

# San Francisco Bay Conservation and Development Commission

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September 11, 2020

**TO:** Commissioners and Alternates

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

**SUBJECT: Draft Minutes of September 3, 2020 Virtual Commission Meeting**

1. **Call to Order.** The virtual meeting was called to order by Chair Wasserman at 1:02 p.m. The meeting was held online via Zoom and teleconference.

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

Chair Wasserman announced that a quorum was present.

Not present were Commissioners: Department of Finance (Finn), San Mateo County (Pine), Solano County (Spering), Department of Business Transportation & Housing (Tavares), U.S. Environmental Protection Agency (Ziegler)

3. **Public Comment Period.** Chair Wasserman gave the following instructions: Now, 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 or as part of an agenda item you will need to do so in one of two ways. First, if you are attending on the Zoom platform, please raise your hand in Zoom. If you are new to Zoom and you joined our meeting using the Zoom application, 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. Second, if you are joining our meeting via phone, you must press \*9 on your keypad to raise your hand to make a comment. We will call on individuals in the order that they raised their hands. After you are called on you will be unmuted so that you can share your comments. Remember, you have a limit of three minutes to speak on an item. 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 may hear me refer to the meeting "host" — our BCDC staff are acting as hosts for the meeting behind the scenes to ensure that the technology moves forward smoothly and consistently as they have been doing.

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 all the Commissioners prior to the meeting and those are for Item 8. If we receive any emails during the meeting they will also be shared with the Commissioners and be made available on our website [bcdc.ca.gov](http://bcdc.ca.gov).

Chair Wasserman announced: That brings us to Item 3 which is the Public Comment Period. Anissa, do we have any hands for public comment?

Ms. Kotay replied: Chair Wasserman, there are no speakers.

**4. Approval of Minutes of the August 20, 2020 Meeting.** Chair Wasserman announced: That brings us to Item 4, Approval of Minutes of the August 20, 2020 Meeting. You have all been furnished copies of the Draft Minutes. I would appreciate a motion and a second to approve those Minutes.

**MOTION:** Commissioner Addiego moved approval of the Minutes, seconded by Commissioner Nelson.

The motion carried by a voice vote with no abstentions or opposition.

**5. Report of the Chair.** Chair Wasserman reported on the following: It seems in this particular time in this unfortunate season of plagues we are facing more of the fires and the consequences of the damage and the smoke has affected the quality of air for all of us.

As we know the sea rise is with us and continues.

I want to address a couple of issues. We have continued to have the workshop working committees of the Leadership Advisory Group and that process is continuing well. Thank you to the people who have participated and all of the public who have participated. That is moving forward well and hopefully will lead later this fall to the recommendation to us to adopt a platform and series of guidelines so that we can move forward on actually creating the Regional Shoreline Adaptation Plan that is necessary to address the seas which are rising.

We are also starting the formal part of our Education Working Group and Committee. This follows the working groups we have had in the past on rising sea level overall on Bay fill and on financing the future and the education one which in certain respects is the most one which is the fourth wave of those efforts.

We will have our first meeting next Friday at 11:00 a.m. It will be virtually by Zoom. There have been a series of representatives of organizations who have met over the last year and a half sporadically to evaluate certain aspects of how we can best educate the general population as well as decision-makers and elected officials on the need to address and adapt to sea level and what we are doing.

If any of you would like to participate in that committee please let Larry and/or me know and we will make sure you get invitations to the upcoming meeting next Friday as well as future ones.

We do expect that we will have meetings on the regularly scheduled dates throughout the rest of the year.

a. **Next BCDC Meeting.** We will hold our next Commission meeting on September 17th and we expect that the Agenda will probably include:

(1) A public hearing and possible vote on the revised enforcement order for Union Point Park in Oakland;

(2) Consideration of new members for the Design Review Board;

(3) A possible vote on the NOAA Assessment and Strategy about which we were briefed by NOAA and our staff during the last meeting; and

(4) An update on the Bay Adapt program which is connected to the Leadership Advisory Group.

b. **Ex-Parte Communications.** This brings us to the point where if anyone wishes to make a report of an ex-parte communication you are welcome to do so – a reminder, you need to do that in writing as well. Are there any members who wish to make an ex-parte discussion report?

Commissioner Nelson stated the following: This actually will come up later in our Agenda. I was contacted by a representative of Wings Landing regarding a project that we are going to consider today. They had questions about the permitting process and I suggested they follow up with staff which apparently they have done.

Commissioner Gilmore reported the following: I wanted to report that I was contacted by the representatives of the Alameda Marina Project and they gave me an advance briefing of what we are going to see today.

Chair Wasserman continued: Now, that brings us to the Executive Director's Report.

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

With school back in full swing and Labor Day approaching BCDC staff has now spent five and a half months working remotely. For some of us this seems like an eternity, for others it has been liberating. For many parents it has been frustrating. Many of us would give our left arm to be able to go back in time and figure out a way for the pandemic not to have happened. While we can't travel through time, on this day 268 years ago people in the British Empire did travel into the future. On September 3rd in the year 1752 the Empire adopted the Gregorian calendar and summarily chopped 11 days out of history. Wednesday, September 2nd was followed by Thursday, September 14th. This wholesale elimination of future days caused riots – and not just among three-year-olds whose birthdays fell during those 11 days. (The Executive Director's transmission was lost.)

Chair Wasserman interjected: Staff, I don't know whether you can assist or whether it is a problem with Larry's computer but he is frozen on the screen at the moment and you were breaking up.

Commissioner Gioia added some levity: I think he is going back in time. (Group laughter)

Chair Wasserman stated: Larry, I think you might have to dial back in. Let's jump to Item 7 which is Consideration of Administrative Matters.

Executive Director Goldzband re-connected to the Zoom meeting in progress: This is what happens when you have everybody working at one time.

a. **Budge and Staffing.** We are the process of filling three positions at this point and we have made an offer for the vacant enforcement position to a gentleman named John Creech who is on the screen in front of you. John earned a B.A. and B.S. in Environmental Studies at U.C. Santa Barbara so he is a Gaucho. He then became a Terrapin as he earned a Master's Degree in Environmental Management from the University of Maryland. He has experience working with various infrastructure projects and is a licensed scuba diver, a Cross Fit instructor and competes in triathlon races. In case anybody has any questions please contact me. We look forward to John starting very soon.

And I am also pleased that Citlalli Aquino, a master's student at San Francisco State University, has joined Shannon's Fiala team through the fall semester as a Riptides Intern – you will remember that RIPTIDES is the program that we developed with our local NOAA partners. Citlalli will assist Megan Hall with the background research for the Bay Plan Mitigation Policy Amendment. Citlalli has a Bachelor of Science from University of California, Santa Cruz – yet another Banana Slug and Gator.

I expect that we'll have a couple more new staff members to announce later this month.

b. **Policy Issues.** Many of you likely have heard that two refineries located in Contra Costa County will be substantially shifting production in the near future. Marathon's refinery will be switching from its existing petroleum portfolio toward renewable diesel (and, perhaps, other products). Phillips 66 will also be switching toward new products. This will require changes to their facilities perhaps including new berthing and maritime infrastructure or at least changes in them. Neither of the corporations has briefed BCDC on these changes yet but we'll make sure to share information.

Now for some great news from our Chief Counsel, Marc Zeppetello - Marc will describe a big victory in District Court.

Chief Counsel Zeppetello addressed the Commission: Good afternoon Commissioners. This is an update on the Point Buckler matter and the federal court litigation not the state court litigation.

Let me provide a little background particularly for new Commissioners who were not here. In November of 2016 after a lengthy hearing before the Enforcement Committee the Commission adopted a cease and desist and civil penalty order against John Sweeney and the

Point Buckler LLC or Point Buckler Club for violations of the McAteer-Petris Act and the Suisun Marsh Preservation Act related to a range of unauthorized activities at Point Buckler Island in Suisun Bay.

The biggest violation was the construction of a levee around the perimeter of the Island by placing fill in tidal marsh and in tidal waters closing up seven, pre-existing, tidal channels and breaches of an old, deteriorated levee.

The respondents also excavated ditches, built some dirt roads and operated a kite-boarding club on Point Buckler Island.

At about the same time the Regional Water Quality Control Board was also pursuing enforcement against Point Buckler and Mr. Sweeney and the Water Board adopted a clean-up and abatement order in 2016 followed by a civil penalty order.

After those orders were adopted Mr. Sweeney and Point Buckler Club filed a lawsuit in Solano County Superior Court challenging the BCDC order and the Regional Board orders. After proceeding in the Superior Court in December of 2017 the Solano County Superior Court judge invalidated both of the BCDC order and the Regional Board orders.

Those decisions are now on appeal to the Court of Appeal. They have been fully briefed for 15 to 18 months and we are waiting for the Court of Appeal to schedule oral argument.

Simultaneously in January of 2017 the U.S. Department of Justice filed a lawsuit against Mr. Sweeney and the Point Buckler Club in Sacramento in the Eastern District of California for violations of the Federal Clean Water Act involving the same unauthorized activities that were at issue in the Regional Board and the BCDC proceedings.

That matter went to trial last year, last summer and on September 1st a few days ago the District Court judge issued a 95-page order and judgement on the defendant's liability under the Clean Water Act and on their defenses.

It was not a complete decision on all issues and it was limited to federal law and the Clean Water Act. There was no mention of the state law legal issues or claims.

Before discussing the legal conclusions I just want to mention a couple of the Court's factual findings after the trial because they are remarkably consistent with some of the Commission's findings.

For example, the Court found that prior to and through 2011 when Mr. Sweeney purchased the site almost all of Point Buckler Island supported and functioned as a tidal channel and tidal-marsh, wetlands ecosystem. But a review of the aerial photographs that 1985 was the last time that major levee repairs had been conducted on Point Buckler to provide the water-control measures necessary for a managed, non-tidal wetland and that between 1985 and 2003 Point Buckler Island's old levees had eroded and subsided allowing the Island to return naturally to tidal marsh.

The defendant's construction of a nearly mile-long, earthen levee including filling and closure of seven breaches and blockage of over-bank flow harmed the waters and wetlands on Point Buckler Island and that nearly 30 acres of Point Buckler Island no longer functioned as tidal channel and tidal-marsh ecosystem.

The Court also found that the defendant's harm to aquatic habitat and fish habitat was present.

So, in part, based on those findings and going through each of the elements of liability under the Clean Water Act the Court concluded that defendant Sweeney violated and remains in violation of the Clean Water Act as a result of unpermitted, non-exempt construction of a levee and other additions of pollutants from point sources to waters of the United States at Point Buckler and also found that Point Buckler Club, LLC had violated the Clean Water Act.

The Court considered and rejected a number of defenses that were raised. I want to mention two of them.

The defendants made an argument in federal court similar to an argument they made before the Commission in passing but then more vigorously in the Superior Court that their activities, this levee construction, was nothing more than maintenance of a pre-existing levee because the site had been the subject of an individual, management plan under the Marsh Act that had been approved and certified by the Commission in the 80s.

They were arguing and the Superior Court actually found that one of the reasons the Court ruled against BCDC was that it accepted the argument that this was just maintenance of a levee that was authorized under the Management Plan.

Well the federal court interpreting a Corps of Engineers regulation found that it rejected the maintenance defense and said the defendants discharges were not for the purposes of maintaining a serviceable levee rather defendant's actions changed the character, scope and size of the original fill; furthermore, defendants constructed the majority of their new levee approximately 3,300 feet on top of tidal marsh outside the alignment of the old levee further away from the tidal waters that surround the Island and towards the Island's interiors.

The second defense I want to mention is that they raised the same argument in Superior Court and it was that this was vindictive prosecution. It was that EPA like BCDC and the Water Board were proceeding vindictively against Mr. Sweeney and Point Buckler Club.

And the basis of this argument was that in 2015 the Water Board's original clean-up and abatement order was issued by the Executive Officer not by the full, Regional Board and the defendant's filed a lawsuit to challenge that on due process grounds saying they were entitled to a hearing.

Well shortly after that lawsuit was filed the Regional Board agreed and they rescinded that order and they proceeded to a full hearing before the Water Board where they adopted the subsequent order.

But the defendants argued that it was after this that BCDC imposed the penalty. After that the Water Board imposed a penalty. And after that the EPA filed a lawsuit and so all three agencies were proceeding vindictively because they were punishing Mr. Sweeney and Point Buckler Club for pursuing their rights in court in challenging the very first order.

In the Superior Court action the trial court found in the state court that although vindictive prosecution is based in criminal law and criminal prosecution had never been applied in a civil context, the Court found that the facts supported an initial showing of vindictive prosecution against BCDC and the Water Board and that the orders should be set aside in part on those grounds.

In the federal action the judge found that the defendants had not identified and the Court had not found any authority for applying this defense in a civil context and that defendants had not established a connection between the federal government's decision against Sweeney and his actions with respect to his legal battles with BCDC and the Water Board.

EPA's testimony suggests that when EPA asked the Department of Justice to prosecute the matter EPA was motivated by a desire to settle the pending cases and restore Point buckler and this was not sufficient to show that EPA decided to affirm these cases in retaliation for Sweeney vigorously defending himself in the BCDC and Water Board disputes.

So finally, there were two other issues that the Court did not reach and that will be subject to further proceedings. One is the restoration or the appropriate remedy and the second is penalties.

On restoration the federal government had submitted a restoration plan as part of the proceedings but the Court found that the record was inadequate with respect to the Court actually ordering implementation of that and so the Court has scheduled further proceedings starting with a status conference on October 2nd where the Court has asked for briefing and will further consider restoration or the restoration remedy.

And finally, on the issue of penalties — the Court cited the provision of the Clean Water Act that provides for penalties and requires the Court to consider numerous factors including the seriousness of the violations and the Court concludes that the defendant's violations of the Clean Water Act are very serious and that the construction of a nearly, mile-long levee at Point Buckler Island resulted in the loss of approximately 30 acres of tidal channels and marsh and their chemical, physical and biological functioning. A civil-penalty award is held in abeyance pending resolution of the government's request for an injunction to implement restoration and defendant's completion of that restoration.

So that concludes the summary of the case. I will comment that the Attorney General's Office is looking into the rules and appropriateness of providing a copy of the federal court's decision to the Court of Appeal.

I would be happy to answer any questions. Thank you very much.

Chair Wasserman asked: Any questions. (No questions were voiced) Seeing none, we will go back to Larry to conclude his report.

Executive Director Goldzband continued his report: I would like Katharine Pan of our staff to describe to you an equity workshop that our entire staff participated in last Monday and listen closely because she is going to be talking about something that the Commissioners are going to end up doing.

Ms. Pan addressed the Commission: You may remember a few months ago when we shared a quick update on the racial-equity planning process, that we were getting ready to start a visioning phase to set a direction for the planned strategies.

On Monday of this week we passed a milestone for this process which was a visioning workshop for all of BCDC staff members to share their thoughts on what BCDC as a racially-equitable agency would look like as well as identifying some of the areas that were doing well, areas where we need to improve, and challenges we'll have to overcome.

We kicked it off with a presentation sharing some racially-equity concepts and definitions and information on the planning process.

Our next steps will be to summarize and share the input we received and then start to schedule interviews to get some more nuanced perspectives and thoughts on where improvements can be made.

And we are hoping to invite Commission members to be part of that interview process to look for more information about that in the coming weeks and please volunteer if you are able.

We are also looking to be working with the Environmental Justice Working Group to organize a Commissioner workshop for one of your meetings in November. So you can look forward to more information on that as well.

That is what I have for you today and back to Larry.

Executive Director Goldzband continued: That is all I have for you, Chair Wasserman and I apologize for the delay.

Chair Wasserman asked: Any questions for Larry?

Commissioner Eckerle chimed in: I just have a quick question for Larry or Katherine. The visioning workshop that you had for staff, did you do that facilitated internally or did you have someone helping you with that?

Executive Director Goldzband explained: It was all done internally by our Equity Team. One of the great by-products was the fact that BCDC has done real tremendous work in workshops with the public is that we are able to use some of those same lessons and use them on staff. And it all worked very closely.

**7. Consideration of Administrative Matters.** Chair Wasserman continued: We had a listing that was mailed on August 21st. If there are any questions Brad McCrea is here to answer them.

Commissioner Nelson was recognized: I have a question for staff about the Wings Landing Duck Club application. I am happy to see a big, 267-acre, restoration project in Suisun Marsh.

My recollection is in the past we have sometimes handled these as major permits. I am not asking for that; I am simply asking staff to explain why they think an administrative approval is appropriate.

It also looks, from the listing, as though the public access has been fully resolved. I note that the staff position is recommend approval with conditions. So I am hoping staff can explain a little bit about the size of the project, why it is administrative, public access and what the conditions would be.

Brad McCrea responded: I know Larry was also ready to talk a little bit about this. We originally expected to handle this as a major permit application. And looking at it more closely, the regulations do allow for this to be handled administratively.

The costs for an application to come in front of you as opposed to doing it administratively are different; it costs more. But that wasn't really the reason.

Timing was primarily the reason driving the decision to do this administratively. We like to bring restoration projects in front of this Commission and celebrate them and inform the Commission about them. DWR and their partners need to get in the water this year to get the work done so they can get out of the water before the environmental-work window is closed. That was the primary reason driving this.

Subsequently, we had not yet hammered out all of the details with regard to public access at the Wings Landing site. To do this administratively, our Executive Director approves this on behalf of the Commission. And the Executive Director needs to be certain that the public access is what the law requires; that being, maximum feasible public access, consistent with this project.

So what we had done is crafted some public access conditions that provide us some flexibility. The public-access component of the project has four elements.

There is going to be new water that is accessible within the tidal channels that are developed at the Wings Landing Restoration Project. There will be signage alerting the public to the opportunity to canoe and kayak through the site. There will also be a field guide, both a printed version and a web version that will be developed by the applicants and the permittees to educate the public about the Marsh itself and specifically about Wings Landing.

And finally, and most interestingly, we have developed and discussed with them the opportunity to get the public out on kayak tours using a local, kayak operator.

This will be through the use of vouchers. There will be 70 vouchers in the first year. And then subsequently after that we have left the condition as currently drafted and the permit is expected to be issued this week if you concur with that.

In years two through five, and this is due to the impacts of COVID-19 on public gatherings, the permittees will be required to develop a plan with the BCDC staff to expand that kayak-tour program by adding more schools or otherwise grow a safe and professionally-managed, kayak program in the future.

So we want to make sure this is an equitable program. We want to make sure it is reaching the right students or right organizations. And to do that takes a little bit of coordination with those organizations. And, at this time, there is so much uncertainty around curricula in general that we have planned to provide some flexibility in the special conditions. And I hope that answers your question.

Commissioner Nelson answered: Largely, yet I didn't hear you say "put in." Is there a kayak, put-in somewhere near the site to facilitate those tours?

Mr. McCrea replied: Yes. Suisun City has a kayak launch. Pascale, do you remember how close the kayak launch is? How about the distances between Suisun City and Wings Landing?

Wings Landing is an island that will be restored and so there is no way to physically walk there.

Ms. Soumoy Pascale stated: It is less than a mile.

Mr. McCrea repeated: It is less than a mile, thanks so much Pascale.

Ms. Pascale reiterated: It is just shy of a mile and it is down the main Suisun Slough from the launch area to one of the main entrances that will be created.

Commissioner Nelson continued: Okay, that is really helpful. I have two suggestions.

The first suggestion is this is an innovative, a different, public-access program; so once it is finalized it would be great if we could get a report on that.

And the second is, there may be quite a few restoration projects similar to this down the road. We've seen one or two and we certainly are going to see more.

So I am just urging staff and the private applicant as well to make sure that they are doing everything they can to bring those projects in front of us. We want to make sure that we don't have problems in the future with projects that we kind of think should be major projects but the timing is short.

Mr. McCrea responded: Thank you Commissioner. We have noted it and will make sure that this happens and work more closely with the parties involved to make that happen.

Chair Wasserman added: And thank you Commissioner for continuing the Jim McGrath representation of users of our Bay.

**8. Public Hearing for Proposed San Francisco Bay Plan Amendment No. 1-20 to Allow Mooring an Historic Ship at Pier 9, San Francisco.** Chair Wasserman announced: Item 8 is a hearing on proposed mooring of a historic ship at Pier 9 in San Francisco. Shannon Fiala will make the presentation.

Planning Manager Fiala presented the following: Good afternoon, Chair Wasserman and Commissioners. Today I am going to be presenting staff's preliminary recommendation on Bay Plan Amendment 1-20, an amendment to the San Francisco Waterfront Special Area Plan.

The Bay Area Council or BAC is a non-profit at the intersection of business and civic leadership. They have applied to amend the San Francisco Waterfront Special Area Plan (SAP) to allow for the permanent mooring of an historic ship at Pier 9 in San Francisco and BAC is in a pre-application, review process for a major permit from the Commission.

BAC is proposing to relocate its office from its current site in downtown San Francisco to the Ferryboat Klamath which would be moored at Pier 9 on the San Francisco Waterfront (shown here in a rendering on the left). The proposed project cannot be accommodated at Pier 9 unless the SAP is amended because the SAP currently restricts the mooring of historic ships in open-water basins in the Northeastern Waterfront to those that were permitted before July 2000.

The McAteer-Petris Act of 1965 provides for the Bay Plan to contain or incorporate by reference “special area plans” with more specific findings and policies for portions of the Bay and its shoreline. The San Francisco Waterfront SAP was developed in partnership with the Port and articulates an attainable vision of the future San Francisco Waterfront.

BCDC first adopted the SAP in 1975 and it allowed, among other policies, for the mooring of historic vessels provided that they did not require substantial alteration to the adjacent, pier structures or new parking over water and that the mooring improve public access and shoreline appearance.

In 1978 BCDC approved the mooring of the historic Ferryboat Santa Rosa shown here on the right at Pier 3 on the other side of the Broadway Open Water Basin from Pier 9. The San Francisco Belle has been moored at Pier 3 since 2001 shown here on the left further back.

The SAP was significantly amended via BPA 7-99 adopted in 2000 which allowed for the approval of uses on renovated piers that were not water-oriented as required by the McAteer-Petris Act but were consistent with the Public Trust Doctrine. In exchange, the amendment required public benefits including fill removal and the creation of open-water basins, open-water areas and new public plazas (two of which are shown here), that the Commission determined would be greater than those public benefits that would be achievable on a permit-by-permit basis. In order to make the finding that BPA 7-99 was consistent with the McAteer-Petris Act the Commission determined that the amendment was necessary to the health, safety or welfare of the public in the entire Bay Area.

Among the many public benefits required via BPA 7-99 was the creation and protection of four “open-water basins” as focal points of public use and enjoyment on the Northeastern Waterfront. Their approximate locations are shown here on the right: (1) Northeast Wharf Open Water Basin, adjacent to Pier 27 which has not yet been constructed; (2) Broadway Open Water Basin, between Piers 3 and 9; (3) Rincon Open Water Basin, adjacent to Rincon Plaza; and (4) Brannan Street Wharf Open Water Basin adjacent to Brannan Street Wharf. These open-water basins were intended to provide opportunities for physical access between the Bay and piers and to provide substantial Bay views from the boundary piers framing open-water basins. Currently, fill within any of the four designated water basins can only be permitted if it is minor and for a limited range of specified water-oriented uses. The restrictions on new fill in the Broadway Open Water Basin are the subject of BPA 1-20 proposed by BAC.

This is the fifth amendment that has been proposed to the SAP since the adoption of BPA 7-99 in 2000. The other four recent amendments addressed: the Exploratorium in 2009 via BPA 1-09; the SAP implementation requirements related to Pier 27 and the partial removal of Pier 23 in 2011 via BPA 3-11; the 34th America’s Cup event that occurred on the San Francisco waterfront in 2013 via BPA 4-11; and, in September, 2019, the Commission voted to initiate a comprehensive amendment to the SAP to provide alignment with the Port’s draft Water Use Land Use Plan via BPA 3-17 for which a public hearing is tentatively scheduled for December 3, 2020 which is likely to be postponed to mid-2021.

Now I’m going to walk you through the three proposed policy changes and staff’s analysis of those changes.

Staff slightly modified the amendment to General Policy 10 requested by Bay Area Council (BAC) and BAC and the Port have concurred with the suggested alterations. Regarding the proposed change to the first sentence, a minor amount of fill created by the mooring of an historic ship may be authorized pursuant to several sections of the BCDC Regulations, including Sections 10700, 10701 or 10704, which I will explain on the next slide. Thus staff suggests the deletion of the specific reference to Section 10704 because the authorization of fill associated with any given proposal to moor an historic ship on the San Francisco Waterfront should be determined on a case-by-case basis. Also, a general reference to Commission Regulations is consistent with other SAP General Policies that include general references to the provisions of the McAteer-Petris Act, the Bay Plan and the other sections in the SAP.

Staff's suggested edits to the second sentence would reduce the redundancy of this policy with the policies that follow regarding Open Water Basins and Open Water Areas.

Analysis of this amendment takes us deep into BCDC's regulations.

BCDC Regulations Section 10700 states that the Commission may approve the placement of minor fill to improve shoreline appearance, including the mooring of an historic ship.

BCDC Regulations Section 10701 states that the Commission may approve the placement of minor fill to improve public access including the mooring of an historic ship.

BCDC Regulations Section 10703 provides two definitions for an "historic ship," as used in Sections 10700 and 10701. Thus, depending on the details of the proposal, minor fill for an historic ship, as defined under BCDC Regulations 10703 may be authorized pursuant to BCDC Regulations Section 10700 and/or 10701.

Section 10704 was added to BCDC Regulations in 1992 to address local governments' concern about obtaining a permit to authorize the repair, maintenance or rehabilitation of historic structures such as the Ferry Building, the Agricultural Building and Richmond's Ford Building. These historic buildings on pilings over the Bay were used in part for non-water-oriented purposes such as offices and the fill required to seismically retrofit such structures that contained non-water-oriented uses would not have complied with the McAteer-Petris Act. Thus, Section 10704 was not added to address fill associated with historic ships and staff recommends that SAP General Policy 10 regarding historic ships be amended to remove the specific reference to BCDC Regulations Section 10704.

Moving to the second policy change, BAC requests that new fill for the berthing of one additional historic ship be allowed in the Broadway Open Water Basin at Pier 9. First, staff will provide analysis on whether or not the Klamath meets BCDC's regulations' definition of an historic ship and then I will discuss the potential impact of allowing new fill in the Broadway Open Water Basin.

First, BCDC Regulations Section 10703 provides two definitions for an "historic ship." The Ferryboat Klamath meets the criteria outlined in Section 10703(a) shown here because it was powered by a steam engine and serviced the Southern Pacific auto ferry routes between the San Francisco Ferry Building and Oakland/Alameda carrying as many as 1,000 people and 78 cars per trip.

The Klamath is proposed to be berthed at Pier 9 and would float at all stages of the tide.

The Klamath was built in San Francisco by the Bethlehem Shipbuilding Corporation in 1924 and has had no restorative or other modifications that substantially altered its, external, historic character. Although the interior of the Klamath would be substantially altered under BAC's proposal, the exterior of the Klamath would be rehabilitated to be similar to the appearance of the vessel in 1924 including its original color.

And finally regarding the Klamath's role in the maritime history of San Francisco Bay, from 1925 to 1929 the Ferryboat Klamath ran the route between the Oakland Pier and the San Francisco Ferry Building. In 1929 the Klamath serviced the San Francisco Hyde Street Pier - Sausalito route. In 1938 the Klamath was sold to the Richmond-San Rafael Ferry Company and for the next 18 years it operated between Point Molate in Richmond and San Quentin in Marin. The Klamath made its last ferry run on September 1, 1956, the day before the Richmond-San Rafael Bridge opened. Thus, the Klamath had a specific role as a participant in significant events in the maritime history of San Francisco Bay.

Second, fill in open-water basins is the central question of this potential SAP amendment. SAP findings regarding open-water basins state that "The 2000 amendment required four, open-water basins for the purpose of preserving or opening up views of the Bay, connecting public access and public plazas with the Bay, providing areas for temporary and transient berthing and mooring along the San Francisco Waterfront and creating opportunities to develop recreational access to the water."

As described in Open Water Basin Policy 1, "Open Water Basins should be focal points of public use and enjoyment of the Northeastern Waterfront. Open water basins should provide opportunities for physical access between the Bay and piers and should provide new and substantial Bay views from the boundary piers framing the open water basins."

As I will describe on the next few slides, the proposed SAP amendment would not prevent the achievement of open-water, basin purposes and would be consistent with Open Water Basin Policy 1.

First, the proposed placement of the Klamath at Pier 9 would potentially create a new focal point of public use and enjoyment of the waterfront. Historic ships provide visual and place-making value and mooring an historic ship would complement the Embarcadero Historic District. The proposed mooring of the Klamath at Pier 9 would enhance public views by adding a distinct, new, maritime feature within the Embarcadero Historic District.

Second, the proposal would provide for improved public access along Pier 9. Access to Pier 9 is currently blocked by an existing gate. Under BAC's proposal the gate would be open during business hours.

BAC's proposal would also provide new and substantial views to the Bay and back to the City from the roof deck of the Klamath which would also be open to the public during business hours.

Finally, although the mooring of an historic ship would reduce the area available for temporary or transient berthing and mooring along the San Francisco Waterfront, Port staff has stated that there has been no demand nor have there been any berthing agreements for the south side of Pier 9 where the Klamath is proposed to be moored.

Moving on to the third and final proposed policy change, again this particular amendment was not requested by BAC but it is recommended by staff. The SAP allows for the mooring of up to four, new historic ships in open water areas. Open water areas in the Northeastern Waterfront designated in the SAP are all of the areas of the Bay not designated as Open Water Basins (i.e., any open water area between the two red lines that is not a red star). By reducing the number of new, historic ships that may be permitted in open water areas from four to three, this amendment would not allow a net increase in allowable historic ships but would change the location where one of the four new historic ships may be located.

Staff has prepared the following analysis of the environmental justice and social equity implications of this proposed Bay Plan Amendment.

First, the Embarcadero is one of the most popular, tourist destinations in the Bay Area. Pier 9 is adjacent to the Exploratorium and the Waterfront Restaurant at Pier 7.5 and the terminus of Broadway Street. The Commission's community vulnerability index ranks this larger area (two adjacent census block groups) within the "moderate" social vulnerability category. The moderate level of social vulnerability was assigned because more than 70 percent of the population fit within the following categories: Renters, Not U.S. citizens, Without a vehicle, 65 and over living alone, Under 5 years of age, and Low income.

Second, BAC states that they have met with hundreds of individuals to discuss the proposed project to solicit and incorporate feedback. This outreach has included neighbors, neighborhood groups, elected officials, ferry-industry leaders and commercial groups as well as academic and research leaders. BAC has conducted outreach to most of the tenants in Pier 9, including the Bar Pilots, the Water Emergency Transportation Authority (WETA) and Autodesk as well as neighbors such as the owners of the Waterfront Restaurant. BAC has presented about the proposed project to the Port's Maritime Commerce Advisory Committee and the Northern Advisory Committee as well as BCDC's Design Review Board. Responses to the proposal have been largely favorable.

BAC shared that they have also spoken with leaders from non-profit organizations serving at-risk populations and how the Klamath might serve them. These meetings have shaped what is proposed to be displayed in the museum, how the public would be able to access the Klamath, how visits and tours would be arranged, and how the community would be able to use the proposed conference center and other gathering spaces on the Klamath.

Finally, based on the information provided and as analyzed further in the Environmental Assessment, staff concluded that the proposed SAP amendment would not negatively disproportionately impact vulnerable communities. In considering BAC's permit application staff would analyze and the Commission would determine whether mooring the Klamath at Pier 9 would be consistent with all applicable Bay Plan policies including those concerning environmental justice and social equity.

As discussed, the Commission relied upon its authority pursuant to Section 66632(f) of the McAteer-Petris Act to protect the “health, safety or welfare of the entire Bay Area” in approving BPA 7-99 which was otherwise inconsistent with certain provisions of McAteer-Petris Act.

Geographic-specific policies for the Northeastern Waterfront include Plan Implementation Requirement 4(n) which requires that future amendments of the SAP as adopted on July 20, 2000, may only be approved if the Commission finds that the revised public benefits and the revised development entitlement, would be in balance and the public benefits would be sufficient to warrant the Commission finding that the revised balance of public and private benefits would be necessary to the health, safety and welfare of the Bay Area.

Staff recommends that the package of benefits included in this amendment allows for the Commission to make the finding that the revised, public benefits and revised, development entitlement would be in balance, and the public benefits accommodated by this amendment would be sufficient to provide that the revised balance of public and private benefits would be necessary to the health, safety and welfare of the public in the entire, Bay Area.

An Environmental Assessment (EA) is required by BCDC’s regulations to be part of the staff planning report prepared and distributed prior to amending the Bay Plan. The EA must either: (1) state that the proposed amendment would have no significant, adverse, environmental impacts; or (2) describe the public benefits of the proposed project, the significant, adverse, environmental effects, any feasible mitigation measures and any feasible alternatives.

Although the proposed amendment would not authorize development and therefore would not have direct environmental effects, the associated, proposed project would have environmental effects which I will discuss.

First a bit of background: In 2011 the San Francisco Planning Commission certified the Final Environmental Impact Report (FEIR) for the proposed 34th America's Cup and James R. Herman Cruise Terminal and Northeast Wharf Plaza Projects, which informed the EA for BPAs 3-11 and 4-11. The City and County of San Francisco (or CCSF) analyzed the potential, environmental impacts of permanently mooring the Ferryboat Klamath at Pier 9 via an addendum to the FEIR of the America’s Cup and Cruise Ship Terminal.

CCSF provided an administrative draft of the FEIR addendum to BCDC on July 23, 2020. CCSF finalized the FEIR addendum on August 27, 2020 and it is currently posted on San Francisco Planning’s website.

As discussed, the majority of the Pier 9 apron is currently gated and closed to the public. Under BAC’s proposed project members of the public would be able to passively or actively visit the Klamath. In addition to the benefits that I have already discussed, on the third level of the ship, a museum (shown here) is proposed to be dedicated to the history of the Klamath and would be open to the public. The roof deck would be accessible to the public by stair and elevator. BAC also proposes that the Klamath would include a conference center/event space with a capacity for 300 people on the main deck which would be available to public agencies for hosting meetings on Bay or ferry-related issues.

Now I will talk you through these EA sections quickly.

Starting with land-use implications, the open-water area adjacent to Pier 9 where the Klamath is proposed to be moored is submerged and not zoned by CCSF. Pier 9, however, is under the Port's jurisdiction and the applicable planning document is the Port's Waterfront Land Use Plan (WLUP) which was adopted in 1997. The WLUP's "Northeast Waterfront Acceptable Land Use Table" does not currently designate Pier 9 for mooring of historic ships. However, the Port is in the process of updating the WLUP. The draft revised "Northeast Waterfront Acceptable Land Use Table" shows that historic ships are acceptable uses at Pier 9 which is not allowable under the current SAP. Thus, the proposed amendment to the SAP and BAC's associated project align with the Port's Draft Waterfront Plan.

Regarding construction and noise, the Open Water Basin adjacent to the south side of Pier 9 includes eight existing piles. BAC's proposed project would involve the removal of the existing piles and the installation of four steel piles to lock the Klamath in place.

All in-water construction would be conducted in compliance with regulatory and resource agency permits including scheduling of construction work during seasonal work windows or, with resource agency approval, under the supervision of a biological monitor to minimize or avoid effects on sensitive species.

Similarly, the FEIR found a less than significant impact with mitigation on biological resources. The FEIR determined that noise from pile driving activities during construction would result in noise levels that could cause potentially significant impacts to fish and marine mammals. Therefore, the FEIR included mitigation measures to reduce these construction impacts to less than significant.

For Water Quality and Dredging, because BAC's proposed project would require in-water construction activities to moor the Klamath, those activities could violate water-quality standards or waste-discharge requirements or otherwise substantially degrade water quality. Therefore, the FEIR includes mitigation measures regarding Water Quality Best Management Practices.

The area adjacent to Pier 9 where the Klamath is proposed to be berthed is currently between 8 to 17 feet deep. As part of BAC's proposed project, dredging of approximately 3,500 to 5,000 cubic yards to an approximate depth of 20 feet would be necessary to berth the ship.

Sediment testing has indicated that the sediment in this area is not contaminated and is therefore suitable for unconfined Bay disposal. The dredging activities under the proposed project would be subject to Clean Water Act Section 404 permit and would require a Dredged Material Management Office Consolidated Dredging Permit. Consistent with permit requirements, BAC would implement best management practices to minimize impacts on water quality during dredging.

Although the FEIR addendum did not address climate change and sea level rise, staff provides the following analysis. Although a lease with BAC has not yet been approved, the Port of San Francisco has preliminarily offered a 15-year lease for the proposed project with two possible five-year extensions. Therefore, the expected, design life of BAC's project is considered to be 25 years, i.e., until 2045.

BAC has used an estimate of 1.9 feet of sea level rise which is consistent with the medium-to-high-risk, aversion category in the State of California's 2018 Sea Level Rise Guidance document and assumes the high emissions scenarios. As proposed, the Klamath is intended to accommodate projected sea level rise through its floating design.

In the absence of intervention, flooding of Pier 9 would begin with water levels projected beyond the term of the lease. However, the design of the access ramp would allow for disconnection and reinstallation if needed to respond to potential sea level rise.

For transportation and circulation, BAC's proposed project includes office uses that would primarily serve BAC which was formerly headquartered nearby in downtown San Francisco.

As BAC would be moving locations, existing trips to the downtown San Francisco location would shift to Pier 9 and these would not be new trips in the area. San Francisco Planning determined that the proposed museum and conference use would not generate a substantial number of vehicle trips including during the p.m. peak hour. Thus, BAC's proposed project would not result in significant impacts related to transportation and circulation.

Although the draft, FEIR addendum that staff received in July did not address appearance, design and scenic views and historic resource impacts, staff provides the following analysis based on the draft, Historic Resources Evaluation Report (HRER) which has since been finalized. The National Park Service and the California State Office of Historic Preservation approved the eligibility of the Embarcadero Historic District and its placement on the National and State Registers in 2006.

The District includes approximately three miles of San Francisco's Northeastern Waterfront from Pier 45 at Fisherman's Wharf, south to Pier 48 at China Basin. Pier 9 is a contributing resource to the District.

Although the bolts connecting the proposed, access ramps for the Klamath to Pier 9 would likely be considered a permanent and potentially adverse effect on the District, the method employed to attach the ramps would be the least cosmetically and physically intrusive to the historic integrity of the pier face as possible.

The draft HRER concluded that the mooring of the Klamath at Pier 9 would be beneficial to the District as it would continue to retain the integrity of Pier 9 for maritime, industrial, commercial and public, recreational use.

The Klamath's historic look and feel would be complementary with the historic ships, San Francisco Belle and Santa Rosa, moored in the District at Pier 3.

The proposed mooring of the Klamath would enhance the public's experience of the historic resource and District and finally, its mooring is also completely reversible.

Finally, regarding Air Quality, although the construction activities associated with the mooring of the Klamath would be limited in scope and duration, San Francisco's, air-pollutant, exposure zone was recently expanded to include Pier 9. Because Pier 9 is in the air-pollutant, exposure zone the ambient health risk to sensitive receptors from air pollutants is considered substantial and would impact the adjacent community that is in the moderate social-vulnerability category as discussed in staff's analysis of environmental justice and social equity. Thus, the FEIR addendum found this impact to be significant and unavoidable with mitigation.

To conclude, BCDC regulations require, in part, that an EA describe alternatives to the proposed action that would avoid or substantially lessen one or more of the substantial effects.

In this case the only reasonably-identifiable alternative is the “no project” alternative under which the Commission would not approve the requested amendments to the SAP. Under this alternative Pier 9 and the Broadway Open Water Basin would remain in its current condition and the indirect, environmental effects associated with BAC’s proposed project to moor the Klamath at Pier 9, as described, would not occur.

One oral public comment was provided at the public hearing to initiate BPA 1-20 by Peter Romanowsky who identified himself as a representative of the anchor-out community in Richardson Bay.

Commissioner Pemberton also provided comments regarding public-trust consistency which will be addressed through the BCDC permit application process for the proposed project.

The proposed BPA is necessary to allow the Klamath to be moored at Pier 9 but would not in and of itself authorize the ship to be moored at that location. Rather, if the Commission adopts the proposed amendment BAC would be required to obtain a permit from the Commission to authorize the proposed project to moor the Klamath at Pier 9.

In considering BAC’s permit application staff would analyze, and the Commission would determine, whether mooring the Klamath at Pier 9 would be consistent with all applicable Bay Plan policies including those concerning the public trust.

As of today, two written comments have been submitted from Alice Rogers and Anne Coffelt in support of the proposed amendment.

The public hearing and vote to initiate BPA 1-20 occurred on May 7, 2020. The proposed amendment was initiated by a Descriptive Notice mailed on May 12, 2020.

The staff report containing staff’s preliminary recommendation was published on August 3. After today’s public hearing staff will publish a final, staff recommendation including response to comments in advance of a Commission vote on the amendment.

After adoption of the amendment it would be submitted to the State Office of Administrative Law which normally has 30 working days to review it. Their review has been extended by 60 calendar days due to COVID-19. After the amendment is approved by OAL BCDC would hold a public hearing and vote on the permit for the proposed project.

That concludes staff’s presentation. The applicant and their project team as well as Port staff are available for any questions. The Chair can now begin the public hearing.

Chair Wasserman continued: Thank you very much Shannon. With the presentation complete I will open the Public Hearing. Any member of the public who would like to make a comment please raise your hand. You will be called in the order your hand was raised. Please remember you have three minutes to speak. (No public speakers offered comment)

I would then entertain a motion to close the Public Hearing.

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

Chair Wasserman announced: We will not entertain questions and comments from the Commission.

Commissioner Nelson commented: I have two questions for staff. This is an interesting project with a lot of merit. Obviously this is not just a legitimately historic ship but one that clears that hurdle by a mile.

I don't recall other historic ships being berthed and being allowed to be used for office space. Am I remembering that correctly? I think that is an important milestone if it is true, if I'm right about that.

It's an important milestone for us to reflect on carefully.

Ms. Fiala replied: Through the historic Ferryboat Santa Rosa moored at Pier 3 does include some office space. So there is a precedent for using historic ships for office space.

Commissioner Nelson continued: The second question is more general and it is not specific to the Santa Rosa Project. The Bay Area Council actually does work on sea level rise and flooding issues. This is clearly an important, historic ship. But there are lots of cool employers in the Bay Area and office space is at a premium. So I just want to make sure that these policies, these changes are set up in a way that we don't inadvertently trigger a land rush or a historic ship rush.

This did not look like a risk given the policies especially with a limit on the number of historic ships but I was hoping you could talk about that to give us some comfort that we don't open a door that we regret.

Ms. Fiala answered: As I described in my staff presentation there is a limitation on the number of potential, historic ships that is included in the current SAP. So assuming the BAC's permit application is approved by the Commission then you have three, additional, historic ships that could be moored in the open-water areas on the Northeastern Waterfront.

But in the Staff Report I included a table of all the possible locations that were explored for the mooring of this historic ship and BAC had come to the conclusion that for their purposes there were no suitable locations in open-water areas.

There are a lot of limitations in addition to the limitation of having three, additional, historic ships there is also a bit of space availability and also site suitability limitations on potential mooring of historic ships.

Chair Wasserman asked: Any other questions or comments? (No further comments were voiced) Seeing none, no further action is required on this item today. As noted, we will likely vote on this item at our November 5th meeting.

**9. Public Hearing and Possible Vote on the Alameda Marina Shoreline Improvement Project by Alameda Marina, LLC and the City of Alameda to construct a mixed-use development at 1815 Clement Avenue in the City of Alameda, Alameda County, BCDC Permit Application No. 2018.003.00.** Chair Wasserman announced: That brings us to Item 9 is a public hearing and vote on the Alameda Marina Shoreline Improvement Project. The presentation will be made by Brad McCrea.

Regulatory Director Brad McCrea addressed the Commission: Thank you Chair Wasserman and good afternoon Commissioners. Schuyler Olsson of our staff was scheduled to do this presentation and unfortunately he scheduled his vacation at the same time as we wanted to get this in front of you and his supervisor Erik Buehmann is out sick today.

Today you are scheduled for a public hearing and vote on the Alameda Marina Shoreline Improvement Project by Alameda Marina, LLC and the city of Alameda to construct a mixed-use development on Clement Avenue in the city of Alameda in Alameda County.

I will take a couple of minutes to orient you and then I will turn it over to Cindy Ma and Sean Murphy who can speak on behalf of the development team.

The project is located along the northern shore of Alameda. It is across from Oakland. It is across from Coast Guard Island. The proposed project is currently and formally a maritime and industrial site. It is 44 acres.

At build-out which will occur over 10 years there will be 2,200 residents and employees who will live and work here.

At the site there will be a marina and boat storage, maritime and commercial, residential and parks and open space.

It is necessary to fill the Bay to achieve a number of project elements and benefits. Specifically, there is a net increase of solid fill of about 6,000 square feet and an increase of floating fill of almost 8,000 square feet.

And there is a net decrease of cantilevered and pile-supported fill of almost 29,000 square feet.

Currently the project site is mostly inaccessible to the public. The project will develop about 4.2 acres of new and improved shoreline public-access areas along almost a mile of shoreline, 4,000 linear feet of shoreline.

That does include about three-quarters of an acre in the Bay jurisdiction; approximately three acres within the 100-foot, shoreline band and a little over a quarter of an acre outside of the Commission's jurisdiction.

This is a rendition of the physical access that is proposed. There is also visual access that is proposed. This was negotiated and discussed with the project team and these view corridors would be guaranteed so that people can always see the Bay from the city streets.

Public-access phasing will be talked about later in the presentation. It is built on a concept of adjacency. The public access comes online with the adjacent development over 10 years.

I will talk a little bit about sea level rise but the applicants will talk much more about it. I want to remind you that for the past nine years, since BCDC's Climate Change policies were amended, our regulatory staff has been evaluating sea level rise impacts on projects on a case-by-case basis.

That is how it is written into the San Francisco Bay Plan in those 2011 Climate Change Policy amendments. That practice of looking at these projects on a case-by-case basis will continue until a Regional Sea Level Rise Adaptation Strategy can be completed.

So this project is no different than all of the other projects that we have looked at and this site has the benefit of staff analysis.

The project includes strategies to ensure that Bay fill and public-access areas are resilient to projected sea level rise through mid-century and can be adapted to sea level rise to 2100. The upland public-access areas will be raised to a minimum elevation of 13.5 feet. And that elevation is more than seven feet above the current mean, higher, high water level.

The Sea Level Rise Plan which has been developed identifies a series of potential measures to adapt the public-access areas to higher levels of sea level rise as needed beyond mid-century. And funding for those future, adaptation measures would be established with a special tax, administered through a community facilities district.

We have noted some issues here in front of you. They include the ones I just described and others that are explained in great detail in the Staff Recommendation that you received.

So with that I will turn the presentation over to Cindy and Sean.

Mr. Murphy presented the following: Good afternoon Commissioners. This is Sean Murphy along with Cindy Ma and we are the Alameda Marina Project sponsors. We are very excited to talk to you about the Alameda Marina.

We have been working very closely with the BCDC staff over the past three years on this important project.

The site is located on the northeast end of the Island along the Estuary and directly across from Coast Guard Island. This part of Alameda is part of the City's Northern Waterfront area and has a mixed-use, development zone. It is also a priority-development area.

The site has been visually disconnected from the shoreline for the past 75 years. This project will open up more than 4,000 linear feet of the shoreline to the city of Alameda and to the rest of the San Francisco Bay.

We started working on this project roughly eight years ago in 2012 when this area was re-zoned to a mixed-use zone with a multi-family overlay. In 2012 we also were added to the 66-year, tideland lease with the city of Alameda. This project is a true public/private partnership.

The full, EIR Master Plan was unanimously approved by the city of Alameda in the summer of 2018. That EIR Master Plan process took approximately three years and involved many stakeholders and extensive, community outreach and involvement.

The project has incorporated many important changes that were based upon on community input but also BCDC's Design Review Board sessions as well as the ECRB approval.

The project has many milestone requirements which are tied to the Tideland Lease and that last milestone is that all agencies grant their approval prior to the end of the year and that we start construction prior to the end of the year.

And by "project" that means vertical development as well as the seawall for sea level rise.

With the approvals of the project in the summer of 2018 we have been very busy since working with various departments within the city of Alameda and with BCDC staff, the Design Review Board and some of those other approvals.

Both the municipal approvals were that of Rec and Park, the Open Space Development Plan approvals and then the Historic Advisory Board because this project is a true mixed-use plan that has new housing as well as adaptive re-use of existing buildings.

So with the City approvals then we spent a significant amount of time in the past two years with the rest of the agency approvals – Regional Water, with the 401 Certification, the Army Corps of Engineers, the Coast Guard and NMMS just to name a few.

The BCDC Commission is the most important and last step in that process. We do have important, defined, in-water work windows. We have requirements that there are promenade wharfs that you are going to hear about later in this project, part of the first seawall retrofit and new, seawall construction that we end up building that in-water work must be completed prior to a work window that is only open through the end of November.

We hope to start construction on that seawall as quickly as next month – October.

We have had an extensive process related to outreach and engagement. It really started in earnest in 2015 with a Citizens Advisory Committee and continues today. We continue to have outreach throughout this project. It is a multi-phase project that should be built in a period of about eight years. We will continue to have that engagement throughout the various platforms and a variety of organizations and groups so we can get a broad understanding of what is best as a project and what is best for the community.

Those community and agency meetings provided a valuable comment and feedback that shaped the final Master Plan and subsequent open-space, development plans. And we feel that the project is much better because of that process.

The Master Plan was about re-imagining this stretch of the Estuary and this property, the Marina – improving it and enhancing it into a new, mixed-use neighborhood that provides many elements and many community benefits.

Some of those elements are continued access and improvement to an existing, boat marina, a working waterfront for the commercial and maritime industry, a variety of housing types that include 104 affordable units, the Bay Trail creation and shoreline access, usable and safe public and open space.

This project will permanently dedicate 3.83 acres of land inclusive of the Bay Trail and four, major, open-space areas that Cindy will talk about later.

And then the project creates over 4,000 linear feet of new seawall providing end-of-century, sea level rise protection and adaptable capacity thereafter.

We have a series of slides that compare today as well as tomorrow in the proposed plan.

In this slide you can see that over 80 percent of the site is currently asphalt and essentially is parking, dry-boat parking and storage. And with that we have a number of deteriorating structures and a failing seawall.

But this plan will create significant, open space with over 500 new trees, seven main, access points along Clement Avenue, public waterfront and shoreline and there will be multiple, visual, pedestrian and vehicular access points that Cindy will explain in detail

What we end up with is an engagement interaction along that waterfront over 4,000 lineal feet.

This rendering shows a true, working waterfront that continues the boating history of the site. This site was the home of Liberty Ship Construction for the War effort and there are a number of existing buildings there that we are going to adaptively repurpose for this commercial, maritime, flex-core space.

We will have a working waterfront that works with public access along the shoreline. This is one component of the project and one component of that Bay Trail.

This slide shows one of the gateways and view corridors into the site. We are rehabilitating three, historic buildings at this gateway – Building 27, Building 19 and Building 21 and this becomes one of the gateway entries. It is called Schiller Street and will be an extension of the City grid and will connect Clement Avenue to the Waterfront.

This rendering represents one of the vertical developments on the far west side of the property which we are calling The Launch. It is a residential development of roughly a four and five-story structure. It is designed purposefully to create a visual and pedestrian connection from Clement to the Waterfront.

This building will have 368 units, 49 of which will be affordable.

This rendering represents that visual and pedestrian corridor through the building that will be inviting for the public to move from Clement Street to the new Bay Trail. This is only one of the many access points that Cindy will talk about through the project.

And with this I will turn the Master Plan slide over to Cindy Ma of KTG. She has been our master planner for this project.

Ms. Ma addressed the Commission: Thank you Sean and thank you BCDC Commission for the time today to go over this really, exciting project.

Here is the entire Master Plan. It is 44 acres including the water side and the inside which fit together by the Waterfront Shoreline where the Bay Trail and public access will occur.

The Master Plan was driven by the vision of reconnecting the City to the Waterfront by extending the City street grid into the site and making this extension an opportunity for a visual, pedestrian and sometimes automobile access.

We placed the location of residential buildings which were informed by flood conditions and also sea level rise information. Essentially all of the buildings that are large, the heavier buildings with a structured garage and wood and concrete material, occur on the west end.

And the lighter buildings which are the townhomes on the east end with all-wood construction are located on the east end.

We definitely need to address sea level rise in this project since it is a waterfront project. Current conditions show more than half of the site underwater at the projected sea level rise in the year 2100.

The proposed project will elevate the public waterfront portion of the site to 13.5 feet which is approximately six feet above the King Tide elevation of 7.5 feet.

The Waterfront has also adaptive capacity as needed as shared earlier by Brad. Shoreline improvements are integral to the sea level rise adaptation. The project team has gone through months of work with ECRB to come up with an approach that would work for the site to ensure safe, public access.

There are four vertical phases to the project and the complete build-out will take approximately eight years. We intend to start the construction on the east end side of the seawall in October which includes over 2,000 linear feet of new seawall, rip/rap and reconstruction of the wharf promenade.

Once construction of the shoreline is complete on the east end side we will quickly move to build a new seawall on the western half of the site. The seawall construction will take approximately 24 months.

Here you see all the phases together. We are showing the recreational, boat marina which is existing at space zero. All public-access areas should be built with the completion of Phase II.

One of the guiding principles of the Master Plan is to reconnect the Waterfront. So it is very important that the public access and open space be provided in each phase of development of the site.

On the east end next to the Navy Operational Support Center will be a future Bay Trail connection.

The four areas of park land shown on the screen are a majority in the 100-foot, shoreline band. This includes the Wharf Promenade, Harbor View Park, Waterlife Park and East Park. And the water portion of Waterlife Park includes boating docks and a foot bridge.

The extensions of the city, street grid into the site is integral to connecting the existing neighborhood and city fabric into the site and waterfront. Presently, view corridors do not exist as there is a wall of buildings along Clement. The view is very limited. These extensions are also the view corridors into the project to the Waterfront. These view corridors provide pedestrian, bicycle and sometimes automobile access into the site connecting to the Bay Trail, shoreline and public-access areas.

This rendering is along View Corridor F looking along the Clement Avenue, open-space area from the street to Waterlife Park. It includes the interim Bay Trail which is 16-foot wide.

The view corridor is really important in this area and in subsequent slides we will show that we have taken great measures to also show it on the east/west axes as well.

Alameda Marina has a great history that will be integrated in the public-access areas through a robust signage program.

The History Walk is one component. These proposed signs take on inspiration from boat sails for the shape. They will be located along the shoreline and include imagery and narratives that tell the story of Alameda Marina from its beginning as homes to the World War II shipbuilding area to its recreational and boat-marina use.

While the project is under construction there will be temporary, shoreline access to the existing, public shoreline at the east end. This slide shows the signage that will ensure that people understand how they can get to that public-access area.

Alameda Marina is dedicated to continuing meeting public-access requirements of BCDC throughout this process.

On this slide you see the west end of the project looking at the maritime-connector portion. You see the Bay Trail on the bottom right. The boat hoist platform will be gated during use. There is a dry-boat storage area and Buildings 25 and 15 which have a public restroom in that area and rip/rap along the shoreline as sea level rise, adaptation measures.

Currently there is a lot of paving on the site with very limited public access. Its primary use right now is RV storage. After completion there will be the Bay Trail along the edge, public, shoreline, access parking within the parking lot, dry-boat storage near the Grand Street launch to make the best use to that adjacency.

This slide shows the rip/rap along the shoreline. The site is raised to show how it is addressing sea level rise. Lighted bollards are proposed along the Bay Trail for safety and official Bay Trail signage will indicate that it is a dedicated, public-access portion.

Here you see a section near Buildings 25 and 26 which shows a seawall approach along the shoreline. The bottom section closer to the maritime yard to the east also has a seawall at the shoreline. Included you see some shoreline railing and where they occur. The team has opted for a more porous design to maximize visual connections to the Waterfront.

The Wharf Promenade area before like much of Alameda Marina today is a lot of paving with limited, public access. The boat yard had more of an industrial-use nature and not very pedestrian friendly at all and you also see the deteriorating wharf structure which currently has no access due to safety concerns.

After the Bay Trail will be incorporated along the edge and also integrated with the Wharf Promenade area. Trees will be planted along the building front and the Wharf will be retrofitted for public access and multi-use purposes.

Waterlife Park is one of the jewels of the project. Here you see a rendering of what we are calling the graving dock. The structure is concrete and you can think of it as a big bathtub. In it there is opportunity for lots of recreational use that does not exist in Alameda today.

There is unique, calm water in the channel and it will allow us to utilize that space for public access and things such as small-craft recreation, kayaks, stand-up, paddle boards and supporting programs such as water-oriented activities.

On the land side of Waterlife Park there will be the Bay Trail, wayfinding walk signage, opportunities to sit with benches along that edge, shade trees for comfort, great views and connections to the Estuary and a way for people to view the activities inside Waterlife Park and also beyond Coast Guard Island and the Oakland Shoals.

Harbor View Park will be a great place for people to come and use. It offers passive recreation, seating areas, picnic opportunities and also amenity building. Bicycle facilities are also scattered throughout. There is public, shoreline, access parking in that launch as well along with loading and unloading areas for kayak and stand-up, paddle-board users. The East Park at the top right of the Park will have that future, Bay Trail connection and offers another for people to have passive recreation.

Thank you Commissioners for your time today. This was a lot to cover in a short amount of time but we are here to answer any questions you might have.

Chair Wasserman continued: With the presentation complete I will open the Public Hearing. Anyone from the public who would like to make a comment please raise your hand and you have three minutes. (No hands were raised for public comment)

Since no hands were raised I would then entertain a motion to close the public hearing.

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

Chair Wasserman announced: Questions or comments from Commissioners.

Commissioner Showalter was recognized: This is exciting and I am so glad to see this. I wondered – how are the parks going to be financed? How is their maintenance and operation over the years going to be financed?

Mr. Murphy explained: We are working with the city of Alameda. There will be a community facilities district which is for the creation of the seawall but ongoing maintenance of the seawall. There will also be a master association, a homeowner's association if you will, commercial association for the maintenance and upkeep of these privately maintained, publicly dedicated park and open space.

Commissioner Showalter had additional questions: Have you modeled how these seawalls are going to affect the flooding implications of adjacent properties?

Mr. Murphy answered: We have some of our team, Angelo Obertello and Sam Yao on and I will defer to them regarding adjacencies.

Mr. Obertello replied: This is Angelo with CBG Engineering working on the project. We did consider the potential effects. The project is proposing to address all of the sea level rise and raise elevations within its project site so there is no encroachment of proposed Bay fill related to the sea level rise, protection measures. So there is no anticipated effect to adjacent properties relative to future sea level rise.

Commissioner Showalter clarified her inquiry: No, that is not what I meant. Sometimes when you put in a hardened surface in, the water bounces off it in different ways than it did before. And you can create a water-level increase in other places. Have you looked at that?

Mr. Obertello replied: The surfaces that are proposed are similar to the existing conditions. There is no change in surface. Where there is a seawall there will be a new, retrofitted seawall and where there is revetment and sloped shoreline there will be sloped shoreline remaining.

Commissioner Showalter continued: What I am bringing up is something that as a Commission we should be very aware of. When you build a seawall in one place the waves bouncing off of it can affect other locations.

As the agency that considers these protections we need to consider what happens at the location and what the implication is in other places. And I'm not necessarily sure that it is proper for the applicant to have to pay for that consideration but it is an important consideration that needs to be made.

Chair Wasserman added: Thank you Pat and it is a very important question and I believe that we are in the process of considering how we can make that a formal part of the application process.

Executive Director Goldzband chimed in: And I believe that Marc Zeppetello our Chief Counsel is considering that.

Mr. McCrea added: That's right and I was just going to add that, anecdotally, this area of the Bay within the tidal canal known as the Oakland Estuary is very, very muted. The tidal action is very muted and this seawall is behind the Marina itself. So there is very little wave action.

Mr. Yao chimed in: This is Sam Yao with Simpson, Gumpertz & Hager. I am the lead, coastal, marine engineer on this. I confirm that the wave action around the coastline is very muted simply because the fetch distance is relatively short.

The second point is that we have are replacing the shoreline infrastructure in-kind which means we do not change the shoreline profile. The coastline protection has minimal infringement on adjacent properties. I am the waterfront, infrastructure engineer. I am the lead engineer and engineer of record for structural design as well as for shoreline protection.

Commissioner Showalter commented: That is good. But even though you aren't changing the profile you are changing how hard it is which is good. It needs to be changed.

And that in itself when we do a large-scale model of this area that will have to be taken into consideration.

Commissioner Nelson was recognized: I have a question for the applicants. I just wanted to make sure that I heard you right and read your exhibits right.

The phasing slide shows Phase IA, IB and Phase II; I heard you say that the public-access improvements will be done at the end of Phase II. I just wanted to make sure that I was correct that in each of those phases it goes from the west to the east Phase, IA, IB and Phase II – that those public-access improvements are going to be built simultaneously with each of those phases on each of those corresponding chunks of waterfront.

Mr. Murphy fielded this question: That is correct. There are four, vertical phases for this project. There are essentially two phases for the seawall and shoreline construction. We start at the eastern side and essentially half of it, call it 2,000 feet, from that eastern edge all the way to that Wharf Promenade is what we start first. We do have in-water, work windows that close at the end of November so we are very eager to start that process.

And then we quickly move from that eastern side to the opposite edge of the property, the western side. We clearly need to build that seawall first. And when that seawall is complete with each and every vertical component, primarily Phase I and Phase II which is the largest development per acreage, that's when the Bay Trail and those components will be delivered; roughly by the end of 2024.

Commissioner Gioia commented: This sounds like a really exciting project and as someone who lives in Richmond along with Mayor Butt and seeing the changes that have happened on the Richmond Marina and Waterfront I think this is a really exciting opportunity for Alameda.

Who are you all working with in the community with regard to making sure that the design and the public access truly is responding to the unique communities in Alameda?

Mr. Murphy responded: At the local municipal level we work with the Planning Commission. We actually had a sub-committee of that Planning Commission that was in place for roughly six months. We also work with the City Council. We have various stakeholders. We had a Community Advisory Committee and then the City itself, the Planning Board has the open-space, development approvals and that is essentially that 100-foot band but more specifically all of the treatment that pallet of materials, the landscape pallet; all of that is fully integrated into those open-space, developments approvals.

We then worked in concert with BCDC staff, Raphael, Andrea and Ethan to understand and articulate some of those really important, public, open-space, components like Harbor View Park and some of those east/west paseos. In the prior iterations of the Master Plan we didn't on that eastern side, have some east/west alignments of buildings. Those view corridors became very important and we integrated a lot of revisions into the Master Plan and the, now approved, Open-space Development Plan together with BCDC staff's support and direction.

Commissioner Gioia interjected: I assume you are working with ABAG on the Bay Trail.

Mr. Murphy replied: That is correct. We are also working through the Design Review Board process. They were a part of all of those discussions.

Mr. McCrea asked: Are there any local, community groups that you worked with?

Mr. Murphy replied: There is actually a community group that was started principally for a lot of the development that is happening on the Northern Waterfront; one was called SAWW, Save Alameda's Working Waterfront. That is a group of about 30 folks in general. Bike Walk Alameda was another important group on the Island that we worked with because everything from Clement Avenue to the Bay Trail is an important corridor for this part of the Island.

And then we worked with Bay Area Council. We also worked with some of the larger organizations. I listed a handful of organizations at the local level.

Mr. McCrea added: Commissioner Gioia, the regulatory staff at BCDC works closely with our planning staff to continually improve our public outreach to local communities and make sure that our regulatory process is transparent and meaningful.

It is something that in the past we haven't focused on as much. Certainly since the Commission adopted its environmental justice policies, it is something that we are critically aware of. Those policies were adopted in the middle of the entitlement process for this project. So, this project didn't receive the benefit of our attention like it has for projects that we are working on now.

Commissioner Gioia acknowledged the response: Yes, I appreciate you talking about that because typically the outreach needs to be the community folks who are not necessarily engaged on following this project.

There are different categories and I just want to ensure that all communities, even those who may not typically be following this project, are contacted because they will be the ones who will use this public access.

Commissioner Gilmore was recognized: I wanted to respond to that. I would say that in the city of Alameda, in particular, people are very attuned to development projects especially projects of this scale and particularly when it involves the Waterfront. So I would be supremely surprised to find out that somebody who would be impacted or interested in this had not had an opportunity to hear about this project or an opportunity to participate.

It goes without saying that projects do not get easily built in Alameda.

Mr. Murphy concurred: As the project sponsor I would echo Mayor Gilmore because we had 75 community meetings throughout the EIR process and throughout this process. We have been very active in the community. Alameda has a very rich history and waterfront projects of this scale clearly our outreach efforts needed to be and wanted to be very extensive.

Chair Wasserman asked: Any other Commissioner comments or questions? (No further comments were voiced) Seeing none, Brad will you now make the Staff Recommendation?

Mr. McCrea read the following into the record: Staff recommends approval of Application No. 2018.002 with conditions as recommended in the resolution mailed to you on August 20, 2020.

Chair Wasserman continued: I would ask the applicant's representative whether you have reviewed those and whether you agree with them.

Mr. Murphy responded: Yes, as project sponsor, Sean Murphy, we have reviewed and approved those conditions.

Chair Wasserman continued: Thank you very much. I would entertain a motion to approve.

**MOTION:** Commissioner Gilmore moved to approve the Staff Recommendation, seconded by Commissioner Scharff.

Executive Director Goldzband noted: Thirteen votes are needed to approve and federal representatives cannot vote.

**VOTE:** The motion carried with a vote of 20-0-0 with Commissioners Addiego, Ahn, Alioto-Pier, Butt, Gilmore, Scharff, Eckerle, Gioia, Gorin, Gunther, Pemberton, Stefani, Nelson, Randolph, Sears, Showalter, Techel, Wagenknecht, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO" votes, and no "ABSTAIN" votes.

**10. Adjournment.** Upon motion by Commissioner Gorin, seconded by Commissioner Nelson, the Commission meeting was adjourned at 3:07 p.m.