

# San Francisco Bay Conservation and Development Commission

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May 29, 2020

**TO:** All Commissioners and Alternates

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

**SUBJECT: Draft Minutes of May 21, 2020 Virtual Commission Meeting**

1. **Call to Order.** The virtual meeting was called to order by Chair Wasserman at 1: 02 p. m. Chair Wasserman announced: Commissioners please unmute yourselves, respond and then mute yourselves again after responding. Peggy, please call the roll.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted, Commissioners Addiego, Ahn, Alioto-Pier (late), Beach, Butt, Chan (represented by Alternate Gilmore), Cortese (represented by Alternate Scharff), Eckerle, Gioia, Gorin, Lucchesi (represented by Alternate Pemberton), McGrath, Peskin, Pine, Randolph, Ranchod (represented by Alternate Nelson), Sears, Showalter, Spering (represented by Alternate Vasquez), Tavares (represented by Alternate El-Tawansy), Techel, Wagenknecht and Ziegler. Senator Skinner, (represented by Alternate McCoy) was also present.

Chair Wasserman announced that a quorum was present.

Not present was Commissioner: Department of Finance (Finn).

3. **Public Comment Period.** Chair Wasserman gave the following instructions: Before I open the public comment period for items not on the Agenda I would like to announce that we will defer Agenda Item 10 on Legislative Matters to our next meeting.

I want to quickly share some instructions on how we can best participate in this meeting so that it runs as smoothly as possible. First, everyone, please make sure you have your microphones or phones muted to avoid background noise. For Commissioners, if you have a webcam please make sure that it is on so everyone can see you. For members of the public, if you would like to speak either during our open public comment period you will need to do so in one of two ways. First, if you are attending on the Zoom platform, click the “participants” icon at the bottom of your screen and look in the box where your name is listed under “attendees” and find the small hand to the left. If you click on that hand it will raise your hand virtually. Second, if you are joining our meeting via telephone you must press \*9 on your keypad to raise your hand to make a comment. We will call on individuals who have raised their hands in the order that they are raised. After you are called on you will be unmuted so that you can share your comments. Please keep your comments respectful and focused; we will mute anyone who fails to follow those guidelines or, at worst, dismiss them from the meeting. Every now and then you will hear me refer to the meeting “host.” Our BCDC staff is acting as hosts for the meeting behind the scenes to ensure that the technology moves the meeting forward smoothly and consistently and they have consistently done a very good job at that.

BCDC MINUTES  
MAY 21, 2020

BCDC has also established an email address to compile public comments for our meetings. Its address is [publiccomment@bcdc.ca.gov](mailto:publiccomment@bcdc.ca.gov). I have received two emails from parties that have been shared with the Commissioners prior to the meeting on the enforcement matter which is Item 9. If we receive any emails during the meeting they will be shared with the Commissioners and be made available on our website [bcdc.ca.gov](http://bcdc.ca.gov) along with the public comment emails we already have received.

That brings us to our next order of business which is Public Comment. We have not received any requests yet. If anyone wishes to address us on a matter not on the Agenda please raise your hand either by telephone or by Zoom and you have three minutes to make your comments.

Peggy, any hands?

Mr. Atwell replied: No hands yet. Let's give them a second or two in case they're shy. We have one hand – Tom Krysiak. Tom, go ahead and unmute yourself and you will have three minutes. Please state your name for the record.

Mr. Krysiak addressed the Commission: Thank you for allowing me to speak today. My name is Tom Krysiak. I live in Alameda. My concern in addressing BCDC is about a rock pier that seems to be hastily put together on the shoreline of Alameda.

It is along the Bay Trail. It looks like it might be illegal. I alerted your office about it. I just don't want to lose the momentum on this because I am a big fan of BCDC and I have attended several of your other meetings and I'm very keen on defending the Bay just like you are.

The address is 12 Callan Place in Alameda. I have sent several emails to your staff. They have been in communication with me. The motive behind contacting you today is that I don't want to lose momentum on this.

So that concludes my comments and thank you very much for letting me participate in this meeting.

Chair Wasserman replied: Thank you Mr. Krysiak. I am sure the staff will get back to you. That concludes our Public Comment Period.

Chair Wasserman moved to Approval of the Minutes.

4. **Approval of Minutes of the May 7, 2020 Meeting.** Chair Wasserman asked for a motion and a second to adopt the Minutes of May 7, 2020.

**MOTION:** Commissioner Wagenknecht moved approval of the Minutes, seconded by Commissioner Scharff. The motion carried by a show of hands with no abstentions or opposition.

5. **Report of the Chair.** Chair Wasserman reported on the following: That brings me to my report. The situation we are in today is extraordinary and scary. This Corona virus pandemic and the necessary sheltering in place response are causing us to learn new ways of doing things and causing major economic and social dislocations.

The vast reduction in automobile and truck traffic and the shutdown of manufacturing has caused a dramatic drop in greenhouse gas emissions throughout the world. So one of the lessons that we can learn from this pandemic is that we do have the ability to reduce greenhouse gas emissions significantly if we are prepared to pay the cost.

I suspect with the working remotely for many businesses seeming to continue or plan to continue we may well have further reductions around the world.

But another lesson we actually have known for some time; even if we do pay the cost and reduce greenhouse gases significantly the Arctic ice will still continue to shrink and the sea levels will continue to rise.

So the job of BCDC has not changed and must not change. We need to continue to push and to explore ways that we can adapt to rising sea levels and we are doing that.

And several of our presentations today address those efforts.

a. **MTC Appointment.** Vice Chair Anne Halsted has decided to step down from her longtime role as BCDC's representative to the Metropolitan Transportation Commission at the end of June. I want to assure you that she is continuing to serve on the Commission as Vice Chair as well as on BARC. I want to thank Anne for her many years of diligent and thoughtful service representing us on MTC and also reassure everyone that she is not leaving BCDC or her role as Vice-Chair. I would like to offer her the chance to say a few words.

Vice Chair Halsted addressed the Commission: It has been a great privilege to serve as BCDC's representative at MTC for these many years.

And during that time we have accomplished a lot. We built a new Bay Bridge. We've moved MTC to San Francisco. We've brought BCDC to MTC. We have merged the ABAG and MTC staff and many other things.

For the first time in Plan Bay Area this year the concerns over sea level rise and climate change will be much more fully represented and I am very happy about that because there is much work to do.

It has been great working with MTC. I know that many of the staff has established a much closer relationship because of the move to the headquarters.

My decision to step down is simply that I think I've been there long enough and it is time for some new blood because it is an extremely important place. So just to clarify – it is not for health reasons. I am not having health problems. I continue to be active and I want to help in every way I can but I am pleased that I can step down and bring in someone else to take over this responsibility and be there to participate at the same time.

So again, I thank all of you for allowing me to participate and I wish us all well in developing stronger regional leadership on the issues that we are concerned with as well as many others as well. Thank you.

Chair Wasserman continued: Thank you very much for your words and, again, for your service. And as we've said, you are not off the hook – you still have a lot to give.

State law requires that BCDC's appointee to MTC reside in San Francisco and be approved by the Mayor of San Francisco. Therefore, at this time I would like to nominate Commissioner Eddie Ahn to be BCDC's new representative to MTC. I have spoken with the Mayor Breed's office about this selection and the Mayor is looking forward to working with Eddie on MTC. I would appreciate a motion and second to nominate him.

**MOTION:** Commissioner Gioia moved to appoint Commissioner Ahn as BCDC's MTC representative, seconded by Commissioner Pine. The motion carried by a show of hands with no abstentions or opposition.

Chair Wasserman continued: Commissioner Ahn, would you like to say a few words?

Commissioner Ahn replied: Thank you for your general vote of confidence and I will work hard.

Chair Wasserman stated: We have no doubt about that. Congratulations.

Vice Chair Halsted clarified a point: Chair Wasserman, I think in your announcement you said, at the end of June – it was the end of May.

Chair Wasserman responded: I'm sorry, the end of May – June 1st. Yes, thank you. We are not talking about legislation today because of the limited number of bills that they are considering in the Legislature.

However, there is one bill I want to bring to your attention – AB3256 sponsored by Assembly Members Garcia, Mullins and Bonta which proposes a sustainability bond for the November Ballot.

This bill is for a \$4 billion bond that supports a wide set of measures to mitigate and adapt to climate change in the Bay Area. It includes \$20 million for BCDC's coastal planning and projects within our jurisdiction.

It has a wide range of allocations to support for regional and local planning and projects as well. I urge you to take a good look at this bill and seriously recommend endorsing it.

b. **Next BCDC Meeting.** Our next meeting will be in two weeks, on June 4th. That meeting also will be held virtually. The agenda for our next meeting likely will include:

- (1) Consideration and possible vote on legislative matters that we deferred today.
- (2) A briefing on a proposed amendment to the Exploratorium permit in relation to the San Francisco Waterfront Special Area Plan.
- (3) A briefing by the California Natural Resources Agency on its newly-adopted principles to be applied by state agencies as they analyze and react to rising sea level.
- (4) A briefing on the Seaport Plan Update.

c. **Ex-Parte Communications.** This is the point where if Commissioners wish to make a verbal report of an ex-parte communication you can do so. As you know, even if you do it verbally you need to do it in writing. If anyone wishes to make such a report, please raise your hand.

Ms. Atwell announced: No hands raised Chair Wasserman.

Chair Wasserman continued: Thank you. That brings us to the Executive Director's Report. Larry, will you please present your report.

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

This Executive Director's Report will include some sobering news. First, we expect BCDC, like every other state agency, to operate virtually for the remainder of the year as much as possible. The Newsom Administration has made it clear that organizations that have worked remotely successfully during the past two months should continue to do so. As such, I expect that the Commission will continue to meet virtually as well likely through the end of the year. I do not foresee receiving approval for a Commission meeting to occur at 375 Beale Street in the foreseeable future. So, BCDC's remote command center will continue to be located at our family's kitchen counter.

A product of our sheltering-in-place nationwide is that we have been reminded of those people whose work generally is overlooked but who are essential to everyday life. In my family's small world our son is looking forward to finishing his sophomore year in high school and then going back to work this summer at our local Safeway. At BCDC I want to note that our administrative staff has been a major factor in our success so far. Without their consistent presence, mainly behind the scenes, we wouldn't be able to communicate, to deposit application fees, to pay your per diems, or to process the myriad human resources forms that occupy our world. You don't see these people presenting permits or Bay Plan amendments during our Commission meetings but we couldn't do those things without them. On this date in 1927, Charles Lindbergh landed in Paris after soloing across the Atlantic. Exactly five years later – 88 years ago today – Amelia Earhart landed in Londonderry after doing the same thing. Each talked at length about the people who built their planes, helped plan their trip and inspired them to great success; those people behind the scenes. And so did Susan Lucci after she won her first Emmy on May 21, 1999 – 21 years ago – after 19 unsuccessful attempts. So, thanks to Peggy and her team for being our covert all-stars – they've enabled the rest of BCDC staff to do our jobs so well.

For example, our Admin team has surveyed our staff and we now know that we need to order some 35 laptops and a slew of webcams. Because the laptops likely will be back-ordered, we'll allow employees to take their desktops home to use in the meantime. We are also starting to set up virtual ergonomic appointments. While our staff can't bring home their chairs because they belong to MTC, we do have some extras that we own so we'll see if some of those can work for staff.

Ordinarily, I would leap right into a description of the budget issues affecting BCDC now, but I want to keep on talking about some of our successes. For example, this morning, Resources Secretary Crowfoot, EPA Secretary Blumenfeld and SLC Chair Betty Yee held a large-scale webinar. Why do I mention this? Because it was put together in large part by the work of our planning and administrative team in collaboration with Commissioner Eckerle.

Commissioner Eckerle commented: Thank you Larry. This workshop this morning was a fantastic opportunity to pull together leadership and staff from the 17 agencies that helped develop the six, sea-level-rise principles to help align state actions around our planning and adaptation efforts in the state.

It was well attended. I think we had around 135 participants. I want to extend a huge thanks to Larry and to Jessica for helping us start to pull the pieces together and to Dana from BCDC staff who joined us in one of many presentations.

So as Chair Wasserman mentioned, Executive Director Mark Gold from OPC who is also the Deputy Secretary for Coast and Oceans, CNRA will be joining us at our June 4th Commission meeting to talk further about those sea-level-rise principles. And we are really looking forward to having that discussion. Thanks.

Executive Director Goldzband continued: Thank you. Another piece of news – this week is the one-year anniversary of the Enforcement Audit. So this week we plan to send a letter to a wide variety of legislators and members of the Newsom Administration detailing the progress of the Enforcement Program during the past year. That letter and the attachments will be posted on our website. The progress made by our staff and the Commissioners on the Enforcement Committee is too good to keep to ourselves.

As Chair Wasserman noted, COVID-19 doesn't make allowances for climate change and neither do dredgers in the San Francisco Bay. The start of the Bay's dredging season remains June 1st and our Sediment Management Team has approved projects that are ready to start. That being said, we still need to have more of those dredged materials sent to beneficial reuse locations. I should note that the U. S. Army Corps of Engineers has decided not to monitor for entrainment of listed species aboard its own dredging ship due to the tight quarters aboard the vessel. And construction on larger shoreline projects appears to be continuing on schedule, at least according to the number of plan review requests BCDC's Bay design analysts are receiving for many of the projects that BCDC permitted last year such as the biotech hub at Sierra Point in Brisbane and Phase one of Pier 70 in San Francisco.

For the final two pieces of good news, I am pleased to announce that the NOAA Office for Coastal Management has approved your landmark Bay Plan Amendments on Fill for Habitat and Environmental Justice. They did include two qualifications; the first is that the map note regarding completion of the Middle Harbor Enhancement Area cannot be used as a condition for a consistency determination and that is not an issue because the policy simply directs what the Commission will work to achieve. The second revolves around the EJ policy – it states that the Commission should prefer to place in-lieu, public access near at-risk communities but NOAA's concern is not about EJ at all; it is about whether states, in general, can require federal agencies to construct a different project than the agency proposed. We are reviewing NOAA's position but we don't expect that it will affect the EJ policies.

a. **Budget and Staffing.** Before I leap into the budget discussion I am happy to announce that Karen Tanner will be joining BCDC as a California Sea Grant Fellow. Karen will receive her doctorate in Ecology & Evolutionary Biology with a designated emphasis on Coastal Science and Policy from the University of California, Santa Cruz later this year, so she is yet another Banana Slug to join BCDC. She earned her previous degrees from Mills College and

James Madison University so she is both a Cyclone and a Duke. Her research has focused on new strategies to improve salt-marsh, restoration outcomes and the impacts of renewable energy development on desert habitats and annual plants. In her previous career she was a software quality engineer at Adobe. So she may become, by default, a member of the audio/visual club. We look forward to her starting with us as a member of the Planning Team next month unless we hear otherwise from you.

But now about the budget: While the May Revise usually is a relatively mechanical update of the Governor's January Budget Proposal, this year it is way-off-the-charts different. That being said, I was heartened by listening to Secretary Crowfoot and other Cabinet members speak about the difficult decisions that the Governor faced as he put together the May Revise. The aspect that impresses me most is that the Governor put this budget together by sticking to the values that he described as he ran for office. This spring the Governor had to triage the damage and figure out how to protect public health, public safety and public education while protecting those Californians who are most vulnerable to the coronavirus. And Secretary Crowfoot also stuck with the values that he and the Governor agreed upon at the beginning of the Administration – promote resilience in the face of climate change, protect and increase biodiversity and increase access to the State's natural resources for all Californians.

Specifically for BCDC's, the Governor's May Revise includes two programmatic changes. First, BCDC is requesting a one-time augmentation to fulfill a settlement agreement ending the Westpoint Harbor Public Records Act litigation. Second, BCDC is requesting a baseline augmentation for work performed on BCDC's behalf by the State Attorney General. These budget changes appear to be non-controversial.

While our staff appreciates what I have just said, they are just as concerned about the aspects of the Governor's proposal that would be "triggered" if the federal government does not "provide sufficient funding" to plug about a quarter of the deficit. Absent such funding the Governor is proposing a list of spending cuts including a 10 percent pay cut for state employees and a 5 percent cut in General Fund for the fiscal year after next. I cannot tell you how BCDC will absorb that cut. We shall work with Finance and the Department of General Services to determine the best.

In addition, BCDC receives almost \$2 million annually from the Greenhouse Gas Reduction Funds (GGRF) commonly known as "Cap and Trade". While these funds are in "baseline", economic activity in California has slowed, so we shall need to be cognizant of the results of the cap-and-trade auctions which, I am sure, will be lower than in previous years. Again, we will run budget scenarios to deal with that.

All of this has put members of our staff on edge. It's cold comfort to learn that BCDC is in its strongest budgetary and staffing position in at least a couple decades. That being said, we have a number of limited-term employees whom we want to keep and we shall do everything in our power to do so. On the positive side, our staff's resilience during the past two months has been no less than brilliant. My job is to get us through the pandemic and its aftermath with as little pain as possible and have the Commission come out stronger than when we started.

b. **Policy Issues.** Finally, Chair Wasserman, I am going to be a nudge. FPPC Form 700s are due on June 1st – you’ll remember that the filing deadline was pushed back. Several Commissioners and Alternates have not yet filed their forms – please do so. The deadline is only eleven days away.

That completes my report Chair Wasserman and I’m happy to answer any questions.

Chair Wasserman asked: Does anyone have questions for Larry? (No questions were voiced) I have a comment to expand on a very important detail of Larry’s Report.

Many of you may not know or remember who Susan Lucci was. For 41 years she portrayed Erica King on the ABC, daytime drama “All My Children” and was frequently referred to as the “leading lady” of daytime television.

7. **Consideration of Administrative Matters.** Chair Wasserman stated there were no listings on Administrative Matters.

8. **Public Hearing and Possible Vote on Modification of Bay Bridge Permit Requirements for Shorebird Roosting Habitat Mitigation; BCDC Permit Application No. 2001.008.46 (Material Amendment).** Chair Wasserman announced: Item 8 is a public hearing and possible vote on the proposed modification of the Bay Bridge permit requirements for shorebird roosting habitat. Rebecca Coates-Maldoon will introduce the project.

Principal Permit Analyst Coates-Maldoon presented the following:

Good afternoon, Chair Wasserman and Commissioners.

On May 8th you were mailed a summary of a request by Caltrans to materially amend the BCDC permit that authorized demolition and replacement of the original East Span of the San Francisco-Oakland Bay Bridge.

That permit included a mitigation package with measures to address many impacts resulting from construction of the Bridge. One such mitigation measure was a requirement for Caltrans to construct 500 square feet of shorebird, roosting habitat near the Bridge’s Oakland Touchdown. After more than a decade of studying options to fulfil this requirement Caltrans is before the Commission today to request that the mitigation requirement be modified. Caltrans believes the original requirement is infeasible and requests that the Commission allow it to instead contribute funds toward another shorebird, habitat project at a different location on the Bay shoreline.

I will start by going through a brief timeline of how we got to where we are today which Caltrans will also discuss in further detail.

a. The Bay Bridge permit was issued in 2001 and originally required that Caltrans identify a method to provide 500 square feet of roosting habitat for shorebirds near the base of the Bridge or in the Emeryville Crescent.

b. In 2004, after some study on how to fulfil the requirement, Caltrans identified its preferred method for fulfilling this obligation to be construction of a riprap, rock island just offshore of the Oakland Touchdown.

c. The permit was amended in 2005 to allow for this rock island’s construction.

d. In 2007 and 2008 Caltrans submitted plans for the rock island to BCDC and other agencies for review. At this point several concerns about the design became evident. While the island would provide 500 square feet of roosting habitat above mean sea level, BCDC staff identified concerns of the lack of resilience of this design to sea level rise. Caltrans considered modifying the island design to raise its elevation but found that this would require significant additional fill potentially resulting in subsidence and failure of the island. It could also impact sensitive habitat in the Bay for essential fish species and potentially eelgrass.

e. In response to these concerns Caltrans began study of alternative methods of fulfilling the shorebird, roosting, habitat, mitigation requirement.

f. In 2013 the East Span of the Bridge opened. This was the original deadline for completion of the mitigation requirement. However, following rejection of the original riprap, island design in 2009 up until the present, Caltrans has worked with various stakeholders and partners to identify alternative methods of fulfilling the mitigation requirement.

As Caltrans will further describe in their presentation, due to these concerns, they have reconsidered a variety of mitigation options to fulfill the permit requirements for shorebird, roosting habitat including both on-site and off-site alternatives. This was done with a good deal of input and coordination with stakeholders, other agencies and potential partners and BCDC staff. Most alternatives considered have been rejected as infeasible or undesirable except for the two highlighted here that Caltrans is requesting the Commission allow it to pursue as an alternative, mitigation strategy.

The proposed amendment would modify the shorebird, roosting, habitat requirement to allow Caltrans to provide off-site, fee-based mitigation in lieu of the previous requirement to construct a riprap island.

As Caltrans will further describe, they propose to provide \$775,000 to East Bay Regional Park District for a habitat-enhancement project at East Island, an existing shorebird, roosting island at MLK Jr. Regional Shoreline in Oakland.

Should the East Island project fail to be completed, Caltrans proposes to provide the full amount to the State Coastal Conservancy which would accept the funds and provide them as a grant to go toward a future, shorebird project that the Conservancy would identify and select with input from BCDC's Executive Director.

Staff believes that the primary issue for the Commission's consideration is whether modifying the permit to allow Caltrans to provide off-site, fee-based mitigation is consistent with the Commission's law and policies particularly with regard to the Bay Plan policies on mitigation.

It is important to note that the Commission has not yet permitted the proposed East Island project. BCDC would conduct a full evaluation of the East Island project's consistency with the Commission's law and policies when an application for that project is received. Any action the Commission takes on this amendment would not bind BCDC to any future action regarding the East Island project.

I will now turn this over to Stefan Galvez-Abadia and the Caltrans team to present the amendment request in more detail.

Mr. Galvez addressed the Commission: Thank you Rebecca. Chair Wasserman, Commissioners and members of the audience, it is always a privilege to be representing the Department before this distinguished body.

This appearance is hopefully one of the last ones that we are going to do as part of the Bay Bridge Project, almost 20 years in the making. I want to introduce myself and members of the team who will be making the presentation and answering any questions that you may have.

I am Stefan Galvez. I am District Division Chief for the Environmental Division in Caltrans District 4. We also have Dr. Brian Maroney. Many of you have gotten to know Dr. Maroney over the years that he has interacted with the Commission. He is an expert on seismic safety and structures in the state of California and in the nation. We also have Bart Ney who is our Public Information Officer who is also available to answer any questions from the media or other members of the public if necessary. We have D.J. Allison from the firm of AECOM. He will be co-presenting with me.

I want to on behalf of the Department and on behalf of our partners at the Metropolitan Transportation Commission and on the California Transportation Commission give a special sense of appreciation for continuing involvement and all the help that we have received over the years from BCDC.

BCDC has had tremendous influence in the way we have completed these projects. Right now we have a structure that is not only seismically safe but it is a beautiful structure from an engineering perspective as well as an architectural perspective.

We are now officially completed and I felt that it was important for us to acknowledge and recognize the role that you have played on completion of this mega-project. So thank you so much for your cooperation.

This slide is for the benefit of the audience and the Commissioners who may not be familiar with the project. It shows the lay of the land with I80, the new San Francisco/Oakland Bay Bridge East Span with an 80-highway shield. You can see the original East Span on the dotted line. You can see Yerba Buena Island and Treasure Island as well.

I wanted to point out the Emeryville Crescent on the upper, right side. Just to the left is the area of temporary impact which is the area of the Bay in question. We had some temporary impacts on 0.8 acres of sand flats which already have been restored and mitigated on-site. This is the area that we are going to be talking about that was the genesis for the condition for the 500 square feet.

I highlighted that the project has been completed but I also wanted to highlight the fact that we have new, public-access features that have not been open to the public because we were completing our construction and also because of COVID-19, shelter-in-place requirements.

So that includes vista points on Yerba Buena Island which will be managed by our partners at TIDA, the Treasure Island Development Authority as well as the viewing area on the Oakland Shoreline. And that is going to be managed by our partners at the East Bay Regional Park District.

We also have a brand new parking lot with about 100 parking spaces. The original parking lot that was included in the 2001 permit was for about 42 spaces.

We are looking forward to completion of these public-access components for the project.

I would also like to highlight that the vista points have been the recipient of the Merit Award of 2020 from the American Society of Landscape Architectures, the Northern California Chapter. Again, kudos to your staff that actually participated actively to design and complete this portion of the project. So thank you so much. Now the region will have access to the Bay right underneath the Bridge.

I wanted to provide a little bit of context pertaining to the roosting habitat. The Department always strives to avoid impacts whenever possible. With a mega-project like the Bay Bridge Project we were not able to completely avoid the impacts. So we looked at compensatory, mitigation programs for any impacts that were not able to mitigation on-site.

We are talking about an initial, compensatory, large program of \$15.5 million. It grew to about \$17.5 million over the years.

I wanted to highlight the wetland restoration and the \$8.8 million contribution that Caltrans transferred to the U.S. Navy for the clean-up activities of hazardous waste on Skaggs Island which resulted in the transfer of 3300 acres located all the way to the San Pablo Bay National Wildlife Refuge. To us this is the Crown Jewel of our compensatory mitigation project.

But again, I wanted to highlight the proportions of what we have done here is pretty clear. We are talking about 3,300 acres that will be preserved in perpetuity. They are smack in the middle of the Pacific Flyway for the benefit of bird species.

We also have done a number of on-site, avoidance, minimization measures. I wanted to highlight the construction of the Bay Cormorant platforms which have been very well utilized by the Cormorants as well as the large-scale, stormwater, treatment capture for about 140 acres between Powell Street to the Toll Plaza Peninsula.

This is a direct benefit to the Bay as well as species in the Bay including birds and fisheries. That area is fully treated right now.

What we are going to be talking about here is the impact of less than an acre, 0.8 acre which was already restored early in the project construction.

Those impacts on sand flats lasted for about six months and they were restored shortly thereafter. We still want to keep our commitments and meet the requirement of 500 square feet that will require mitigation but I want to make sure that it was understood that this area has been fully restored and mitigated on-site.

In 2001 we committed to provide the 500 square feet for shorebird, roosting habitat. In 2005 after having different meetings with stakeholders and evaluating the different options, we agreed to construct the riprap island about 200 feet north of the Oakland Shore.

And the commitment was to maintain 500 square feet above mean sea level. Now what we didn't know about back in 2001 all the way to 2006 was what the Commission referred to earlier today which is about sea level rise.

There was very little guidance. There was little direction. There was little regulation about sea level rise. And once we started looking at the design of the island and how we were going to build it and how it was going to be maintained we realized that because of sea level rise projections – we would have to continue to add riprap to this island.

The other factor that came into play was the fact that this island is located on young-Bay mud. Basically anything that goes onto young-Bay mud quickly sinks. So we would have ended up with a situation where we would continue to add riprap and the island would continue to subside, it would continue to sink into the young-Bay mud. So it was unsustainable.

In addition to that the more riprap we added the larger the footprint at the base of the Bay occupying more Bay resources as well as volume of the Bay.

There was no guarantee that other agencies would agree to this ongoing fill in the Bay. We also have sensitive areas, eelgrass beds in the near proximity of the riprap island. It just became self-evident and very clear that it just was not sustainable.

Luckily enough we had a number of stakeholders and partners who worked with us including BCDC all along the way and we determined that the best course of action would be to shelve this design and look for other options.

We looked far and wide and all the alternatives with all the stakeholders. There is a map on this slide that identifies about a dozen locations that we jointly considered and evaluated. Most of these locations were not feasible for many reasons.

We were lucky enough to find the MLK Shoreline East Island as a really promising location. East Bay Regional Park District has agreed to be a partner and to receive the funding from the Department. And so we are in agreement with the Staff Report and Recommendation which would allow us to transfer \$775,000 to the East Bay Regional Park District so they would design, build, implement, maintain and monitor this new, roosting habitat.

With that I am going to pass it on to D.J. Allison from AECOM who is going to get into a little more detail about what is involved on this project.

Mr. Allison addressed the Commission: Thank you Stefan. I am going to provide a little more detail about the project that Caltrans is proposing to fund with this \$775,000.

The MLK Jr. Regional Shoreline is an existing East Bay Regional Park District park. It is located in San Leandro Bay. It is right in between the Oakland Coliseum and the Oakland Airport. It has a lot of different kinds of habitats present including tidal marsh, salt marsh, seasonal uplands, seasonal wetlands and it is known to support a large number of birds including more than 20 species of shore birds which this project will further support.

This shows a general overview of the proximity of high-quality, shorebird, foraging habitat to the MLK Regional Shoreline. As you can see there is no shortage of available feeding grounds near this location that we are proposing to use to support the development of the project.

The MLK Regional Shoreline includes a number of individual components that the project we are looking to support is located in an area called the Shorebird Sanctuary or New Marsh. It is a restored, tidal marsh that was constructed in 1998 by the Port of Oakland.

Inside that New Marsh area there are two, existing, shorebird, roosting islands. Our project that we are looking to fund is located at East Island.

East Island is an existing island. It is about 44,000 square feet. But it is very low in elevation. It is only about seven and a half feet NAVD which is very close to the high-tide limit. In fact, this Island is inundated during seasonal, high-tide events which make it a very poor high-tide, shorebird, roosting area. It also is vegetated with rural, upland and non-native species which really limits its suitability for shorebirds.

This graphic provides a little more of an overview of MLK Regional Shoreline itself. As you can see East Island is called out there in the center of New Marsh.

So the project that we are proposing to fund has a number of components. First, it would raise the elevation of a portion of East Island which would restore it as a high-tide refuge for shorebirds and we are looking to raise a portion of it to an elevation that would make it resilient to end-of-century, sea-level-rise projections.

Of that 44,000, square-foot Island we are looking to enhance about half of it, 20,000 square feet to be improved shorebird roosting and nesting habitat.

We are also looking to restore the other half of the Island to tidal marsh. The project that we are funding would fund three years of monitoring to be conducted by the East Bay Regional Park District staff and it would also fund three years of weed and predator abatement work to be conducted by East Bay Park staff.

Shown here is an existing profile of East Island with relevant elevation lines shown on the right including those with sea level rise projections.

This project would cut material from one side of the Island and place it on the other side of the Island. And in the end you would end up with this enhanced area on one side and a restored, tidal marsh on the other side.

One thing that is important to note is that a portion of this elevated, shorebird area would be high enough that it would be resilient to rising sea level projections.

I will now compare what is currently required in the Caltrans permit with what we are proposing to amend. Our current permit has a project located in Bay waters near eelgrass whereas the project we are proposing to fund is technically located in the ruderal, shoreline band.

The current project in the permit would likely result in substantial impacts to fisheries. It is located in essential, fish habitat as designated by the National Marine Fisheries Service whereas the project we are looking to fund would likely result in no fisheries impacts.

The current project in the permit would result in approximately 500 square feet of shorebird habitat above mean sea level. The project we are proposing to fund would result in approximately 20,000 square feet of shorebird habitat above mean sea level and that is about 40 times what is required in the permit which we think adequately compensates for any time lags that have resulted from the implementation of the permit.

Of that 20,000 square feet approximately 5,000 would be at an elevation that is high enough to be resilient to end-of-century, sea-level-rise projections.

The current project in the permit would result in a loss of Bay waters and approximately 500 square feet of tidal surface waters or 4,000 square feet of fill in the Bay. The project we are proposing to fund would actually create 24,000 square feet of new, tidal marsh, new, tidal waters.

And then finally, this last slide here breaks down the material comprised on each project. The current, permit requirement is for a riprap island whereas the project we are proposing to fund would be constructed out of Bay mud. It is a beneficial-reuse, sort of a project.

There is one other item in the proposed amendment and that is a requirement to install informational, shorebird signage at the Oakland Touchdown. We wanted to let the Commission know that this signage has already been installed on-site and it is ready for the public whenever that shoreline opens up.

There are actually two kinds of signs that have already been installed. On the upper right is more of an informational sign and there are four of these installed around the shoreline to help inform the area that will be part of the public-access area to avoid shorebirds. And then finally there is also a large, format, informational graphic that informs the public about Bay habitats and Bay species. This is already installed on the public pier that will be opening later this summer.

And with that closing summary I am going to turn it back to Stefan Galvez.

Mr. Galvez continued: Thank you D.J. This closing slide highlights the benefits of what we will be getting here. We have highlighted the fact that we are creating 40 times the amount of shorebird habitat that was originally required and that it will be resilient to sea level rise conversely to what we were dealing with at the Oakland Touchdown and we will be avoiding those impacts in special, aquatic sites because this area is so highly sensitive.

The fact that we are providing some tidal-marsh habitat as opposed to the fact that we didn't have that before and also avoiding new fill in the Bay and the number of species that we are going to be serving out here point to the fact that overall this is a much better solution. It is greener as opposed to just dumping riprap in the Bay.

We believe that we meet your Mitigation Policy Number 12 all (a) through (f) items. We have worked very closely with our partners at East Bay Regional Park District. We believe that it is time to move forward after almost 20 years of having this condition in the books and 10 years of looking very carefully at different options. It is difficult to fathom that we are going to find another or better location.

With that in closing I want to give a special thanks to Caltrans staff who has worked with us for the last 19 years on this as well as to the Golden Gate Audubon Society and the Sierra Club who are advocates for bird species in the Bay and they are doing a wonderful job. They have been our partners all along and stakeholders in the project and we want to thank their involvement. It has made our proposals better and lastly the East Bay Regional Park District and the State Coastal Conservancy who have been involved in this project.

If you have any questions we are here to answer those for you. Thank you.

Chair Wasserman continued: Thank you very much. Rebecca, I assume that concludes the presentation.

Ms. Coates-Maldoon replied: That is correct.

Chair Wasserman opened the public hearing: We will now open the public hearing. Any member of the public who would like to make a comment please raise your hand to speak.

Mr. Matthew Graul commented: I am Matthew Graul and I am the Chief of Stewardship for the East Bay Original Park District. Thank you Chair Wasserman and members of the Commission for the opportunity to speak today about this project.

The District really appreciates the opportunity to help Caltrans satisfy this mitigation requirement. Caltrans has been a great partner as we've evaluated options to create shorebird habitat.

The District has had great success in creating these types of shorebird roosting and nesting islands. We built up the Hayward Shoreline and it has been a very successful labor-of-love for our staff because we have a very active Least Turn colony there and also have a lot of Snowy Plovers that regularly nest on the island.

And because of the way we are able to maintain these islands and their isolation within these marsh habitats we are able to get good nesting success. We expect after a number of years we will have a similar success at this East Island. This is something the District is very passionate about and this Island has been a long-term vision for the Park District to build in the New Marsh and this opportunity helps accelerate that vision and deliver it in a short time period and provide important, needed habitat along San Francisco Bay.

I'd be happy to answer any other questions about our project. We are ready to go on this and we would like to start completing the design next year and working towards our permits over the next several years and ready to deliver this project in the near future. Thank you.

Ms. Atwell noted: I don't see any other hands Chair Wasserman. There is no more public comment.

Chair Wasserman responded: In that case I would welcome a motion and second to close the public hearing.

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

Chair Wasserman continued: Any questions or comments from Commissioners?

Commissioner Nelson was recognized: I have a couple of questions for Mr. Graul from East Bay Park District. Can you walk us through the status of this project? I will start with my overarching concern.

I have been following mitigation in the Bay Area for a long time and in some places I've been concerned that projects that were initially planned as restoration projects get turned into mitigation projects. At times I've been concerned that those restoration projects designed to help the ecosystem get turned into mitigation projects and wind up being a strategy that hopefully maintains the status quo but doesn't achieve some of our restoration goals.

I am just trying to understand a little more about this project. So I have two questions for Mr. Graul at East Bay Parks. First is, can you just tell us more about the status of this project? Has it been planned? Does the Park District have restoration funding for this project? And the second is whether the loss of the area of this island is going to be of concern. This would roughly reduce that habitat island in half. I heard you say that it is being already used as a nesting site is being used by a number of species.

It is good news that this project would increase the resilience of the site to sea level rise but is there a concern that cutting the size of this island in half would reduce some of its existing, habitat value?

So the first question is about the status and funding and the second is about the reduction in size of the habitat.

Mr. Graul responded: As far as this project and the idea for it – one, we do not have any funding for this island. We don't even have funding for a design. It was really just an idea of how we can enhance this island.

We are building another island in the area. It has taken us a number of years and we call it the West Island. And the West Island was higher originally and was much smaller and we've been doing it over a number of years with volunteers and very small grants. So it has taken us a number of years to enhance that island.

We are just now seeing the pioneer species that colonizes on that other island. The next phase on that island will be to put out a sound system and attract endangered species. And this has been very effective at the Hayward Shoreline.

As far as the East Island is concerned we have no money for design and was just really a concept; an idea that something we could do in the future. So when Caltrans approached us we said, oh hey – we have this project that is an idea for us but we really have no money for design of to move it forward. It will be a number of years before we would even start thinking about moving it forward and looking for funding. It wasn't really in our work plan and we don't have any funding stream for that.

And so to talk a little bit more about the current condition though is that right now it is vegetated with very ruderal species. We don't have good nesting on that island by shorebirds at all. It really doesn't support shorebirds at this time.

So by changing the configuration – right now the extreme, high tides can flood the entire island. So there is not much roosting habitat there and it is colonized by a lot of weed species.

So as part of our transition to making a better habitat will be like we did on the other island; we have the weeds and then we will raise the upland portions of the island and that is

what we would be doing in this situation and then putting down more rock and shell substrate that will provide a better habitat for the birds to roost and nest.

And then after we create that sub-surface then we will be maintaining it weed-free. So it will be a much better nesting habitat and really in area that nesting and roosting habitat doesn't really exist or doesn't provide a very good habitat right now.

Commissioner Nelson replied: Okay, that is helpful and you also answered my question for the staff so thank you. That's it for me Chair Wasserman.

Commissioner McGrath commented: This is kind of fun for me because this is all in my back yard. I want to make three points.

First, it is a pleasure to see the Martin Luther King Shoreline Project. That project is why I went to the Port of Oakland. Will Travis talked me into it. Former chief counsel of the Coastal Commission had sued the Port successfully over the fill of that property. And I helped my staff put together a restoration project which resolved that litigation and I actually got to walk the channels just before we opened it with Roy Gorman who has since passed. And indeed I think the description of the shortcomings of that nesting is accurate.

Second, I want to make the point which is important to the larger work we are doing about trying to make sustainable restoration efforts that this entire marsh and mud flat system at the base of the Bay Bridge is an artifact of human intervention.

When they built the original Bay Bridge they put down pilings but first they dredged a location where they could create the piling bents and the cap for them. They simply side casted the material which was largely sand which waves gradually brought to the shore and built this nice, little marsh that had endangered species on it.

That certainly wasn't intentional. I was kind of excited to find that. Those two things are efforts at inadvertently creating marsh at the base of the Bay Bridge which is endangered-species habitat and successfully but not as successfully as we would like to. Restoring habitat at Martin Luther King Shoreline illustrates what we can do.

And then the last comment in terms of what is out there and the value of sustainability; I've actually been in the rebuilt Crescent. I've been in the New Marsh in my kayak. It was very cool. There used to be an old duck blinds which had been abandoned and there were white pelicans up there and they kind of look down at you. They knew you were below them and they weren't threatened.

It would be really exciting to have that kind of feature but it really isn't sustainable. The settling of mud is a well-established phenomenon.

I think this is a great project. I think the science that has been done is very sound. And I like it because it is right in my back yard. I am going to support this.

Commissioner Scharff was recognized: I also think it is a great project and I think I like it better than the original project. But with that said, I'm having trouble understanding how it actually meets the (a) through (f) requirements.

I was hopeful someone could walk me through each of them and how it meets it. My concern is that this isn't a permitted project so I don't really see – I see that we identify a specific project but if this project doesn't happen for some reason then there is no specific project and it is just \$750,000 and it doesn't seem that Bay Plan Mitigation Policy No. 12 allows that.

I didn't hear about provision of accurate tracking of funds. I was really concerned in the Big Picture about the assignment of responsibility. It seems that \$750,000 is being given but I haven't heard that is enough money to make this happen. And I did hear that there were no other funds other than these funds.

So, what assurances do we have that the project happens? It seems that we need more. And the last one (f) which is provision for long-term maintenance, management, and protection of the mitigation site - is there money available for that? Caltrans basically pays the \$750,000 and seems to walk away.

So maybe someone can just address how this meets the (a) through (f).

Mr. Allison responded: This is D.J. Allison from the Caltrans T\team. I'm trying to share a slide that goes through each of these items. Can you see that?

Ms. Atwell replied: Yes we can see it.

Mr. Stefan Galvez commented: This was something that when we began discussing with our partners at the Park District we wanted to make sure that it was going to a serious commitment and that we would be able to meet your Bay Plan Mitigation Policy No. 12.

Here we try to summarize how we addressed those concerns. So the mitigation project is pretty clear and that is what we walked you through today.

Item (b) on the tracking of funds; Caltrans has a financial mechanism which is an agreement which we enter into, and it is a legal agreement, with the recipient of the funds - in this case the East Bay Regional Park District.

And it outlines a number of requirements including making sure that those funds are going to be used as they are intended to be used. And they have to keep track of all the expenditures, invoicing – basically we write the check originally but there has to be a tracking mechanism that is involved for all of those expenditures. And they are all identified as part of the co-op agreement.

One of the discussions that we have been having with BCDC, and we've done this in the past, is that BCDC will have the ability to review it and make sure that they feel comfortable with the terms of the agreement. So you have that verification via your staff.

Responsibility of ecological success is going to be via the East Bay Regional Park District. Basically we are assigning responsibility to the Park District. And again, the Park District has it outlined in the co-op agreement but also the park District is going to have to have obtain their own permits including BCDC permits and any additional permits that they need to acquire from other regulatory agencies. So that will most likely be included there. I don't want to speculate exactly what is going to be included but I am sure that BCDC staff is going to do their due diligence to ensure that.

In terms of fair and adequate fees; this was a key point of our discussions and negotiations with the East Bay Regional Park District because we want to make sure that we were not going to run short on this.

We wanted to ensure that the design was going to be solid, that the estimation of the different items was going to also be done in a detailed manner, that there was funding included there for the CEQA review and the environmental impact preparation and permitting as well as the monitoring and all the different items that go into making a project successful.

And these estimates that we worked with them on – there were different iterations and we had a third-party estimator to double check those numbers.

And so we feel very comfortable with this and I could also have the East Bay Regional Park District speak to you if you would like. But we worked on these items very closely.

Commissioner Scharff had more questions: I would like to ask the staff from the East Bay Regional Park District some questions. What happens if there are cost overruns? Is the Park District going to step up and spend the money to make this happen? If for some reason this project doesn't go forward how do we meet Bay Plan Mitigation Policy No. 12? How is there a project identified? Because it seems to me that the money just goes – just goes; where?

Ms. Coates-Maldoon addressed the issue: If the East Island Project fails to be completed for any reason the funding would go back to Caltrans who would then be obligated under the permit to transfer it to the State Coastal Conservancy.

BCDC and the State Coastal Conservancy have an existing memorandum of understanding for which this money would be spent pursuant to which includes that BCDC's Executive Director would review where that funding would go when a specific project is identified.

Commissioner Scharff asked: But how does that mean Mitigation Policy 12 without identifying a specific project? I mean no specific project is then identified. I could see it being that we go back and say, (a) if this doesn't happen Caltrans has to come back to us and come up with a new mitigation measure; that I see. But I don't see how this complies with Policy 12 without saying, we are going to do a project unless Caltrans was going to say – we'll take responsibility for this project to make sure it happens.

I mean that is fine too because this is a great project. The fact that we are estimating it now and it is going to be built within five years; I have yet to see a project come in on time and on budget when it is estimated that far out.

It is just so far out it is hard to know. I just think we need to have those questions answered. I am concerned about it.

BCDC Regulatory McCrea chimed in: Commissioner Scharff this is Brad McCrea, BCDC Regulatory Director. If this was an easy one it would not have taken us 10 years to find solutions. We also would not have brought it to the Commission. We would have handled this administratively.

The fact that we brought it to this Commission, such a relatively small intervention, we understood it was a big deal.

So as you saw on the map there were lots of alternatives that have been looked at. Periodically over the last 10 years there have been conversations about finding a solution.

We feel confident that this will get built at the Martin Luther King Regional Shoreline.

I think your question to the Park District is a good one and I think we should hear from the Park District about whether or not they think they can get it done for \$775,000.

Commissioner Scharff interjected: I mean what happens if they don't? I assume that they then are in violation of their BCDC permit and we can enforce against them.

Mr. McCrea explained: If they can't get it done we can walk you through the assurances we have built into this BCDC permit to make sure that it gets done. And if can't get done then the money would get deposited with the Coastal Conservancy to be used to, "...benefit shorebird habitat in or adjacent to San Francisco Bay with a preference for the creation or enhancement of high-tidal, refuge habitat for shorebird species."

Again, if you want more detail on this special condition I'm sure we can –

Commissioner Scharff added: Well I mean I think the concern is say that they start funding it and they run out of money so they are going to make a covenant to fix it because otherwise Caltrans now spends 750,000 and there is no other money to deposit but there is no money to complete it.

So I assume that once they start this construction they have to complete it no matter what it costs basically. Then the long-term maintenance – three years is not long-term maintenance. So then I assume the East Bay Park District will sign a permit that says, yes – we are going to maintain this long-term and if they don't then they would come before BCDC's Enforcement Office.

Mr. McCrea chimed in: Two things; and perhaps Mr. Lennebacker would like to speak to maintenance and whether or not that is a long enough duration. And also I think you should hear from the Park District about the budget.

Mr. Lennebacker chimed in: I can speak to the duration that is being proposed for funding here. It is three years because that is the original requirement in the BCDC permit for the project.

The funding includes three years of bird monitoring and maintenance at the site. And it actually includes funding for things that weren't originally envisioned in the BCDC permit for the Bay Bridge Project.

We have spoken a lot with the East Bay Regional Park District and I don't want to speak for them but in our discussions with them they do an excellent job of maintaining their sites. We sought out partnering with the East Bay Regional Park District because they do a great job. They are really excellent at maintaining the habitats that they do maintain and I will leave it for Matt to speak to what commitments they will make.

But I know that they are already present at the shoreline so that is another good reason we looked at this site. We know they have a presence there. We know they are actively monitoring and maintaining that site as well. I will leave it to East Bay Parks to speak to their sites.

Mr. Graul commented: I will start with the cost estimation. We are confident in the estimates now. We do recognize that if this is delayed into the future those costs go up. It is our intention to start as soon as we receive the funds and it is programmed into our work to start with the design next year and to start moving this forward faster.

Considering the level of thought and consideration that has gone into the concept design we feel like we are really going to be ready to move forward with the full design in a fairly, expeditious manner.

One thing that keeps being raised is if for some reason things change or we couldn't continue that or there was some issue with the ability to deliver that design at any point – you know, if we haven't delivered the full project we will have to return all the money to Caltrans.

So we are kind of taking on this responsibility and are aware of that. But we really believe in this project and want to see it continue to fruition.

And as far as the long-term management and monitoring; since we are already in the area, we commit to being there and maintaining the site. The important thing on these sites after they have been established is really weed management and weed control.

And if we do a good design and it is constructed appropriately there shouldn't be many issues in the initial years. But going into the future our biologists who are monitoring and managing these sites they monitor them on a regular basis and then provide annual reports as part of the U.S. Fish and Wildlife Service permits and other things to be out working with these species.

We really see it as a part of their job which is to monitor and maintain these islands. If that were to change; I mean if something changed we would look at other means to meet those needs because these are some of the highest, priority sites for the Park District to manage and maintain especially once we have endangered species using them.

It is not just the weight of the BCDC permit we will get but also there will be state and federal permits that require us to protect habitat for those species.

I certainly can't predict everything and times are uncertain but these are some of the most high-priority activities that we do. So we will continue to keep these activities as a high priority into the future.

Commissioner Scharff stated: Well thank you. That was actually very helpful and gave me a lot of comfort. And I really appreciate that response.

Chair Wasserman continued: I think the questions that were raised are important ones. It is also in a context in which that the analysis of the original project is fairly sound. It is not a feasible project. One might go forward and say it is not a sensible project but we don't need to do that.

It does appear that they have done a fairly thorough job of analyzing other alternatives. So while I share the concern of adapting an alternative with a project that is neither permitted yet nor fully funded; I'm not sure that we have a whole lot of choices. And I think the key here is going to be for staff to continue to monitor the efforts and I don't think it needs to be a part of the motion but I would expect staff to require periodic and even moderately-frequent reports from the applicant, from Caltrans and from the Park District on progress towards making this project a reality.

Mr. Allison clarified: One important point of clarification; there is an expectation in our understanding between Caltrans and the East Bay Park District that this is going to be a fully-funded project.

The amount of funding that we are proposing to commit to the project is expected to fully fund it not partially fund it. I want to make sure that is clear to everybody.

Chair Wasserman replied: Thank you for that clarification. Rebecca, will you make the Staff Recommendation please.

Ms. Coates-Maldoon read the Staff Recommendation into the record: On May 8th you were mailed a copy of the Staff Recommendation for Material Amendment No. 46 to Permit No. 2001.008.00.

The staff recommends that you approve the requested amendment with conditions to require that Caltrans:

- First, pay fee-based mitigation in the amount of \$775,000 towards the East Island Shorebird Enhancement Project and meet specified criteria regarding the use of the funds;
- Second, if the East Island Project fails to be completed by December 31, 2025, transfer the mitigation funds to the State Coastal Conservancy which would grant the funds to create or enhance shorebird habitat in the Bay Area pursuant to an existing Memorandum of Understanding between the Commission and the Conservancy; and
- Third, install educational and informational shorebird signage near the Bay Bridge Oakland Touchdown. While no immediate opportunities exist to provide for shorebird, roosting habitat near the Oakland Touchdown, the findings of the Staff Recommendation also include a note encouraging sponsors of future projects in this area to consider methods of providing roosting habitat as an element of project design.

With these conditions as outlined in more detail in the Staff Recommendation the staff believes that the project is consistent with the Commission's law and Bay Plan policies and recommends that you adopt the recommendation of approval.

Chair Wasserman continued: Thank you. I would ask for a motion and a second. Please raise your hand.

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

Chair Wasserman continued: I do need to ask formally that the applicant's representative understands and accepts the Staff Recommendation.

Mr. Galvez responded: Yes we agree with the Staff Recommendation and we support that.

**VOTE:** The motion carried with a vote of 23-0-0 with Commissioners Addiego, Ahn, Alioto-Pier, Butt, Gilmore, Scharff, Eckerle, Gioia, Gorin, Pemberton, McGrath, Peskin, Pine, Nelson, Randolph, Sears, Showalter, Vasquez, El-Tawansy, Techel, Wagenknecht, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO" votes, and no "ABSTAIN" votes.

**9. Commission Consideration and Possible Vote on the Enforcement Committee's Recommended Decision on Proposed Uncontested Cease and Desist Order No. CCD2020. 001. 00.** Chair Wasserman introduced Enforcement Committee Chair Scharff who then addressed the Commission. He reported that on April 22, 2020 the Enforcement Committee held a hearing and voted to recommend the adoption of the amended proposed Cease and Desist Order No. CCD2020. 001. 00. He stated that the original order was adopted in a noticed public hearing on March 12, 2020.

The violations at issue are the result of homeless encampments in Union Point Park, a public park in Oakland established to serve the surrounding, under-served communities. The City of Oakland established the Park working with other entities and is responsible for the Park.

Commissioner Scharff then informed the Commissioners that after the Enforcement Committee originally voted to recommend a cease and desist order for Union Point Park, the COVID-19 pandemic took hold in the Bay Area and the City of Oakland requested extensions to the approved deadlines. He noted that these revisions were incorporated into the amended order being presented to the Commission.

He then reminded the Commissioners that the Enforcement Committee has taken a measured approach during this extraordinary time by recognizing the human elements involved in enforcement cases and the unique challenges for people experiencing unsheltered homelessness during the pandemic in Union Point Park and elsewhere.

He reiterated that while the COVID-19 shelter-in-place measures are in effect BCDC is not undertaking any actions that conflict with the guidance from the Centers for Disease Control or local public-health officials. BCDC expects that public agencies will not force any individual to leave shelter unless it is to ensure that they are being moved from an unsafe situation to safer location.

He explained that this was the framework under which the Committee voted to amend the Order by extending deadlines before submitting it to the Commission for approval.

Commissioner Scharff stated that the Order does not require immediate action to relocate the individuals that are currently in the Park. Instead it requires relocation in accordance with the revised deadlines requested by the City of Oakland. He emphasized that the Enforcement Committee was recommending only injunctive relief -- the issuance of a cease and desist order that will require the City to eliminate the encampments and restore the Park -- not civil penalties.

Commissioner Scharff then introduced Schuyler Olsson who provided a brief history of the Union Point Park enforcement case and information on the recommended Order.

Mr. Olsson presented a summary of the recommended enforcement decision and proposed Cease and Desist Order No. CCD2020. 001. 00 for the City of Oakland at Union Point Park located in Oakland along the Oakland/Alameda Estuary across from Coast Guard Island and adjacent to Union Point Marina. He informed the Commissioners that the Park was constructed in 2005 after collaboration by a broad range of community groups, agencies and individuals including the Unity Council, Trust for Public Lands, BCDC, Association of Bay Area Governments, the Coastal Conservancy, the City of Oakland and the Port of Oakland.

He described the Park, which includes the Bay Trail Path along the waterfront, play structures, lawns and gardens and multiple, other amenities. He informed the Commissioners that the Park was constructed pursuant to two BCDC permits each of which requires a designation of public-access areas with associated amenities. He explained that one permit was issued in 2004 for the larger area and another permit was issued in 2010 for the smaller area the pair of which are collectively referred to as "Union Point Park." The proposed order also addresses violations that occurred on a small, beach area adjacent to the Park. Mr. Olsson used a map to show the boundaries of each defined area.

Union Point Park was initially built to BCDC requirements. Mr. Olsson showed photos of how Union Point Park looked when it was opened in 2005 when there were healthy lawns with picnic areas and other amenities and the site was substantially used by the public for recreation.

He then informed the Commissioners that the Park had recently become seriously degraded. He stated that in March 2018 BCDC started receiving complaints from many members of the public regarding the establishment of homeless encampments and a lack of maintenance in the Park and the adjacent beach area. The reports continued through early 2020 about accumulated trash and debris, poorly maintained amenities, fires and arson, vandalism, violence, and threats to tenants of the neighboring Union Point Marina.

Mr. Olsson showed photos of large encampments at the north end of the Park in late 2019 shortly before BCDC issued violation reports to demonstrate that much of the site was inaccessible to the public and the public did not feel safe using the Park and its amenities. The limits to public access included vehicles parked in the public-access area. The photos also showed examples of degradation of Park amenities including but not limited to benches, picnic tables and landscaping.

Mr. Olsson informed the Commissioners that BCDC staff initially contacted the City in mid-2018 and in 2019 met with the City several times to negotiate a resolution. BCDC also made three briefings to the Enforcement Committee who directed staff to negotiate a cease and desist order with the City.

In December 2019 staff issued two violation reports, one for each permit. Over the following weeks BCDC and City staff negotiated an order that required the City to implement encampment closure and a Park restoration plan developed by the City and refined through negotiations with BCDC.

Mr. Olsson noted that the City of Oakland has not contested the Order which was designed to ensure the City can comply with the requirements. On March 12th staff presented the proposed order to the Enforcement Committee who voted unanimously to adopt it. The order was to have been presented to the full Commission on April 2nd but that meeting was cancelled due to COVID-19. Thereafter, in March and April of 2020 the City requested time extensions for several requirements in the Order that had not yet been adopted, stating that the requirements would contravene public-health orders and guidance and the City was diverting efforts to emergency response. The City's April extension request letter was included in the Commissions meeting materials. Staff took the City's extension request letter to the Enforcement Committee on April 22nd. At that meeting the City requested that the issuance of the Order be postponed until there was greater certainty regarding COVID-19. Nonetheless, the Committee voted unanimously to adopt the revised order with extended deadlines with the dates requested in the City's letter.

The Order allows the City to request further extensions of the deadlines or amendments to Order terms should the City be unable to meet certain requirements due to COVID-19 or for other valid reasons.

Mr. Olsson stated that the order, if implemented, would ensure that current Park residents are transitioned to safer housing situations and that the Park is ultimately restored and returned to the public for its intended uses.

The first requirement he highlighted was the establishment of a temporary reprieve zone for Park inhabitants. The City established the zone and conducted a clean-up of surrounding areas in January 2020. The purpose of the reprieve zone is to relocate encampments previously spread around the Park to a designated zone in the Park to manage the situation and allow the City to begin restoring surrounding areas. The Order required the City to provide social services to the reprieve zone's inhabitants and ultimately transition them to safer housing and to provide toilets, garbage pick-up and wash basins. He indicated that to BCDC's knowledge the City is already providing these services.

The original order required the City to close the reprieve zone, restore that area and return it for public use by May 1st. However, due to federal, state, and local, public-health guidance the City has been unable to close the reprieve zone and relocate zone inhabitants. He informed the Commissioners that in the proposed order the deadline to close the zone is now September 1st. He reiterated, however, that the City may request further extensions as needed.

The proposed Order also requires the City to prevent establishment of further encampments in the Park on an ongoing basis and to submit a formal encampment prevention plan by August 15th.

Finally, the proposed Order requires a series of Park restoration and maintenance measures. These measures include near-term measures such as installation of missing amenities as well as development and implementation of long-term plans resulting in the complete restoration of the Park by April of 2022 and the City conducting ongoing maintenance thereafter.

Mr. Olsson then handed the presentation to Commissioner Scharff to present the Enforcement Committee's recommendation. The Committee recommended that the Commission adopt the uncontested Cease and Desist Order No. CCD2020. 001. 00 that would be issued to the City of Oakland to require the City to remedy violations involving encampments and other unauthorized activities that are interfering with public uses of Union Point Park and require the City to restore and maintain the Park.

Commissioner Scharff informed that Commissioners that the City preferred that BCDC delay proceeding with this action until there is more certainty regarding COVID-19. Commissioner Scharff informed the Commissioners that the Enforcement Committee believes that it is critical that BCDC proceed with this Order recognizing that deadlines can be extended for good cause if necessary consistent with the terms of the Order. He noted that the Enforcement Committee was concerned and believed that without an order in place restoring the Park may not be a City of Oakland priority. The approach BCDC is taking is particularly important considering the ongoing pandemic when safely accessing public space while social distancing has been shown to promote overall well-being and to enhance community resilience.

Chair Wasserman then asked if anyone from the City of Oakland wanted to make any comments.

Mr. Michael Branson, Deputy City Attorney for the city of Oakland responded. He informed the Commissioners that the Assistant City Administrator, Joe DeVries, was also on the line. He informed the Commissioners that it is a challenging time for Oakland and for every community around the country and in the Bay Area. The City of Oakland has had to very quickly shift resources to respond to the pandemic. This has included changes in how the City protects vulnerable populations and how it manages encampments. He stated that the City currently has staff working out of an Emergency Operations Center, others who are deemed essential, and others working remotely to do their best to maintain City services. He also stated that the City is now confronting a massive budget shortfall which will require future tough decisions. He asserted that the City's attention has been quickly reoriented to confront the public health and economic impacts of the crisis. He informed the Commissioners that it was that context in which the Commission meeting was held. And in that context the City respectfully asked that the Commissioners seriously consider postponing issuing the proposed Cease and Desist Order. Mr. Branson asked the Commissioners to vote to continue action for 90 days or until the County Public Health Official lifts the shelter-in-place order.

He informed that Commissioners that on March 12th the Enforcement Committee voted to adopt the proposed order and the City largely supported that decision with some concern about how the health crisis would affect implementation. He noted that BCDC staff had worked closely with the City on the terms of the Order and that the City really appreciated the work that Staff put into creating a plan that was proceeding. The City had already started to implement provisions of the Order. He mentioned that the City had set up a temporary reprieve zone, had made lighting improvements to the northern parking lot and was scheduling the beach clearing in addition to the clearing actions that had already occurred during the setup of the temporary reprieve zone.

He stated that four days after March 12th the Bay Area counties issued their shelter-in-place orders. He said that the City knew immediately that it would not be able to meet the timelines that were in the Order including, in particular, the full closure of the reprieve zone. The City contacted staff to request extensions. Mr. Branson indicated that while the City appreciated the extensions that the Enforcement Committee provided in April, the City believes that finalizing the Order with a timeline all parties acknowledge continues to be very uncertain was not the right action. He asserted that the City did not believe it made sense to enter an Order that the City knows has implementation issues from the outset. He recognized that while the proposed Order allows the City to seek extensions from the Executive Director that provision is intended to address unforeseeable events.

Mr. Branson further asserted that the course of the crisis continued to be very uncertain but it was foreseeable that the timelines provided in the Order will very likely continue to change as a result of the shelter-in-place order and CDC guidelines.

He states that the City would soon have to seek extensions. He asked that rather than enter an Order with immediate implementation issues the City recommended that the City and BCDC staff continue to discuss an appropriate, revised timeline and return with a proposed order that reflects that new schedule and creates a successful path to restoration of Union Point Park. He asserted that the City and BCDC were all in agreement that work needs to be done to the Park and the City knows that changes to the timelines will not change that. He asserted that the City is committed to making the restoration happen but claimed additional flexibility was needed.

Mr. Branson introduced Joe DeVries to provide some information on how the City was currently deploying some resources.

Mr. Joe DeVries addressed the Commission. He reiterated as Mr. Branson had that the process of working with BCDC staff and the Enforcement Committee had been delightful from a public-servant's point of view. Noting that it had been logical, methodical, and that everyone has been very realistic in recognizing that the homeless crisis that the City faced prior to the pandemic had been drastically exacerbated.

Mr. DeVries stated that the City had an encampment management policy that they were operating with which allowed the City to take the steps that it took until the shelter-in-place orders were issued. He stated that he was really excited with the City's progress when they created the reprieve zone. The City checked in with their outreach staff and they are still reaching out to the people living in the encampment and informing the City on progress weekly. Outreach staff are providing people living in the encampment with hygiene kits, meals, and City staff are servicing their Port-a-Poties. Two distinct groups were encamped in the park outreach staff have been able to get them to get along better and some of them have actually been placed into housing.

Mr. DeVries reported that when the shelter-in-place orders were issued the City Council acted and required the City to adopt a temporary encampment management policy through the City Administrator that considers the CDC guidelines about not disturbing encampments or displacing people because of the potential to exacerbate the spread of COVID-19.

He states that under that new policy, the City's team and their crews have strictly been doing garbage removal and maintaining the hygiene facilities at about 40 encampments citywide. They have provided Port-a-Poties, handwashing stations and weekly garbage service that they are looking at increasing. The Oakland City Council authorized an additional emergency \$1.6 million to better gather garbage at encampments citywide. Mr. DeVries stated that the thought is the City could maintain the status quo, which the City knows is not acceptable as a final solution, for Union Point Park but at least where the City created a reprieve zone the City is providing the described services and, as possible, moving people into housing. Mr. DeVries stated that the State leased two hotels and then turned them over to Alameda County for placement of people exposed to COVID-19. He noted that two more hotels were coming online in Alameda County.

Mr. DeVries also informed the Commissioners that the City received trailers from the State and opened, a week before, an RV park that can house up to 132 people off of Hegenberger Road near the Coliseum. Those units are reserved for the City's most medically vulnerable unsheltered.

Mr. DeVries described the Union Point Park intervention as a geographic intervention whereby the City is attempting to address everyone that is in that area. The more common intervention with homelessness and certainly with the City's current guidelines with the trailers is that it is based on the individual. City staff look at the coordinated entry list at the people that are most medically vulnerable and they get offered housing spots first.

He informed the Commissioners that it translated into people living at Union Point Park who are 65 or older with underlying medical conditions would get moved into City trailers on Hegenberger Road or into one of the other intervention locations such as the hotels. He stated that there was no guarantee that everyone at Union Point Park who meet the requirements of the coordinated entry list and that he knew they do not. Mr. DeVries explained that the City did not know what resuming the normal placement of homeless individuals into the City's community cabins or state RV parks or City shelters will look like.

He noted that the City had to create greater social distance at their shelters. The City had to implement single occupancy in its cabins, which used to hold two people, to create more distance. He stated that the City needs more shelter because the City's total shelter beds have been impacted by social distancing.

Nevertheless, Mr. DeVries reiterated that the City is committed to the Union Point Park Restoration Plan. He stated that the City was perplexed about committing to implementation dates now because of what the City is facing. He explained that is why he thought the City Council was advising that the City postpone action on Union Point Park restoration.

Mr. DeVries asserted that the City would work closely with BCDC staff in partnership as the City has since the beginning and reiterated that it has been a refreshing process. He then asked if the Commissioners had any questions.

Ms. Atwell asked Chair Wasserman if he wanted to open item 9 for public comment.

Chair Wasserman answered in the affirmative.

Ms. Atwell stated that a Brock de Lappe shared slides that the BCDC meeting host had showed on the screen but Mr. Brock de Lappe was unable to unmute his line or to hear the BCDC host. Brock de Lappe was the only person who had raised his hand to provide public comment.

Chair Wasserman continued by asking for Commissioner comments and questions.

Commissioner Gioia commented noting that as a person in county government dealing with shelter-in-place orders he wanted to shed light on what he considered valid arguments by the City of Oakland.

He states that in Contra Costa the Health Officer's legally-binding health orders have instructed the police Chiefs of every city not to disband homeless encampments because that causes a greater threat and safety issue than having a defined, accessible encampment where the county's, health, outreach workers or anyone from the City can work with them.

He stated that he had not seen the specifics of the Alameda County order but noted the county order and that they are all very similar. He asserted that at a minimum any action BCDC takes needs to be consistent with county health-officers' orders which are under state orders because BCDC does not want to put the City of Oakland in the position of deciding between complying with a BCDC order or violating a county order which is a misdemeanor or more.

Commissioner Gioia said that he did not support the proposed Order as written. He stated that there needed to be some modifications to address the reality on the ground. He noted that what the City of Oakland representative said was the City's reality asserting that forcing the City in this emergency to take an action that violates a county health officer's order is not something BCDC should be asking them the City to do.

Commissioner Showalter stated that she was equally interested in firstly keeping everybody safe but, secondly, getting people properly housed. She noted that there had been reports in the news that getting people moved into the hotels has been a very, very slow process. She asked how large the encampment is in terms of how many individuals are there and what the City's timeline was for getting people moved into the hotels through their criteria.

Mr. DeVries replied by noting that the hotel work is a County function not a City function and that the county hotels in Alameda County in Oakland are full. The City of Oakland, he stated was able to move people into those hotels very quickly. The County got a third hotel that is not full. But the first two big hotels were filled rather quickly.

The City trailers were about half full and the City is moving about a dozen people every two or three days into them meaning they would be full within about two weeks.

Chair Wasserman interjected clarifying that the initial question was how many people are at the Union Point Park.

Mr. DeVries responded that there were approximately 22 to 24 people at Union Point Park. He stated that two people were placed into housing in early March. He explained that he did not have data that anyone else from Union Point Park has been placed in housing since shelter-in-place took effect. He reiterated that the City's outreach teams are out there but, to his knowledge, no one was placed as part of the normal placement process into housing.

He explained that the people living in Union Point park are an especially service-resistant population. He noted that while the City may offer them good housing options or transitional housing to lead to permanent housing; they will not necessarily take the City up on that offer. He gave an illustration of 80 percent of people in an encampment moving to cabins while 20 percent would say they were not interested. The City then has to use law enforcement to have people move on when the City decides to close an area. He explained that geographical intervention is the approach the City would use for Union Point Park requiring people to choose between accepting the identified placement or finding somewhere else to encamp.

He explained that the City has had five federal lawsuits filed against it when it has tried to close encampments, all of which he has been named in. He stated that thus far the City has prevailed in every case but some lawsuits are ongoing.

Mr. DeVries recognized that the encampment in Union Point Park is not a large group and was confident that if things were to return to the normal crisis of the unsheltered then the City could get these 22 people offered reasonable, transitional housing and the City could close the encampment. He stated that the City was just not in normal times at the time of the hearing.

Commissioner Gorin, a Supervisor from Sonoma County, noted that homelessness is the most perplexing and challenging issue for everyone probably nationwide but certainly in the Bay Area. She noted that Sonoma County is challenged with exactly this situation as described by Commissioner Gioia in Contra Costa County. She informed the Commissioners that the Sonoma County public health officer has decreed against rousting any homeless individual encampments. She stated that it was considered too dangerous during the COVID pandemic. She noted that Sonoma County is providing five or more people with sanitation and handwashing facilities and trying to get meals delivered to them.

She stated that Sonoma County has faced the same service-resistant challenges that the City previously described. She also noted that the city of Santa Rosa opened an encampment of 70 tents trying to clear out the underpasses and areas of the parks. Sonoma County cannot move homeless people out of its parks pursuant to a lawsuit and a negotiated settlement stipulation.

Commissioner Gorin wished Sonoma County had a zillion dollars to build housing because they do not have old hotels to convert and need a means of building housing for 3,000 people. And the attempts that Sonoma County made to put up emergency temporary shelter using pallet shelters was two and a half times more expensive than the county expected. She noted that every other county is dealing with the same issue.

She agreed with Commissioner Gioia that the Commissioners should modify and delay the Order. Commissioner Gorin stated that BCDC could not move the homeless individuals during COVID unless they have agreed to go into housing and asserted that social distancing complicated matters in homeless shelters so counties have even more homeless people that need to be housed because of COVID-19.

Commissioner Scharff commented to clarify a misconception by Commissioner Gioia and maybe others that the Enforcement Committee was suggesting that the City move any homeless individual out during COVID-19. He stated that the proposed Order was really clear that this is not the intent and that all of Commissioner Gioia's concerns were addressed by the Order.

He stated that the whole concept was that everyone would stay until COVID-19 was over and that the City of Oakland suggested the amended timeline dates. The Enforcement Committee told the City of Oakland that if they need to extend the timelines they did not have to go to the Enforcement Committee. They just need to go to the Executive Director.

Commissioner Scharff reiterated that no one was suggesting that people be removed during the COVID-19 crisis. What the Enforcement Committee was suggesting was that BCDC have an Order and retain oversight over this process as this goes forward because if BCDC does not retain oversight then BCDC would not know what is going on and would not have any ability to resolve concerns. He explained that the Enforcement Committee members had shared Commissioner Gorin and Commissioner Gioia's concerns.

Commissioner Scharff reiterated that the Enforcement Committee is neither asking for people to be rousted or removed nor putting the City of Oakland in the position of having to violate a county order; none of that is occurring.

Commissioner Gioia asked for the timeline to be explained so that the Commissioners could understand it.

Commissioner Scharff stated that he thought an explanation of the timeline would be helpful and deferred to Mr. Olsson to go through the timeline which the City of Oakland requested and does not require the City to do anything they feel uncomfortable doing during this crisis.

BCDC just wants to know what the City's plans are. The Order is really a monitoring device during this process. That, he noted was what the Order is about.

Chair Wasserman gave Mr. Olsson permission to proceed.

Mr. Olsson explained that the proposed Order timeline related to the closure of the reprieve zone had a deadline of September 1, 2020. However, as Commissioner Scharff has stated several times, the City can easily extend that deadline by sending BCDC an email and saying that due to COVID-19 they still cannot close this encampment requesting an extension to the timeline that could be granted by email.

Executive Director Goldzband interjected to clarify that he would be able to grant an extension over email and that if that were to happen then he would make sure that two things happen.

First, he would confer with the Enforcement Committee Chair, Greg Scharff to ensure that he understands what is going on. Executive Director Goldzband would also ensure that the Commission understands what is going on, that is, that an extension was requested and that he would be granting it or letting the Commissioners know what is going on.

He noted that this was all part of an agreement that was done before the last Enforcement Committee meeting that was held and that the Enforcement Committee approved.

Commissioner Gioia interjected to ask that Executive Director Goldzband build in some process where BCDC would confer with the County Health Officer, because there are no standards whether the Executive Director will grant or deny an extension request. Commissioner Gioia described the extension request process as hazy and asked to build in something about conferring with the County Health Officer to ensure that extensions are consistent with some standard since they are the local statutorily authorized officer who can help make a determination. He asserted that at a minimum BCDC would need to put that language in the Order and reference that the Executive Director is consulting with them. He then asserted that he did not think that September 1st date was realistic but that if there is going to be an extension then there needed to be some standards and the County Health Officer could help determine that.

Mr. Michael Branson addressed the comment about the City of Oakland having proposed the timelines in the Order. He stated that when the City was going before the Enforcement Committee in March, the City was in a very different circumstance than it found itself in a few months later.

He stated that the City was on the precipice of dramatic change. Mr. Branson stated that as preparations were being made to work from home, he sent a request for a 30-day extension for the dates that were fast approaching. He stated that the City had no way of knowing, for example, whether it would be able to meet the deadlines for providing a Park Activation Plan, installing a bike rack and clearing some beach areas.

Subsequently, Mr. Branson sent the letter attached to the Agenda asking for 90 additional days on top of what was requested by the City and what was in place when the Order was being heard before the Enforcement Committee. He stated that the dates as presented were not heavily discussed or negotiated, not discussed as they may fit within this crisis, and how they fit in with the City's budgeting. He reiterated that the City was grateful for the extensions because otherwise the City would have had to close the temporary reprieve zone 20 days ago, which the City and BCDC were in agreement wasn't going to happen.

He noted that the extensions were a temporary stopgap to allow for BCDC and the City to have the conversation before the Commission. He asserted that in addition to the timelines the Order obligates the City to conduct regular patrols of the area that was formerly part of the encampment which he took to mean that the City was being forced to kind of keep people within a constrained area. He asserted that the City has obligations in the Order that he thought are concerning because the City did not currently have the ability to make regular patrols to enforce the reprieve zone.

Commissioner Nelson began his comments by acknowledging what a difficult situation it is and thanked the staff and the Committee for their hard work and also thanked the City for raising really important issues. He observed that when the Executive Director mentioned the Enforcement Audit in his Executive Director's Report he recalled that one of the things the Commission was criticized for was lengthy delays in enforcement cases. He reminded the

Commissioners that the Union Point Park enforcement action started well before the pandemic began. He asserted that as an opening principle it was important to act and not to simply delay for a future date. He had some suggestions. He stated that it was critical first that BCDC, under no circumstances, move people in ways that would make them less safe than they were on the day of the hearing. He also thought that it was critical that the Commission do what it can to encourage, pandemic aside, the transition of homeless people to housing by finding an appropriate way to act on the day of the hearing. He also thought it was critical that the Commission act to make it clear that, as a long-term matter, housing in this public access is simply not acceptable and that it is not a question of “if” but “when” this issue is resolved. He stated that he had reviewed the Cease and Desist Order and was not sure he fully understand some of the critical nuances therein. He suggested an approach less focused on the dates than on the requirements. He agreed with Commissioner Gioia who suggested it was important to avoid adopting something that looks, on paper, as though the City is sort of hardwired to be in violation. Commissioner’s Nelson’s focus was more on an approach where in addition to the City asking for an extension, there was guidance to the Executive Director to mandate that the Commission grant extensions under specific circumstances and he indicated that Commissioner Gioia had outlined those. He reiterated that he was less focused on the dates because he had no idea what the right dates are but was focused on the mandate. He thought it was fine for the City to be asked to request extensions but he also thought that BCDC staff need a mandate of the circumstances under which extensions could be granted.

Commissioner Sears aligned her comments with those made by Commissioner Gioia. She noted that as a county supervisor she has been involved with a lot of these issues on the ground. She found the concerns raised by Oakland compelling. She recognized that although some of the dates are associated with submitting a plan to do something rather than actually doing something even creating a plan is challenging for some of the reasons that the City of Oakland representatives raised which is that many of the staff at the County and at the City of Oakland are currently engaged as disaster service workers. She recognized that everyone is in a situation that is rapidly changing with a great deal of uncertainty while dealing with budget issues that need to be figured out and addressed.

She stated that she was very sympathetic to Oakland’s challenges. She suggested that the matter return to the Commission at their second meeting in August at which point perhaps the Commissioners will be able to identify more realistic dates to accomplish some of the goals. She was not comfortable that this was the right time to set specific timetables for any sort of action.

Commissioner McGrath stated that the issue was intellectually and emotionally difficult, noting that it was heartbreaking at so many levels: for the people that work on it and for people who are resistant. He stated that they deal with this at the Regional Water Quality Control Board with constraints on their ability to be prescriptive about the approach. He recognized and endorsed the comments of many of the previous Commissioners that the cities and the counties find themselves on the front line with no easy solutions.

He stated that his perspective from the Regional Board is first to prevent health problems for the larger society and for the people in the camps. He recognized that the City of Oakland has done some of the best pioneering work on homelessness. He reported on having

listened to the City of Oakland staff at the State of the Estuary Conference about outreach to provide Port-a-Poties and trash pick-up before anybody else which made him think the City is acting in good faith.

Commissioner McGrath's concern was about what the City should be working on. He was willing to see delays for a better solution. He stated that to the degree that the Commissioners adopted something that made the City do something that satisfies BCDC, when perhaps they could be spending those limited staff resources securing housing through motels, Commissioner McGrath thought it would be a mistake.

He liked Commissioner Sear's suggestion that the Commissioners table the Order for some time, not because the Commissioner are not taking it seriously, in recognition of Commissioner Nelson's comments, but recognizing that there is only so much time in a day and there are only so many people that work on homeless issues at the City of Oakland. He stated that he knew from their counterparts at the city of Berkeley that they are hammered right now just trying to keep something from being seriously significant.

Commissioner McGrath was not comfortable thinking that BCDC can craft a solution and an improvement to the Order in this time that would make sure that the City is working on the right things rather than just satisfying BCDC. He concluded by stating that he was not comfortable proceeding.

Commissioner Pine summed up the common agreement as everyone wanting the Park to be cleaned up as expeditiously and humanely as possible while also recognizing that we are in the middle of a pandemic. He noted that one approach was putting the Order on hold and returning it to the Commission as suggested by Commissioner Sears. Another approach would be to key any deadlines off a change in the shelter-in-place order that would allow the City to work on the issue. He states that until the City was available to work on these issues BCDC could not place deadlines; BCDC would be inviting a certain request for an extension. He suggested that a potentially alternative way to craft the Order would be to put deadlines on a start date that would occur on the appropriate lifting of the shelter-in-place order.

Mr. Marc Zeppetello, General Counsel, informed the Commissioners of their options. Regulation 11332 addresses Commission Action on a Recommended Enforcement Decision. He explained the four options in acting on a recommendation from the Enforcement Committee.

First, the Commission may adopt the recommended enforcement decision without any change. Second, it may dismiss the entire matter by voting not to adopt an order. Third, it may remand the matter to the Enforcement Committee for further action as the Commissioners may direct. Fourth, it may reject the recommended enforcement decision and decide to consider the entire matter de novo at a future hearing before the Commission.

Mr. Zeppetello offered two additional comments. One, the idea of continuing the matter and bringing it back to the Commission is not contemplated by this regulation but even if it were then the Commissioners would be coming back to consider the same Order that was before them and would not have the option under the regulation to modify it. He then, as a final point, called the Commissioners attention to the extension-of-time provision on page 11 of the proposed Order, paragraph (f)(2) that stated that the Executive Director may grant an

appropriate extension of time for demonstrated good cause to comply with any provision of the Order. He explained that although that language does not have specifics or detailed direction for the Executive Director it is very broad and it is a standard phrase or clause in court orders of good cause and it can encompass anything including what the Executive Director heard from the Commissioners during the hearing.

Commissioner Butt stated that from a practical standpoint whatever order, if one were to be adopted, could not be enforced by BCDC. He noted that on the other hand, he thought it was important to adopt something because the City of Oakland needed to have some motivation to deal with Union Point Park. He stated that without motivation people take the path of least resistance. He observed that when you are looking at trying to set up a managed homeless encampment or something like that, neighborhoods come out against it, everybody is against it; and so what happens is people in political life and city officials always look for the path of easiest resistance. He stated that the path of easiest resistance may well be to put an encampment on the shoreline because there are fewer neighbors there and then the City does not have to worry about it. He recognized that the City of Oakland asked for a 30-day stay. He thought it was reasonable to adopt that. Commissioner Butt thought that if there are reasons to stay it further the Chair can do that and BCDC could even put some language in there that refers to lifting of the health department requirements.

Commissioner Butt thought it was really important to go on the record that, in fact, there is a violation and that BCDC wants to see it fixed and is willing to work with the City of Oakland to get there. He recognized this as the Commissions' obligation because they are responsible for the shoreline and the Bay Trail and he thought it was irresponsible just to say it is not going to happen and the Commission would not deal with it now.

Commissioner Nelson was recognized by Chair Wasserman he indicated that he was contemplating a motion; he asked whether the Chair was going to make a recommendation in which case he would let the Chair make that suggestion instead of offering a motion.

Chair Wasserman replied that he would consider returning to Commissioner Nelson then recognized Commissioner Gioia.

Commissioner Gioia remarked that he has a lot of confidence in the Enforcement Committee and thought that a good approach would be to remand the Order back if that was one of the four options because he thought the Chair of the Enforcement Committee understood the Order but the additional discussion would help them craft something that incorporates some of the points the Commissioners raised. He stated that he respected his colleague from Richmond, the Mayor, who he often works with but the City of Oakland like many jurisdictions are dealing with hundreds of homeless individuals in encampments throughout the city. He stated that their obligation under health and safety is to move those who are vulnerable into hotel rooms when there is a limited number. He informed the Commissioners that in Contra Costa they have spent millions of dollars to rent 500 hotel rooms to move folks out of shelters into those hotel rooms and then go to encampments and move those who are most medically vulnerable to those hotel rooms. He was sure the City of Oakland is engaged in similar actions in Alameda County. He thought it was unfair to ask them to prioritize a BCDC order over the health and safety of individual members of the homeless

population. What Contra Costa County will do is go through homeless encampments throughout the City and move out those who are most in need of having shelter during this pandemic. There is a concern of a second wave in the fall that remains uncertain.

Commissioner Gioia stated that under the four options that BCDC counsel provided remanding the Order to the Enforcement Committee to make a more flexible order that accommodates the concerns the Commissioners mentioned and come back to the Commission may be a reasonable approach.

He was willing to make a motion in that regard.

Chair Wasserman stated that he would consider returning for that motion.

Commissioner Vasquez chimed in and stated that as a member of the Enforcement Committee, having heard this case several times, he thought the Committee provided direction. He thought it was important that BCDC continue with the Order itself. He noted that the proposed Order has the flexibility within it that allows the Executive Director to provide for the accommodations that the City may need. He noted that the other part of the discussion was that the Park is in shambles and the community around there wanted the Park and they pushed to have the Park put in place and that is why they worked with the non-profit and the City of Oakland and the Port Authority who owns the property. He thought that the Commission had a responsibility to continue to apply subtle pressure with the Order on the City of Oakland for them to take it seriously. He recognized that there will be costs to rebuilding that whole Park but again, the local community was the one suffering now not the Commissioners. The park was something the local community wanted, something they got and something they have lost. He explained that for the people that have their boats at the Harbor; the Committee's intent was to have somewhat of a check-in process but to continue with the process and looking for improvements along the way.

Commissioner Vasquez stated that the City is in violation and noted that while the Commissioners did not hear from the community the Enforcement Committee did hear from the Community about their concerns. They would love to have their Park back.

Executive Director Goldzband was recognized and asked if other members of the Enforcement Committee wanted to speak.

Commissioner Ahn had a clarifying question for the Enforcement Committee about how many members of the public spoke at the Enforcement Committee and who spoke.

Ms. Karen Donovan replied that BCDC has heard from a number of members of the surrounding area including the man who was unable to speak earlier during the hearing who owns a nearby property and has been very involved in providing comment on this matter.

Mr. McCrea noted that was Mr. Brock de Lappe, who had called back in, had his hand up speak and has probably been the most vocal member of the public.

Mr. Brock de Lappe, Oakland Marinas Harbormaster, addressed the Commission. He had slides that showed a very dense association of encampments that he stated clearly that have been a breeding ground for potential disease. He informed the Commissioners that children are living in this Park and that he has called Alameda County Child Protective Services because of the inhumane environment that these children are living in.

He explained that based on park conditions no member of the public would ever go and use this Park as it is. He explained that he had been working with the City or attempting to for over two and a half years to get this Park cleaned up with one delay after another and the situation has only deteriorated.

He reported that the east parking lot was full of RVs at one point. It was cleared out in August but people are now camping out in cars. There are signs posted there about no overnight parking but there is no enforcement in either of the lots at the Park which turns the Park into an absolute pigsty which it shouldn't be.

Mr. Brock de Lappe shared the CDC's guidance on homeless encampments being cleared that indicated connecting people to stable housing should continue to be a priority. He explained that the CDC did not say not to clear encampments they said to get people into reasonable housing as quickly as possible. He asserted that the way that people in the encampment are living in the Park is inhumane. It is a health risk. He stated that BCDC should talk to the people of Alameda County Vector Control because the rat population there is totally out of control.

Mr. Brock de Lappe showed the Commissioners an article from the previous day's San Francisco Chronicle that stated that less than five percent of homeless in this state are in rooms. It also stated that of the 15,000 hotel and motel rooms that California has leased for the homeless only half are being used. Mr. Brock de Lappe asked why the City did not have the ability to house as Joe DeVries said, 20 people or 22 people since in his letter which is Exhibit B he said that the City had not even conducted a census and why there is no census on the Park when that would seem to be a priority for doing any kind of planning.

Mr. Brock de Lappe was concerned that after all these years the City of Oakland has not gone in and done any kind of census of how many people they are actually dealing with. He requested enforcement action to make sure that this does not continue to slide on indefinitely.

Commissioner Gilmore responded to the comment about how many people came to the Enforcement Committee. She recalled that the Committee had at least three meetings. The first two were particularly well attended. The Committee had a vast cross-section of people from the community who came in and talked about the park conditions and how it is a problem.

These meetings occurred before COVID-19 but BCDC gave people ample opportunity to come in and discuss their concerns.

Commissioner Gilmore then informed the Commissioners that the Order was brought before the Commission because staff and the City of Oakland have spent a lot of time negotiating over it and she thought the negotiations have been cordial, pleasant and very fruitful. She stated that the feeling among the Enforcement Committee was that if we just dropped everything whenever we picked the order up, whether it was months from now or whenever it would be, we did not want to be starting from scratch. The Committee wanted to keep the framework that we had but be very flexible with the City of Oakland understanding how unusual these times are that we are all living in.

She also thought that the Order was a means of having oversight and understanding what was taking place on the ground.

Commissioner Techel was recognized, she stated that Enforcement is sometimes a bit of a dance; hearing both sides and deciding what makes sense and how we can be most effective. She noted that she supported the Order and while she is not keen on over-enforcement there was so much flexibility in the Order she felt it could get BCDC's message across. The Committee said where it thought the restoration and maintenance needed to go and provided the flexibility in these unknown times.

Chair Wasserman stated that the park situation was very, very difficult even before COVID-19. He thanked Joe DeVries and other members of the City as Commission Chair and as an Oakland resident for the efforts they are making. He noted that the efforts are not enough even though the Commission appreciates the work the City is doing and the way they have worked with staff. Chair Wasserman also thanked the Enforcement Committee for its thoughtful response.

He recognized that the problems in Union Point Park clearly preceded the pandemic and were ongoing for some time and need action, and a framework for action.

He recognized, on the other hand, that the framework was worked out before the pandemic and the orders from the county health officials which made him have a little difficulty proceeding with that context.

He stated that a part of him wanted to entertain a motion to return the Order to the Enforcement Committee not because he thought what they have suggested is fundamentally wrong in any way but because it was put in place before the effects of this pandemic happened.

If the Commission was going to approve the Order it would need to change Item (f) on page 11 of the Order because it refers to any unforeseeable event. He noted that while it well may or may not have been unforeseeable when the Enforcement Committee came up with its recommendation it sure is foreseeable now meaning that language does not work.

Chair Wasserman asked General Counsel, Marc Zeppetello, if the Commission could change the language of (f)(1).

Mr. Zeppetello replied that the regulation does not allow the Commission to change the Order.

Having heard from everyone Chair Wasserman concluded that the Order as it stood provided enough standard and the one standard it does have is not realistic because it talks about unforeseeable events. He thought the Order should be returned to the Enforcement Committee making it very clear that the Commission does not disagree with this as a framework but that it does need to be modified in light of the shelter-in-place orders and the consequences for this Park and for the City of Oakland. He then asked for any Commissioner to make that motion for consideration. Commissioner Gioia made the motion and Commissioner Sears seconded the motion.

Chair Wasserman asked if anyone wished to comment on the motion as made.

The Reporter asked Chair Wasserman for a clear statement of what the motion was.

Chair Wasserman replied that the motion was to return the matter to the Enforcement Committee being clear that the Commission believed the framework they have worked out is a

sensible one but needs to be evaluated in light of the pandemic and the public orders of the Alameda County Public Health Officer and that, in particular, there needs to be attention paid to the language of the extension of time or other modifications based on the consequences of the COVID-19 pandemic.

He verified that the motion as restated was acceptable to the maker of the motion and the seconder both Commissioner Gioia and Commissioner Sears replied in the affirmative.

Commissioner Nelson commented that the motion in general terms was what he had been contemplating and that he would vote for it. His only concern was that it offered the potential to put more of a burden on the City of Oakland staff.

He invited City staff to offer an opinion, if they have one, about whether they would rather the Commission just adopt the recommendation of the Committee rather than force them to come back to work with the staff and work with the Enforcement Committee one more time.

Mr. Branson responded that he was ready and able to reconvene with the staff that the City have worked with so well so far. He reiterated the City's appreciation of staff efforts until that point. He stated that he imagined that it is frustrating for BCDC staff to feel like there has been a change here but he thought the City can work with BCDC staff to make some tweaks that reflect the reality of COVID-19.

Commissioner Wagenknecht commented that while he would probably end up voting for the motion he was really disappointed in the Commission not supporting its Enforcement Committee. He thought they really did a job several times over crafting the Order and the Commissioners threw them for a loop.

Chair Wasserman appreciated and understand a reaction like that from members of the Enforcement Committee but noted that was not his intent. He asserted that if the Commission could have amended the language of (f)(1) then he probably would have decided differently but "as is" it doesn't give our staff the guidance or the flexibility that everybody intends in light of the consequences of the COVID-19 including the impact on the resources of the City of Oakland.

Mr. DeVries agreed that Michael Branson has more capacity than he does noting that he has been stationed in the Emergency Response Center since March 18th and is now in charge of building a food-distribution network as well. He was proud to report that the City is now shipping about 40,000 meals a week to vulnerable populations in Oakland.

He sought to honor the work of the Enforcement Committee and BCDC staff. He reiterated that while the City was working with BCDC staff and long before the Enforcement Committee's final approval many of the steps that they needed to take to come into compliance had already been taken.

He concluded that the City and BCDC staff are working together in good faith and will continue to do so. He asked that the City's request not be seen as the City's resistance to the collaboration with BCDC staff or the Enforcement Committee. Mr. DeVries thought that with some minor tweaks the City can bring the Order back to the Commission and if the pandemic will let them then the City will get back on track.

Chair Wasserman reiterated Mr. DeVries previous comment that the City's experience that the people in the encampment are resistant to receiving help. He recommended that the challenge just needs to be acknowledged in what is going to go on and that we should proceed once we have figured out a solution.

Chair Wasserman then asked the BCDC host, Ms. Atwell to call the roll on the motion and informed Federal representatives that they could vote on the motion if they chose to.

**MOTION:** Commissioner Gioia moved for approval to remand the Staff Recommendation to the Enforcement Committee for appropriate and updated stipulations. The motion was seconded by Commissioner Sears.

**VOTE:** The motion carried with a vote of 20-2-1 with Commissioners Addiego, Ahn, Butt, Gilmore, Scharff, Eckerle, Gioia, Gorin, Pemberton, McGrath, Peskin, Nelson, Randolph, Sears, Showalter, Techel, Wagenknecht, Ziegler, Vice Chair Halsted and Chair Wasserman voting, "YES", Commissioners Alioto-Pier and Vasquez voting "NO", and Commissioner Beach voting "ABSTAIN".

**10. Briefing and Potential Vote on Pending Legislation.** Chair Wasserman reminded everyone there were no legislative matters to consider.

**11. Briefing on a Potential Amendment to Bay Plan Mitigation Findings and Policies. Chair Wasserman stated: We will now move to Item 11, which is a briefing on a potential amendment to the Bay Plan mitigation findings and policies.** Shannon Fiala and Megan Hall will make the report.

Executive Director Goldzband commented: It is 3:52 p. m. and I am concerned about losing portions of the Commission. I would suggest that you delay the last item that being the EJ implementation discussion because I think it is tremendously important for the Commission to hear that and to become involved with it. We are more than happy to put it on the next Commission meeting and finish with the Bay Plan Mitigation discussion.

Chair Wasserman replied: Unless there is an objection I would agree to do that, but I want to be very clear that it is because the discussion on the environmental justice and social equity implementation is very important and we don't want to do it in a rushed manner or when we will not have as many Commissioners present as possible.

Executive Director Goldzband added: And let me say that we have three staff members who are involved in that briefing, each having a fundamentally different aspect of it. And given that this discussion you are about to have essentially furthers the Bay Fill Policy issue because it is being dealt with by the Bay Fill Working Group and the EJ discussion furthers the EJ Bay Plan Amendment that you approved last year. Staff believes it is tremendously important that you all participate in that discussion.

Chair Wasserman stated: Unless I hear an objection, we will continue Item 12 to our next Commission meeting and proceed now with Item 11 on the possible amendment to Bay Fill Mitigation policies.

Planning Manager Fiala introduced Item 11: Thank you Chair Wasserman. I am excited to introduce this briefing. A number of actions were identified back in 2017 as an outcome of the Commissioner workshops on rising sea level as well as the Bay Fill Working Group meetings and by stakeholders through Policies for a Rising Bay.

These included six Bay Plan Amendments which were prioritized in three phases. The highest priority amendments addressed environmental justice and social equity and fill for habitat projects.

Phase 2 amendments would address Bay Plan Mitigation policies and Bay Plan policies addressing the beneficial reuse of sediments.

Finally, Phase 3 would tackle fill for shoreline protection and adaptive management.

In addition to Bay Plan amendments, the actions identified by the workshops included legislative changes, the creation of guidance documents, and coordination efforts including improved inter-agency collaboration regarding mitigation.

In 2017 many issues were identified regarding mitigation on San Francisco Bay including the need for increased regional advance mitigation and the impact of rising sea level on mitigation projects and Bay ecosystems in general.

As you know, the Commission adopted the Phase 1 Bay Plan Amendments regarding environmental justice and fill for habitat in October. And now staff has started background research on the amendments to address Bay Plan Mitigation policies, which Megan Hall will explain in much more detail.

Coastal Scientist Hall addressed the Commission: Good afternoon Chair Wasserman and Commissioners and thank you Shannon for the introduction. My name is Megan Hall and I am a coastal scientist here at BCDC. I'm excited to present on our preliminary research on mitigation at BCDC.

Today's presentation has two primary objectives:

First, we'd like to introduce you to some of the existing and expected issues with mitigation at BCDC, especially issues that might emerge with rising sea level.

Second, we'd like to hear your feedback on the scope and process for a potential Bay Plan Amendment to address those issues.

But first, I'd like to take a step back and make sure we're all on the same page about what we mean by mitigation at BCDC. Mitigation is a term that is applied in different ways in different contexts. It is common to hear discussions of mitigating for the effects of climate change or mitigating for greenhouse gas emissions. Recently we have heard mitigation in a human health context when discussing mitigating for the effects of COVID-19.

In the environmental regulatory context and at BCDC, the term mitigation is used in reference to mitigate for project impacts to make a project consistent with laws and policies. Mitigation allows projects to happen that could not otherwise be permitted.

In the regulatory context mitigation is typically defined as: A series of actions, generally taken in sequence, to offset adverse environmental impacts, specifically first avoiding the impact if possible, then minimizing the impact, and finally, for any unavoidable adverse impacts, providing compensation.

More specifically, compensatory mitigation consists of measures to offset unavoidable adverse impacts to the environment and could include restoring, creating, enhancing or preserving a resource.

Most of the Bay Plan findings and policies on mitigation focus on how to determine appropriate compensatory mitigation measures.

Although the Commission has required mitigation for unavoidable adverse environmental impacts of projects as a condition of some permits since the early 1970's, policies on mitigation were not added to the Bay Plan until 1985. The policies were amended to their current form in 2002.

What you see here is a summarized version of the policies in the Mitigation Section of the Bay Plan.

The policies state the standard order of mitigation: to avoid, minimize, and then compensate.

They also state a preference for on-site mitigation, followed by mitigation banking, and finally in-lieu fees.

The policies also address issues including what factors to consider in siting and design of compensatory mitigation, community involvement in the siting, design and implementation of mitigation projects, and determination of mitigation timing, amount and type.

Compensatory mitigation at BCDC has typically included fill removal, restoring diked Baylands, acquiring habitat areas and contaminant remediation. These activities all aim to achieve habitat restoration, creation, enhancement or preservation. For habitat projects and fill projects the project can either be in-kind or out-of-kind addressing whether the habitat type restored or type of fill removed is the same or not as the habitat that was impacted.

These activities can be carried out on-site or off-site, and can be an individual project executed by the permittee, part of a mitigation bank, or a project carried out by another entity through an in-lieu fee payment.

I'll walk you through some recent examples of mitigation required by BCDC, some of which you may recall.

Mission Bay Ferry Terminal, for example, involved both fill removal and contaminant capping. To compensate for fill to create a pier and float, the applicant (the Port of San Francisco) was required to remove collapsed sections of Piers 64 and 66 along with additional marine-debris removal. To compensate for dredging of a contaminated area to accommodate ferries, the applicant capped the area with clean sand and a marine mattress. The mitigation occurred onsite where the fill was going to be placed. And the applicant was responsible for carrying out this mitigation project themselves.

The San Francisco Ferry Terminal Expansion also required fill removal as mitigation for fill placement impacts. One component of the project placed fill for the improvement and expansion of a ferry passenger waiting and public-access area at the Southern Promenade.

In this case the applicants, the Port of San Francisco and the San Francisco Bay Water Emergency Transportation Authority, paid the Coastal Conservancy to remove piles and deck structures that had fallen into the Bay at the Terminal Four Wharf and Warehouse site in Richmond, so this was off-site mitigation.

Mitigation can involve wetland habitat restoration as well. Liberty Island mitigation bank, a habitat restoration site in the Delta, has been used to provide off-site mitigation for impacts to fish habitat that have resulted from several BCDC projects, including sand-mining projects and upgrades at the Military Ocean Terminal Concord (MOTCO). Mitigation banking allows an applicant to purchase credits to offset impacts of their project from a site that has officially been approved as a “bank.” Mitigation banking is typically off-site but it doesn’t have to be by definition.

Finally, the touchdown of the East Span of the Bay Bridge required a range of mitigation actions many of which were addressed through Rebecca’s and Caltrans’ presentation earlier in this meeting. At the project site, the applicant, Caltrans, was responsible for removing the Old-Bay-Bridge East-Span structure and restoring eelgrass, among other mitigation measures. In addition to in-lieu fee payment for the Shorebird Roosting habitat, Caltrans also paid in-lieu fees for off-site eelgrass restoration at East Shore State Park and for wetland restoration at an area quite far off- site, Skaggs Island in San Pablo Bay.

As I mentioned, BCDC has been requiring mitigation since the 1970s. Since that time BCDC has conducted several assessments of its Mitigation Program and implemented two major policy updates. In addition to the policies, staff developed a Mitigation Practices Guidebook in 1987 that provides some guidance on how to mitigate for different types of fill.

However, since the policies were last updated in 2002, climate change, and sea level rise in particular, has emerged as a significant threat to Bay Area communities, ecosystems and infrastructure.

Recognizing that sea level rise could change the way we mitigate for project impacts, the Commission, staff, and stakeholders raised the need to re-consider mitigation policies yet again during the 2017 Commission workshops on rising sea level, as Shannon described in her introduction.

Based on the needs identified through the workshops, staff began the process of researching a potential Bay Plan Amendment on mitigation by exploring the following question:

Considering sea level rise, how should we rethink current mitigation practices and paradigms to ensure long-term project success and increased resilience of ecosystems, communities, and the built environment?

This includes re-assessing some of the most common questions in determining mitigation requirements: Who is responsible? Where should it happen? How long should it last? What do projects look like? And how much is required?

To address this question and further identify what issues need to be addressed, staff has started a process of preliminary background research and discussions. So far, this process has included reviewing a lot of current and past documents including:

- BCDC mitigation law and policy,
- Commission workshops on rising sea level outcomes,
- Past BCDC mitigation staff reports,
- Other agency mitigation policies and practices, and
- Reviewing and engaging in Bay Area mitigation planning efforts.

Staff has also had several meetings and interviews including with:

- BCDC Regulatory Staff,
- BCDC Senior Staff, and
- The Bay Fill Policies Working Group.

Through this process, we've identified seven key issues related to BCDC's compensatory mitigation program that build on the issues identified through the workshops on Rising Sea Level.

The first issue focuses on clarifying BCDC's current mitigation policies and providing more certainty around how to apply these policies.

The next six issues are forward-thinking and consider how our current mitigation policies should be changed to address emerging problems. These issues ask – considering sea level rise and environmental justice, how should we and could we do things differently?

Now I'll walk you through each of these issues in more detail and provide some potential solutions to address each issue, which include both policy changes and other non-policy solutions.

As I describe the issues below I'll ask you to please consider whether these are the right issue areas to address, what might be missing, and how a Bay Plan Amendment could address some or all of these issues.

The first issue focuses on the lack of clarity in some current mitigation policies and questions around how to apply current mitigation policies. We have heard from regulatory staff that some of the mitigation policies are vague and thus difficult to apply with certainty. Specifically, there have been a lot of questions around how to best determine mitigation amount and what kind of mitigation is acceptable for a given project. Additionally, for projects that were permitted prior to the 2002 Amendment to the Mitigation Policies, but are implementing mitigation now, it is sometimes unclear how to reconcile and apply the current and previous policies. Finally, it can be difficult to determine mitigation requirements for complex projects with secondary impacts such as how to mitigate for a project that involves contaminant clean-up that may also impact subtidal habitat in the process. The challenge is to provide for general application of the policies but also to be clear and promote consistent application.

Potential solutions include adding specificity and clarity to policies and developing a guidance document to further interpret the current mitigation policies.

The second issue is long-term maintenance of mitigation sites.

As sea level rises existing and proposed mitigation sites may be inundated. Also, habitat around the Bay is expected to shift including at sites being impacted by projects now.

These projected changes lead to several questions. How long must mitigation sites be maintained considering sea level rise and how does projected habitat change in the impacted area affect this determination? What does adaptive management look like for these projects? And who is responsible for this maintenance? This is an especially important question in the case of smaller applicants who may not have the resources for long-term management and maintenance.

Potential solutions include:

- Policy changes to ensure long-term project success.
- Policy addition to better define how we decide the maintenance of mitigation with sea level rise.
- And development of guidance to better inform how we monitor and manage these projects to ensure long-term success and how we assess risk and vulnerability of the proposed projects up-front to determine how necessary long-term maintenance is.

The third issue area is preference for on-site mitigation.

BCDC policies currently state a preference for on-site mitigation before using mitigation banking or in-lieu fee programs. This order differs from the preferred order of some other regulatory agencies. For example, the Army Corps and EPA 2008 Mitigation Rule states a preference for banking, then in-lieu fees, and finally permittee responsible mitigation.

Additionally, the Bay Plan Policy preference for on-site mitigation may not reflect the potential advantages of mitigation banking and in-lieu fee programs as opportunities for more regional approaches to mitigation planning.

As sea level rises, planning for mitigation in a regional context could be increasingly advantageous. Strategic thinking about mitigation could result in more of the benefits we want to see including EJ benefits, a well-distributed mix of habitat types providing different functions, and projects that contribute to regional restoration and sea level rise resilience visions. Well-planned mitigation banks and in-lieu fee opportunities could provide these benefits.

On the other hand, there are advantages to on-site mitigation including keeping the mitigation close to the actual impact and restoration or protection of smaller habitat areas that may be important for habitat connectivity. Similarly, banking raises some additional challenges like who is responsible for long-term maintenance of a bank site once the bank has sold all the credits.

Considering a future with rising sea level, should we shift our thinking about mitigation siting and these different approaches to mitigation?

Potential solutions to this issue could include:

- Policy change to restate the order of preference for banking and in-lieu fees,
- Development of guidance on how to best use mitigation banking and in-lieu fee programs to improve sea level rise resilience, and
- Improving inter-agency coordination of mitigation requirements .

As I described in Issue Area 3, as sea level rises, planning mitigation in a regional context and in advance of project impacts could be increasingly advantageous to provide the benefits we want to see where we want to see them and where they are sustainable.

BCDC has had limited involvement so far in region-wide mitigation-planning efforts, but our involvement may be important to ensure that mitigation projects address issues important to BCDC, including sea level rise adaptation, fill removal and other needs. BCDC involvement in regional advanced mitigation planning will also be important to facilitate multi-agency permitting of mitigation projects.

How should we and could we proactively move forward with efforts to strategically plan and place mitigation?

Potential solutions include:

- Policy changes to address how we site mitigation and how we coordinate in an inter-agency context,
- Adding a policy or finding to address the sea level rise benefits of mitigation planning,
- Collaborating to develop a mitigation bank or fund for fill removal,
- Increasing BCDC involvement in regional, advance mitigation, planning efforts, and
- Improving inter-agency coordination of mitigation requirements.

Issue Area number five focuses on determination of mitigation kind and how essential nexus influences that decision. Based on the case of Nollan vs the California Coastal Commission, required mitigation must have a reasonable nexus with the impact. BCDC has often allowed out-of-kind mitigation in the past but to promote regional restoration visions and quickly increase the resilience of the estuary we may find that in some cases it will be beneficial to allow for even more out-of-kind mitigation.

Working within the bounds of Nollan vs. California Coastal Commission, can we and should we require more out-of-kind mitigation when appropriate to work toward greater sea level rise resilience of the estuary?

Potential solutions include a policy change or development of guidance to add specificity on determination of kind and nexus.

Issue area 6 focuses on how to determine mitigation amount (or, in other words, how much habitat should be restored, or how much fill should be removed) for projects that advance sea level rise resilience.

Several questions are raised by this issue.

First, how should mitigation requirement and amount be determined for projects that fill or cause impacts but also provide multiple benefits? Should mitigation be required for habitat type conversion? And can and should reduce mitigation requirements be used as an incentive to encourage desirable adaptation processes and solutions?

Potential solutions include:

- Policy change to add specificity on how we determine amount of mitigation, and
- Developing guidance to further advise how we measure benefits against detriments considering sea level rise and how to determine the appropriate mitigation ratio considering that criteria.

Finally, issue 7 focuses on incorporation of environmental justice and social equity into mitigation planning and permitting. We will examine all of the above issues through the lens of environmental justice needs.

As a reminder, mitigation was addressed to some extent through the EJ Bay Plan Amendment. Several important policy additions were made including: Requirements to consider equitable distribution of social benefits when determining location and design of compensatory mitigation; mitigation for disproportionate impacts of projects involving communities in projects; and considering community priorities when deciding among mitigation programs.

Through this amendment process we could consider how we take this work a step further to ensure that EJ is effectively incorporated into planning, siting and design of mitigation throughout the Bay.

Potential solutions include:

- Policy changes to add EJ in consideration of any of the above issue areas that I mentioned,
- Policy addition to further EJ benefits of mitigation projects, and
- Development of guidance to explain how we can further incorporate EJ analysis addressing issues identified above.

The issues I just presented are based on discussions we've had with BCDC regulatory staff and the Bay Fill Policies Working Group. There are also a few general conclusions from these discussions that have helped to inform our thinking on whether policy changes, guidance, or other solutions would be best to address the issues described above.

First, we heard that the current mitigation policies are likely flexible enough to address some of the issues related to sea level rise but more clarity around the intent of some policies would benefit permit analysts and applicants when handling current and future issues.

The policies leave many questions regarding how mitigation should be handled in the context of rising sea level. And finally, for some issues more research is necessary to determine the extent of the problems and the options to address the problems.

Considering the scope of each issue and the feedback we have received; we believe these issues would be best addressed at least in part through a Bay Plan Amendment along with other solutions.

Our proposed next steps are to refine the goal of the project and to dive deeper into background research, which we expect will last through the summer. This research would culminate in the release of a Background Report on the issue which could serve as the foundation for discussions of draft policy changes.

We would then hold a Commission vote to initiate a Bay Plan Amendment, and assuming it passes, move forward with the formal Bay Plan Amendment process including briefings, workshops and an initial public hearing.

As you saw in the Issue Area slides above we've also identified some potential non-policy solutions that could address each issue either in conjunction with or instead of a policy change. This is a summary of those solutions which we could explore further through the background research process.

I'd also like to highlight in red the non-policy solutions that would also address issues raised through Fill for Habitat Bay Plan Amendment.

So with that I would like to give Commissioner Nelson, Chair of the Bay Fill Policies Working Group, the opportunity to add some comments on this topic. Thank you very much.

Commissioner Nelson spoke: As Megan mentioned, we discussed these issues at a Bay Fill Working Group meeting. I think we have the right composition of Commissioners and members of the public to tackle these issues if the Chair would like us to. Although if he would like us to that will probably involve an appropriate name change.

I also just want to start by noting that Larry mentioned in his opening comments today that the policies that the Commission adopted coming out of the Bay Fill Working Group have not just been adopted by the Commission; they've now been approved by the Feds which really wraps up the work of the Bay Fill Working Group.

So I just want to thank the staff, the members of Working Group and the public for working with us on that process. It really has gone well, and we've made important progress there. And these mitigation questions are a logical next step.

I went through the Commission's plans and policies when we began this discussion. What seems clear to me is that when we developed our mitigation policies, we were essentially assuming a static Bay. And we now know that we are now facing a dynamic Bay. And that raises enormous questions.

We really saw that earlier today with the discussion of the Caltrans mitigation requirement. When that discussion began – I hesitate to ask how long ago we began discussing Bay Bridge replacement – but suffice to say, it was before we had adopted updated policies on sea level rise.

And frankly, I have some sympathy for Caltrans who started this discussion before there was Commission guidance on sea level rise, and as a result of that, their search for an adequate mitigation program regarding shorebirds has had a bit of a tortured path.

That is just one issue that we need to wrestle with. What do we do about adaptation for mitigation sites over time? Megan outlined a number of others.

The staff has done a nice job of summarizing some of those key questions. To me it is quite clear that there is enough meat for us to chew for two reasons.

The first is to ensure that we meet our responsibilities to adequately protect Bay resources, but also to help provide guidance so applicants know if they enter the permitting process what the mitigation requirements are likely to require. We have a lot of flexibility under existing policies, but I don't think that provides applicants with much guidance as they start that process about what they are going to need to do to make sure they are adequately mitigating for impacts they may have.

To me it is quite clear, and I think to the Working Group members as well, that there is plenty of material for us to chew on. And the staff has done a good job of summarizing the issues and our options for moving forward. I don't think we need to worry about answering those questions today but just making sure that we're deciding a program that is moving us in the right direction to answer those questions and provide recommendations back to the Commission. Thank you.

Executive Director Goldzband commented: I need to fall on my sword and say that I failed the Chair and failed the Commission. When we worked with Megan on her marvelous presentation, I failed to include the word "pivot".

I want to make it clear that what we are doing here is moving in the next step of that pivot in the Bay Plan Amendment based upon uncertainty going forward and based upon the need to ensure that BCDC reacts proactively to rising sea level.

What Megan described is yet another aspect of that pivot. And I just wanted to make sure that you all recognize that I am bleeding behind me that's why you can't see it on the white shirt and I have fallen on the sword for forgetting to make sure that it was part of the presentation. Thank you.

Chair Wasserman stated: I'm not sure falling on your sword was necessary at all. However, the point is a very important one. The previous Bay Fill Amendment was in some respects appropriately narrowly focused.

This one needs to be much more broadly focused. And Megan did make some references to this. I think it is in the overall context and it needs to be stated that way of the pivot that we have, in fact, made; that we have recognized that in order to save the Bay we are going to have to fill it in some ways that were not at all contemplated prior to recognizing rising sea level as a major, major threat.

And I think that is going to ripple through a number of things that are contained in the outline that Megan presented.

And to some extent, and this needs to be discussed by the Working Group, that pivot focuses on the word "necessary." What fill is necessary. What projects are necessary. So that is a piece that we need to make as the contextual basis for this amendment as it moves forward.

And we will have some discussion. I don't know whether that means we ought to rename the Bay Fill Working Group and perhaps expand its membership. That is all worth talking about.

Peggy let's open it up to Public Comment please.

Ms. Atwell stated: I don't have any hands for public comment. I have two hands from Commissioners.

Commissioner McGrath commented: I am excited about this. I think it is something that is necessary to do.

I would point out that the guidance that we have was 1987. I was a young man in 1987, I got to tell you.

We know a lot more about all the aspects of when mitigation works well and when it doesn't. We have to acknowledge that it is time to update that.

The other thing I would like to refer to is this morning's discussion – I recognize the concerns raised by Commissioner Scharff and Commissioner Nelson about what essentially is "pay and walk." And that is a slippery slope.

I wasn't bothered by it this morning because the actual impact had filled back in, the areas that were excavated and the context of getting something much larger. That is something that we need to grapple with and I think we need to do a little research and we need to look outside of the Bay.

I am going to refer staff to two specific projects. The first pay-and-walk project that I know of was Batiquitos Lagoon where a restoration project was funded by the Port of Long Beach but they were not in charge. The Lagoon intervention would be a very good project to do some research on. You ought to talk to the Port of Long Beach and the Coastal Commission.

There has also been some post-project monitoring. I think it bears on the question of do you need to continue monitoring? Do you need to continue maintenance?

The other project that has some aspects of that is Bolsa Chica. So you ought to look outside of just the Bay where this has been tried and find out what worked well and what went wrong and let's do what might work well and not do what went wrong.

Executive Director Goldzband added: And that's a way for us to work with the Coastal Commission to see if and when we can align throughout the state of California these kinds of issues.

Commissioner Showalter was recognized: I was disappointed when I went to the last Bay Fill Working Group meeting because I thought we were going to get to the heart of the matter. We have to protect people from rising sea levels and doing a flood protection amendment is one of the methods we will have to use.

We have this Bay Adapt process that is bringing together people from multiple agencies to get a cohesive set of principles for us to all move forward on which will be needed to inform all parties.

So in the interim they are going to do this other really important job working on these mitigation policies which are outdated.

We are not stopping with mitigation policies. After this we are going to go into Bay fill for flood protection.

Ms. Atwell noted: Commissioner Showalter, you are cutting in and out so we are only getting part of your conversation.

Commissioner Showalter stated: I'm done.

Chair Wasserman continued: I thank you all for your comments. We will have some discussion with staff and Commissioner Nelson on the focus of the future of the Bay Fill Working Group and its membership and see where we go from here.

But this process that was described clearly does need to move forward.

And with that unless there is a Commissioner or the Executive Director who wishes to say something; this brings us, as always, to the most important action – the motion to adjourn.

**12. Briefing on EJ Implementation.** Item 12 was postponed to a future meeting.

**13. Adjournment.** Upon motion by Commissioner McGrath, seconded by Commissioner Nelson, the Commission meeting was adjourned at 4: 31 p. m.