commission have an opportunity for an update before December 2019 if that is the date? I was also hoping if you could elaborate on the public process a little bit and how frequently the discussions occur and that sort of thing.

Executive Director Goldzband fielded the question: I will answer the first question which is if you want it you got it. So we will definitely update you then we will make sure that we do so on a semi-regular basis.

Mr. Goldbeck added: This will follow the Bay Plan Amendment process. So the staff will prepare a staff report on the proposed change and has to circulate that a month before the public hearing and then there will be a formal, public hearing in front of the Commission where the public can come and testify. And there may be multiple, public hearings if needed.

The staff responses to any questions or comments raised by the public will be included in the staff report.

And then after the public hearing is closed the staff will prepare a staff recommendation that also responds to all the comments received at the public hearing and then the Commission will vote.

Commissioner Pemberton asked about procedure: So would the public comment period begin once BCDC makes a decision to proceed and then it would conclude before the public hearing before the full Commission?

Mr. Goldbeck replied: Well obviously the public is welcome to comment anytime they choose but the formal, comment period will close at the end of the public hearing unless the Commission decides to extend it.

Commissioner Eckerle asked about bifurcation of amendments: Can someone explain to me why this amendment is separated from the previous amendment we just heard about?

Mr. Goldbeck explained: We set this up as two amendments because one is looking at the overall Seaport Plan and that is working with all the various ports. And some of the ports want to take some time, particularly the Port of Redwood City, which is doing some strategic planning.

And so, they are on one timeline and we want to make sure that we do this right for the whole Seaport Plan in terms of looking at the whole region. That is one process and this is a specific proposal and the Seaport Plan was proposed by the Executive Director but this is a separate request by the A's so it is also a separate item and it is going to be on its own timeline.

As you know there is going to be overlap because we need the cargo forecast and throughput capacity analysis, but they are on different timelines, and right now the public hearings on both of them are scheduled for December 5th.

Commissioner Pine commented: I had that same inquiry. I think the difficulty here is we really have no idea what the timelines will be for the second amendment concerning specifically Howard Terminal because of all the uncertainties with the project.

The point has been made that there is not an urgency to go forward with this and that if we delay this by six months what is the harm? The point was made by BCDC, which I think is a good one, is our staff is resource-constrained and we are woefully behind in working on some other matters. I would much rather put staff against some things that are backlogged as opposed to seeing – this seems like, nice-to-do not have-to-do work, and there is some potential that it would all be for naught because we don't know if this project is really come to fruition.

I need a better understanding for - why now?

Executive Director Goldzband responded: Let me answer that in a couple of ways. The two issues that you are probably referring to that are behind schedule are the environmental justice amendment and the Bay Fill plan amendment are on schedule to be finished this year.

They will not be finished any faster or any slower if BCDC does this work.

The second issue is that it is quite possible without being able to predict the future that the A's and the Port and City of Oakland will go to Sacramento and try to change whatever laws are necessary in order to get a plan approved.

That is not a value judgement it is simply a statement of fact. We believe that it is in the interest of the state of California and BCDC to have all the information possible for the State Legislature and anybody involved with this with regard to what the economic ramifications are and the Seaport habitat ramifications are of this project which will be generated through this plan, through this amendment.

As a result, we believe that doing these at least starting concurrently, and they may not end concurrently, is the way to go because candidly the more information that we can generate through our established, regulatory, open, transparent process that can inform a process in Sacramento the better off the Bay Area will be.

Commissioner Randolph asked: I am wondering whether the process that might happen in Sacramento is our concern or not. So, along the same line of inquiry with the last two questions, that if the idea that these two processes going on simultaneously, the one for Howard Terminal alternative uses of the land would inform the general Seaport Plan, which I can see. But otherwise why wouldn't we just wait for the Port to make the determination on its own that this land is not required for maritime use?

Mr. Goldbeck replied: I think what the Commission needs to think about is if the A's are going to work with legislators and work on legislation, that legislation could affect the Commission. And it is probably in the Commission's best interest to have the staff up to speed and in contact and working with all interested parties.

Executive Director Goldzband added: As well as the members of the Legislators, who should understand what the ramifications are of a throughput analysis and the like.

The last thing the Commission wants is for staff to sit back while legislatures in Sacramento are affecting the authority and jurisdiction of the Commission.

For something to happen in Sacramento I am sure that the State Lands Commission will be involved and just like BCDC needs to be involved.

Commissioner Randolph continued: And the second half of the question: why would we not wait for the Port to tell us that they don't need the land for maritime use?

Executive Director Goldzband explained: Again, it seems to staff that the more we can do that is impartial, that has an analysis behind it that we can stand behind, the better off everybody will be in order to make a decision.

If the Commission decides to wait until June or August to start this process, I can assure you that it will be very difficult for the State Legislature to wait until June or August to start a process. I would rather make sure that as a staff we get as much good, solid analysis as possible as quickly as possible so that we can educate those interested parties which include the A's and the Port and who knows who else.

Commissioner Ranchod inquired: It is nice to see that the A's are considering a proposed, mixed-use development around the ballpark. Are there reasons to initiate the process of considering the possible amendment apart from this project that was described by the A's earlier?

Mr. Goldbeck replied: There is no reason why we have to separate them. There are two requests that could take their own timeline and so the staff thinks it is wise to have them as two, different things that one may go forward and one may not but not to have attached at the hip in one process.

Commissioner Ranchod continued his inquiry: And the second question related to staff resources and thanks for the assurance that beginning work on this would not take away from the other priority issues like environmental justice and the Bay Plan Amendment. Do we have any estimate as to how much BCDC staff time would be required if we initiated this process over the next six months?

Mr. Goldbeck answered: Yes we do. I don't remember the exact number but Linda has it in terms of our estimate right now of staff PY (person year).

Ms. Scourtis asked for clarification: For the overall process versus the Howard Terminal?

Commissioner Ranchod replied: Right, if you can separate them out.

Ms. Scourtis explained: Because the some of the 1-19 Bay Plan Amendment information is going to help inform the second Howard Terminal process, I believe it will take a full person year (PY) to do this work and actually more like one and a half (PY). There is a lot of analysis that needs to be done.

The A's have agreed to pay for staff time. They are also paying for the cargo and capacity consultant reports.

Commissioner Ranchod asked: So one plus person years to work up both proposed plan amendments?

Ms. Scourtis answered: Yes, it might be more like one and a half. Let's say one and a half PY and because the funding sources are very separate. The environmental justice work is being done under the Commission's General Fund Budget. The Port work will be underwritten partially by MTC funding and the Howard Terminal will be underwritten by the Oakland A's.

Mr. Goldbeck added: Actually, just a technical correction, the environmental justice work is being funded through a NOAA grant.

Commissioner Ranchod continued: And so apart from the issue of funding which is good to understand where the money is coming from – because of the limited BCDC staff time in people is there any constraint there as a result of pursuing the second, proposed, Plan amendment in addition to the first one we already talked about?

Ms. Scourtis explained: To conduct the overall Plan amendment we're hoping that we can cobble sufficient funds together dedicated to port planning to perhaps hire some limited-term assistance.

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Commissioner Pemberton was recognized: As a member of the Environmental Justice BCDC Commissioner Working Group, the work that the staff has done has been phenomenal and they are completely on track and absolutely not years behind.

From my perspective that is not a concern on my part with this action before BCDC.

Acting Chair Halsted stated: And we do have this important workshop coming up, so it is important to get to that, too.

Commissioner McGrath commented: As a potential member of this I am comfortable going forward with the second amendment. I think that anybody that asks for BCDC to look at a Bay Plan amendment deserves an answer as long as they are paying for it.

On that aspect I am supportive. On the aspect of, are they really paying for it and how does it work I'm not so sanguine. While the lead agency may well be the City of Oakland and with a land-use plan you can certainly do something at a programmatic level that might also cover whatever CEQA responsibilities or information BCDC would need to move forward with its jurisdictional question, I am also a CEQA practitioner for 16 years for the Port of Oakland, and quite mindful of the cases that say that you have to deal with the whole of the project and you cannot inappropriately segment it.

What I would propose that we do is go ahead with this item and postpone the next item until – I am frankly not willing to just have a blank check on exactly how the funding is going to work and is it enough and is the scope sufficient?

While I have a lot of faith in the staff it is perhaps – what did Reagan say, trust but verify. I want to make sure that the actual scope of work captures what we need to do under CEQA and how we need to be protected.

Acting Chair Halsted stated: That is an important thought but I would ask you to hold it while we finish.

Commissioner Gioia commented: I have a different approach than what you suggested. If we go forward today it is contingent on the next item being successfully negotiated because frankly, we want to ensure that full costs are recovered and that includes indemnification. So I am prepared to go forward and make this contingent on the next item. The Commission is going to provide direction on the next item, give direction to the Executive Director and it is contingent on the agreement with the A's to include in that contract all costs that we direct as part of that contract which is full cost recovery plus indemnification.

Commissioner Pine was recognized: I have a quick question for the Executive Director. You made the point that you want to be in a position to engage with the Legislature in the event of expedited CEQA discussions in Sacramento.

Executive Director Goldzband clarified: I didn't say CEQA discussions just discussions.

Commissioner Pine continued: Okay, discussions. But couldn't you do that regardless of whether we approve this motion or not?

Executive Director Goldzband answered: Sure. On the other hand if the analysis is not done in a timely manner then we will have less information with which to influence the process.

Commissioner Nguyen asked: Isn't Item 8 a necessary input to Item 9? That is, if the removal of the port priority use designation that dependent on the forecast volume and future technology and that has to be done before we can determine whether we should remove that designation?

And my second question is what is the Port's timeline?

Ms. Scourtis replied: To the first question – the updated foundational information is necessary for any future activity around the Port Plan. And what was the second question?

Commissioner Nguyen repeated: What is the Port's timeline relative to when we want to finish the Seaport Plan?

Ms. Scourtis asked for clarification: The Oakland A's could answer that question. Are you referring to the Howard Terminal?

Commissioner Nguyen clarified: The Ports' timeline in their deliberation of the proposal.

Ms. Scourtis replied: We hope to reconstitute and convene the Seaport Planning and Advisory Committee to consider the updated cargo forecast and capacity assessment and also preliminary staff report recommendation by the end of the summer of this year.

And that would come prior to fulfilling our requirement to come back to the Commission with our staff report and the SPAC staff report and preliminary recommendations for the hearing.

Ms. Jessica Fain on BCDC staff commented: The funding for these throughput studies currently is proposed by the A's. Absent that funding the entire timeline of the Seaport Plan would likely have to be revisited.

Commissioner Gioia detailed a potential motion: I will make a motion and the motion is to go forward with issuing the notice to start the process for a Plan amendment contingent on the successful negotiation of a contract with the A's as directed by this Commission in the next item. Does that make sense?

Meaning the process does not go forward until there is the successful completion of the negotiation otherwise there is no incentive to negotiate this contract.

Acting Chair Halsted stated: Commissioner McGrath did you want to comment on that?

Commissioner McGrath (off mic): No just to second.

Acting Chair Halsted continued: We have two seconds then or a third. Are there other questions or comments?

Commissioner Vasquez commented: Can you tie the two together because one action is incumbent upon another action in the past.

Commissioner Gioia asked: If that is the goal that we want to achieve how do we achieve it?

Commissioner Vasquez answered: By voting on this one and voting on the next one and putting those requirements in that one.

Mr. Zeppetello suggested the following: Well I think you can do it contingent as the motion is made. On the other hand if the Commission fails to adopt Item 10 then your vote on this will not be effective.

Commissioner Gioia responded: Right, okay. So we can make it contingent, all right.

Acting Chair Halsted continued: We need a roll call vote.

The Reporter (off mic): Excuse me; we need to know who seconded this motion. We have two seconds on this.

Acting Chair Halsted replied: Oh, Commissioner Ranchod.

The Reporter: Commissioner Ranchod is that correct?

Acting Chair Halsted answered: Yes.

**MOTION:** Commissioner Gioia moved approval per his commentary of the staff recommendation, seconded by Commissioner Ranchod.

**VOTE:** The motion carried with a vote of 15-4-0 with Commissioners Ahn, Arrequin, Gilmore, Gioia, Gorin, Eckerle, Pemberton, McGrath, Ranchod, Randolph, Vasquez, Nguyen, Wagenknecht, Holzman and Acting Chair Halsted voting, "YES", and Commissioners Peskin, Pine, Sears and Hillmer voting "NO" and Chair Wasserman "RECUSING".

**10. Commission Consideration of a Contract with the Oakland Athletics for Staff to Conduct the Analysis Required for the Commission to Consider Removal of the Bay Plan and Seaport Plan Port Priority Use Area Designation from Howard Terminal.** Acting Chair Halsted announced: Item 10 is Commission consideration of a contract with the Oakland Athletics to provide funds for the staff to conduct the analysis required to consider removal of the Bay Plan and Seaport Plan priority use designations from Howard Terminal. Cody Aichele-Rothman will make the staff recommendation.

Ms. Aichele-Rothman presented the following: the staff of BCDC recommends that the Commission authorize the Executive Director to: (1) execute a contract with the Oakland A's to provide up to 193,067.00 dollars to the Commission for the staff's time to process and the Commission to consider the proposed Bay Plan and Seaport Plan Amendment; and (2) amend the contract so long as the amendment does not involve substantial changes in scope.

Commissioner Gioia commented: So you want to get to some direction on the items. So just to reiterate that in getting to Commissioner McGrath's point of ensuring that it is the full cost incurred by BCDC as determined by BCDC and that includes indemnification for any legal challenges.

Does any of the staff including Counsel believe that this covers everything?

Acting Chair Halsted asked: Is there anything that should be included that we haven't?

Mr. Zeppetello replied: I can't think of anything at the moment. I think the indemnification is the big one and the draft contract does provide for up to 120 percent of actual costs. So it has a buffer in there.

Commissioner Gioia stated: There is no material that was attached online to this agenda item. So we don't have that contract.

Mr. Zeppetello replied: Correct.

Commissioner Vasquez asked: So there is going to be payment for consultants also in this agreement. Are those consultants going to be mutually agreed to?

Ms. Fain explained: There is no payment of consultants as part of this contract. The A's separately will bring on a consultant that will be managed by BCDC staff. That is separate from the amount that is this contract that we are discussing right now.

Commissioner Vasquez asked: Is that enough oversight then?

Mr. Goldbeck replied: To clarify – what that means is the A's will pay for the consultant but the consultant will report to the Commission and the Commission will direct their activities. The Commission will select the consultant.

Commissioner McGrath commented: I'm mindful of this as a first round of potential condition on this. I'm well aware of our Counsel's consideration that we have an equivalent process but it needs to be supported with enough information.

And I think this is a good starting place but I have in mind a condition to the effect – the cost of the contract may be increased to provide a scope of work that shall include provision for the necessary environmental work at a level of detail necessary to support the Commission's CEQA equivalent work.

It makes it clear that the responsibility doesn't determine what the level of detail is, and the City's planning process may well cover it, but I want to make sure that it is in the record that it's their dime.

Mr. Goldbeck responded: Staff agrees with this; in fact, staff had already been talking with the A's about just such language. So we are like minds on this.

Commissioner McGrath added: But I think that's clear enough on my record and the excellent notes taken by our reporter.

**MOTION:** Commissioner Gioia moved approval of the staff recommendation per his commentary and Commissioner McGrath's friendly amendment, seconded by Commissioner Pemberton.

**VOTE:** The motion carried with a vote of 19-0-0 with Commissioners Ahn, Arrequin, Gilmore, Gioia, Gorin, Eckerle, Pemberton, McGrath, Peskin, Pine, Ranchod, Randolph, Sears, Vasquez, Nguyen, Hillmer, Wagenknecht, and Holzman, Vice and Acting Chair Halsted voting, "YES", no "NO", votes and Chair Wasserman, "RECUSING".

**11. Adjournment.** Upon motion by Commissioner McGrath, seconded by Commissioner Hillmer, the Commission meeting was adjourned at 2:47 p.m. to participate in an environmental justice workshop.