

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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March 27, 2009

TO: All Commissioners and Alternates

FROM: Will Travis, Executive Director (415/352-3653 travis@bcdc.ca.gov)
Mamie Lai, Assistant Executive Director (415/352-3639 mlai@bcdc.ca.gov)

SUBJECT: Approved Minutes of March 5, 2009 Commission Meeting

1. **Call to Order.** The meeting was called to order by Chair Randolph at the Ferry Building, Second Floor in San Francisco, California at 1:00 p.m.

2. **Roll Call.** Present were Chair Sean Randolph, Vice Chair Halsted, Commissioners, Bates Bourgart, Gibbs, Goldzband, Gordon, Jordan Hallinan, Lai-Bitker (represented by Alternate Johnson), Maxwell (represented by Alternate Addiego), McGlashan, McGrath, Moy, Nelson, Shirakawa (represented by Alternate Carruthers), Smith, Kato, and Wieckowski.

Not Present were: Secretary of Resources (Baird), Sonoma County (Brown), Department of Finance (Finn), Contra Costa County (Gioia), U.S. Army Corps. of Engineers (Hicks), Association of Bay Area Governments (Lundstrom), Solano County (Reagan), Napa County (Wagenknecht) and San Francisco County (Vacant).

3. **Public Comment Period.** Chair Randolph asked for public comment.

a. David Lewis, Executive Director of Save the Bay, commented on the process being used on the climate change policies that are currently being reviewed by staff for potential changes in Bay Plan policies. He stated that he had observed a vulnerability and suggested a procedural change.

He said that among the properties covered by the Bay Plan that are at greatest risk of impact from sea level rise -- as demonstrated by BCDC's own inundation zone maps -- are the managed wetlands and salt ponds. These are not the only climate change impacts that those areas might feel, but sea level rise is certainly among them. Currently, managed wetlands and salt ponds are not available for potential changes because of the way the Bay Plan climate change policies review was noticed.

When the staff report comes to the Commissioners and suggests some changes in Bay Plan policies, if the Commissioners at that time felt that either the findings or policies on salt ponds and managed wetlands also should take note of climate change in any way, BCDC wouldn't be able to make those kind of changes without re-noticing and having potentially a longer delay.

If the Commission re-notices now and at least says "we want the managed wetlands and salt plan policies to also be available for potential changes in either the findings or policies" there would be a slight delay for public notice of that and comment on it, but the staff report



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and background work has mostly been done and we don't feel that would be a very long delay.

He concluded by encouraging the Commission to re-notice the existing plan and expand the number of policies in the Bay Plan that could be changed. The re-notice doesn't require making any changes in salt ponds or managed wetlands, but it gives the Commission the option of doing it through this process, and Save the Bay thinks that's a wise way to go.

4. **Approval of Minutes of February 5, 2009 Meeting.** Chair Randolph entertained a motion to adopt the Minutes of February 5, 2009.

MOTION: Commissioner Halsted moved, seconded by Commissioner Smith, to approve the February 5, 2009 minutes as corrected. The motion carried unanimously, with one abstention.

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

a. **Returning Commissioner.** The Santa Clara County Board of Supervisors concurred with Commissioner George Shirakawa's appointment of Eric Carruthers as his BCDC alternate. Mr. Carruthers was the alternate for at least two other Santa Clara County Supervisors who served on BCDC. Chair Randolph welcomed him back.

b. **Next BCDC Meeting.** The next BCDC meeting will be in four weeks, on April 2nd, at the Ferry Building. At that meeting the following matters will be taken up:

(1) A briefing on the Bay Plan revisions that staff will be proposing to address climate change.

(2) A briefing on the Delta Conservation Plan.

(3) The Commission will consider a status report on the progress being made in carrying out the strategic plan.

c. **Ex-Parte Communications.** Chair Randolph invited Commissioners to provide staff with a report on any written or oral ex-parte communications.

Commissioner Smith met with representatives from Cargill and DMB about the Redwood City site and they discussed their emerging development proposal.

Commissioner Goldzband had a conversation with David Lewis about the whole salt pond issue.

Commissioner Wieckowski had a phone call from Save the Bay about the proposal.

Commissioner Nelson also had a phone call from Save the Bay, who were making sure he was going to attend this meeting.

Commissioner McGrath also had a telephone call from Save the Bay and he asked them to come and talk at the meeting and to put it in writing so that all the Commissioners could see it.

Commissioner Kato also had a conversation with David Lewis of Save the Bay.

6. **Report of the Executive Director.** Executive Director Travis provided the following

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report:

a. **Budget.** Two weeks ago the Governor and the Legislature finally agreed on a plan for addressing California's \$42 billion deficit. This is how that plan will play out for BCDC:

First, the Governor's directive to close most state offices the first and third Fridays of each month remains in effect. BCDC staff will be on furlough without pay on those two days.

Second, the Governor has rescinded his directive that 20 percent of state employees be issued notices that their jobs may be eliminated.

Third, the Commission continues to expect that it will be directed to make further budget cuts. However, as you may recall, last December BCDC proactively instituted a plan that will generate \$100,000 in savings this fiscal year. Therefore, if the Commission is directed to make further expenditure reductions it is poised to do so.

Finally, with the budget in place, it is expected that by the middle of this month BCDC will again be able to pay Commissioners their per diem expenses for attending Commission meetings.

b. **Interns.** The Commission has two new interns working in the planning section on GIS matters. Jeanne Jones has a BS in engineering from Boston University and is a graduate student in geography/GIS at San Jose State University. Damon Growl received a BS in Environmental Resource Science from the University of California, Davis and is currently getting his masters in geography and statistics at Cal State, East Bay. Both of them will be with the Commission through May.

c. **Federal Program Evaluation.** Next week BCDC will be visited by a team from the federal Office of Ocean and Coastal Resource Management in Washington, D.C., which is conducting a required evaluation of the progress both BCDC and the Coastal Conservancy are making in carrying out the federally-approved California coastal management program. As part of the evaluation, a public meeting will be held in BCDC's office next Monday at 5:00 p.m. to receive comments from anyone who is interested in the Commission's work. Staff has provided all Commissioners with the public notice of that meeting in case they know of anyone who might want to attend it.

In addition, the federal team has scheduled a meeting with Chair Randolph and Vice Chair Halsted, as well as other meetings with various stakeholders with whom BCDC works on a regular basis. If any of the Commissioners would like to meet with the team, please let staff know so they can make the arrangements.

d. **Statement of Economic Interests.** It is time, once again, for members of the Commission to file their annual Statement of Economic Interest. To assist in meeting this requirement, staff mailed a Form 700 and instructions to each Commissioner. The completed form must be received in BCDC's office or postmarked by April 1st. If you have any questions about these forms, John Bowers, BCDC legal counsel, can help you.

e. **Reports.** I want to call to your attention three documents we sent you.

The first is a report regarding the status of the Potrero Hills landfill expansion project.

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As explained in that report, lawsuits, additional studies and the merger of the corporation that owns the landfill with another company -- which will require that the landfill site actually be sold -- has delayed our consideration of the permit application for the expansion of the landfill. We originally thought, when the Commission took up this matter in late 2005, that we would be able to hold a hearing on this application in mid-2006. Now it appears that won't happen until late 2009 at the earliest. If you have any questions about this project, please direct them to Ming Yeung, who is the third staff member who has had the lead responsibility for us during the long life of this project.

The second document is a memo transmitting the printed versions of some regulations you revised dealing with our application form and permit fees. Please insert these pages into your reference copy of our regulations.

The third document is a draft response to the letter we received from Save the Bay last week requesting that you expand the scope of the Bay Plan amendments to allow for amendments of the managed wetlands and salt pond sections of the Plan. It is unfortunate, because of the timing, that Save the Bay hasn't had an opportunity to look at our staff report on this, which will be released shortly.

As we explained in our letter, we believe it is better to develop overarching findings and policies addressing climate change and sea level rise that will apply everywhere within your jurisdiction, including managed wetlands and salt ponds, than it is to revise sections of the Plan that were only recently updated. Unless you direct us to take a different approach, we will send our response letter to Save the Bay today.

f. **SPUR Board of Directors:** I have been invited to serve on the board of directors of SPUR, the San Francisco Planning and Urban Research Association. I have consulted with both our legal staff and the Attorney General's staff to determine whether this would raise any conflicts of interest for me. I've been advised that so long as I exercise caution, do not get involved in SPUR matters that would conflict with my responsibilities as your executive director, and recuse myself from participating in SPUR decisions that may also involve discretionary decisions by BCDC, it would be acceptable for me to serve on SPUR's board. My primary interest in serving on the board is to advance SPUR's involvement in regional planning, a goal that I believe is fully consistent with BCDC's interests. Therefore, unless you have objections, I will accept SPUR's invitation.

g. **Amsterdam.** My trip to Holland three weeks ago was enjoyable, educational and productive. While I was there we held the first meeting of the project team we will be working with on the climate change adaptation conference the Dutch government is sponsoring. The conference will bring Dutch and California experts together in San Francisco this summer. We are exploring whether this conference can be linked with the design competition we're holding, which will culminate in an exhibition of the winning entries in mid-July. I hope you had a chance to listen to KQED Radio's report on the competition, which was aired last week.

Commissioner Nelson asked about the Save the Bay response letter -- he wanted to ensure that if the Commission concludes that they want to make one policy change with regard to urban areas or port priority use areas, and a different set of policy changes with regard to salt

ponds, managed wetlands, or some other area where the Commission has jurisdiction, that handling this issue in a more holistic way won't limit the Commission's flexibility in comparison with the ability to go in and make changes in individual sections.

Executive Director Travis responded that the Commission would not be able to make changes in sections that are not included in the notice. What they have found is some areas that are in danger of flooding right now and some areas that will be in danger of flooding in the future, and some subsided areas that are not only in danger of flooding but will flood unless they are protected now. That three-part separation doesn't square with whether they're salt ponds, managed wetlands, urban or rural --. So staff thinks it's better to approach it holistically and have one section that says "these are our policies dealing with sea level rise and climate change" and then apply those everywhere, whatever authority and jurisdiction we have -- which differs for salt ponds, managed wetlands, shoreline band, Bay, and others.

Commissioner Nelson followed up by noting that, in an urban setting, if a city is at risk of flooding, one particular response might make sense -- a seawall, or something else. A different response might be appropriate if that area at risk of flooding is a wetland or perhaps a wetland can be designed to prepare for flooding. He concluded by stating he wanted to ensure that the current approach won't deny the Commission from tailoring different responses in different settings.

Executive Director Travis clarified that the current approach would do exactly that, allowing whatever the appropriate solution, whatever authority the Commission has available to them in that situation, could be used.

Commissioner McGrath noted that this is an interesting and difficult question in absence of something in front of them. It seems conceivable that at some stage the Commission may decide to craft some more geographically specific direction and perhaps -- can some of that be done in the overarching policies that talks about geographic areas of similarity and at the end of the discussion the Commission may decide that some other areas need further measures and your recommendation will be at that time it may be appropriate to go forward with further policy guidance?

Executive Director Travis responded that indeed that is the case. As we look at that and recall that the legislation that gave BCDC the authority to look at the issue of climate change and sea level rise didn't change the Commission's regulatory decision, regulatory authority at all. So if something is low lying and it's on the shoreline, the Commission is limited to making sure that it provides public access. That's all. If somebody wants to build something there and the Commission has maps that indicate it will flood, it can't even require that it be protected, much less that it be designed and moved.

So what staff sees happening and what they're working toward is bringing to the Commission an overarching set of policies that say "here's what you do now." And nested in there is a strategy that is very much like the one that has been up on the BCDC website for two years, which says that the whole region needs to work together and come up with a strategy for the whole Bay Area, and that may mean that there will be changes in the law and changes in the policies as they are applied in various areas.

7. **Commission Consideration of Administrative Matters.** Executive Director Travis stated that the administrative listing was sent to Commissioners on February 19th. As usual, Bob Batha is available to respond to any questions about the matters on the listing.

8. **Briefing on the Redwood City Saltworks Project.** Brad McCrea, Commission staff, provided some background. The proposal, a concept by DMB Associates in Cargill, is to develop 1,433 acres at the Redwood City industrial plant site in Redwood City. The property consists of salt ponds and is therefore subject to the Commission's salt pond policies in the San Francisco Bay Plan. The developer is considering a mix of uses, including habitat restoration, parks, housing, retail, commercial space and recreation.

Mr. McCrea corrected portions of the staff report. First, that the Saltworks site has not been used for salt production since 1901 but that a portion of the site appeared to be wetlands as recently as 1943. Second, the staff report states that Redwood City's 1990 General Plan identified two land-use designations for the Saltworks site -- urban reserve and open space. Actually, the Plan shows two open space land use designations for the site -- urban reserve and unimproved areas.

Lastly, Cargill sold 16,500 acres of salt ponds and adjacent habitats to the state and federal governments in 2003. The staff report states that the Saltworks site was removed from that negotiation because the sale price of the site was prohibitive due to the development potential of the site. Given that there has been a great deal of controversy over the appraisal that was done around the time of the sale, perhaps a more fair description is that the sale price was prohibitive due to the *perceived* development potential of the site.

Mr. McCrea reminded the Commission that no formal action will be required today. Staff is briefing the Commission on the proposal now because of the scale of the development ideas, the type of policy issues that the proposal raises, and the simple fact that development of the site for uses other than salt production raises controversy. As always, staff welcomes any policy guidance that Commissioners may wish to offer.

Mr. John Bruno, DMB Associates, stated that the topic of today's briefing is going to be a basis for change. People aren't afraid of change, but they are afraid of the unknown.

This property had been offered for sale to the U.S. government in 2003 and the government declined. DMB's partner, Cargill, then looked for a company that could help them to determine whether there better uses of the site than the continued production of salt. Over a three year period DMB Associates extensively met with the stakeholders to determine an answer to that question.

Boris Dramov, ROMA Design Group, then gave a powerpoint presentation. Some highlights:

Industrial processing has occurred on the site for over 50 years and the site has been extensively modified, compacted, filled and scraped due to those intensive salt production efforts.

Since the late 1970's, roughly 90 percent of the property has been acquired by the state of California Department of Fish and Game and U.S. Fish and Wildlife Service.

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The entire Saltworks plant site is located within Redwood City and its relationship to the city is an important consideration in determining future use and the potential linkages.

Adjacent to the plant site is the Port of Redwood City; the 1.7 million square foot class A office campus known as Pacific Shores; the recently constructed 400 slip Westpoint Marina; the Britannia Seaport Center, a 600,000 square foot office business park; and the Bloomquist Industrial Area, which includes a variety of construction and building material businesses. Further to the west is an area undergoing transition, with a number of proposed, planned, and approved commercial and residential projects.

The southern area of the site includes a variety of service and storage facilities, as well as mobile home parks, a PG&E power line corridor, and a bayfront canal that brings the water from the municipalities.

There are two major vehicular corridors, Highways 101 and 84, and three interchanges - Whipple Avenue, Woodside Road and Marsh Road -- that border the site. Seaport Boulevard connects to the Woodside interchange and provides the main vehicular access corridor to the Port and other urban uses, as well as the Saltworks site. An adjacent rail track serves the port. Other transit also serves the area.

The comprehensive planning process had the intent of integrating regional and local habitat restoration and management objectives and existing plans with other project objectives. This process established opportunities for collaboration among local, state and federal agencies, landowners, other private interests, and the public. It also involved an ongoing baseline scientific assessment of existing and historical natural conditions and resource values at the site. The study was undertaken by Mike Joslin of Wetlands Research Associates and Keith Bowers and his group from Biohabitat.

Through the significant community outreach effort mentioned earlier, with numerous meetings and workshops, there has been contact with over 10,000 Redwood City residents. The overwhelming response from the community so far is that they prefer a balanced approach, with conservation, restoration and sustainable development of the site. This approach is consistent with other local objectives related to the reconnection of the City with the Bay, enhancing the livability of the community as a whole, and downtown infill and transit-oriented development.

Mr. Keith Bowers, Biohabitats, described the conservation and restoration efforts, which includes maintaining maximum water surface area, public access, and habitat diversity consistent with the proposed project.

One of the first things Biohabitats did was examine the site's relationship to the Bay, the Peninsula, and the surrounding matrix of existing marsh. They researched water flow, sediment transport and tidal hydrology patterns. They mapped and researched the watershed that drains to the site and its impact on the quality of water and the aquatic organisms of the Bay. They dug through historical files, photographs and maps to better understand the site and the development patterns and urbanization and the impact of the loss of wetlands that has occurred over the past 100 years. They have also looked internally on the site.

One surprise is how huge the site is, which presents all kinds of opportunities for integrating wetland restoration with community building. Second, the industrial nature of the site.

There is also a maze of internal levees. Unmanaged regional stormwater is causing flooding problems to the adjacent properties north of the Saltworks site. Development of the site offers the opportunity to address that concern by providing a regional stormwater management basin to help alleviate some of the flooding that is occurring right now.

After extensive research and consultation, Biohabitats developed a series of wetland restoration concepts focused on striking a balance between wetlands restoration and development. The goal was to identify a geographic configuration that first and foremost would facilitate the restoration of a diversity of different habitats consistent with the San Francisco Estuary Project and the South Bay Salt Pond Restoration goals.

They are confident that they can restore a fully functioning tidal marsh and a natural transition zone in about a 3-7 year timeframe. The approach will include clear and specific long-term and short-term biological and physical goals, success criteria, a monitoring program, and provisions for long-term maintenance and management needs, including mitigating the effect of sea level rise. Most importantly, the approach will provide habitat for threatened and endangered species.

All restoration work will be fully funded through DMB and Saltworks. Through private initiative and public collaboration hundreds of acres of wetlands can be restored in a relatively short timeframe at no public expense.

Mr. Peter Calthorpe discussed the jobs/housing imbalance within the Bay Area and how that manifests in exporting housing into areas that force people to commute and emit a lot of carbon because of the increased vehicle miles travelled. Trying to achieve the jobs/housing balance is an imperative part of the Saltworks project.

The Saltworks area has a large amount of land that can be utilized to exhibit best practices in terms of creating walkable and transit-oriented environments.

Finally, this is a site that allows for new green technologies.

Mr. Dramov echoed those comments. Ecological values and regional environmental sustainability need to be integrated into the planning for the future of the Saltworks site.

Concepts developed thus far include:

A concentration of new, restored tidal wetlands that will provide protection to existing habitats.

An Interpretive Centre that can be located within the project. The Center would enhance an understanding of the value of the Bay environment and build stewardship to its continued protection, maintenance and management.

Ecological restoration and regeneration calls for the creation of an additional transitional area to extend the environment of the Bay inland, and knits it together with a variety of complementary environmental and recreational functions and activities. The transitional areas

can extend along the edges of the tidal wetlands and finger into the upland areas in an integrated manner that emulates the natural flows of waters into the Bay. Another important feature of the transitional areas will be a muted tidal marsh lagoon, designed as part of the stormwater management system and to maintain a significant water surface area at all times.

A continuous bay trail at the juncture of the saltwater wetlands and the muted tidal marsh lagoon, which would connect with the existing Bay Trail at Bayfront Park and the Westpoint Marina and Pacific Shores and link to downtown.

Incorporation of community sports fields and enhanced pedestrian transit and vehicular linkages.

Compatibility and support for the revitalization efforts being undertaken by the city downtown and in adjacent areas and provide greater connectivity to the ferry terminal downtown and the Caltrans station.

These concepts are based on DMBs' and Saltworks' commitment to a balanced approach that maximizes the potential of wetlands restoration consistent with the project and at the same time provide unparalleled opportunities for housing near Silicon Valley jobs that directly affect regional environmental issues of energy consumption and climate change. It also provides a way of financing the restoration objectives and more efficiently creating a more mature and diverse ecosystem as well as providing for future flood protection.

Chair Randolph asked Redwood City Mayor Roseanne Foust if she wanted to address the Commission prior to public comment.

Mayor Foust thanked Chair Randolph, Members of the Commission, Mr. Travis and Commission staff for giving her the opportunity to speak. She acknowledged that City Manager Peter Ingram and one of the city's senior planners, Blake Lyon, were also present. She stated that she was speaking on behalf of the City Council of Redwood City and then remarked:

"I don't need to tell you that the Saltworks Development application will be one of the biggest proposed land use changes in Redwood City and in the Bay Area for generations. As such, I'd like to share a few thoughts with all of you about our community process that the city will be leading.

When we receive the conceptual plan, the council and the community will have its first look and the subsequent reactions. Our staff expects that the concept plan will be accompanied by a long list of complex technical strategies, each of which will require several months of technical inquiry, analysis and discussion.

We have worked very hard to define the city's role in managing the Saltworks application process and public information for the remainder of 2009. Our goal is to quickly ramp up and become the credible information source about the concept plan, the review of technical infrastructure information, and to work toward a complete application sometime in the summer or the fall of 2009.

We are working on a two-stage information outreach process that is based on our overarching goal of completion of our new general plan in October of 2009. So 2009 will be designed to, in parallel, complete our general plan, to keep our community up to date on the ongoing Saltworks application process.

We will then launch a series of major project information workshops in early January 2010 on a

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completed application leading up to the CEQA scoping sessions in February and March of 2010.

We have to remember that the submittal of a concept plan is only the starting point, it is not the end game. There will be a rigorous public engagement effort and a multi-year CEQA process ahead that will shape the plan and its alternatives.

Our promise to the community of a city-led public outreach on this will be fully and well honored. I like to say "we heard you" and we're excited about the opportunities that this proposal brings to the community of Redwood City and the greater Bay Area.

So I really appreciate, thank you so much for giving me a chance to address you today. We look forward to a healthy debate about the project and a very long and meaningful collaboration with all of you, Members of the Bay Conservation and Development Commission. Thank you."

Chair Randolph thanked Mayor Foust for her comments and opened the public comment portion of the hearing.

David Lewis, Executive Director of Save the Bay, expressed his appreciation for the opportunity the Commission is taking to step back. He added to some of the context that Brad McCrea presented in the staff report. First by underscoring the special opportunity available today, because there is no permit application for this project, no local approval yet, and -- as heard from the Mayor -- no project EIR under way yet, no local development application even filed. So the Commission kind of has a free opportunity without your regulatory hat officially on yet, to give some feedback to what is heard today.

Second, our view is it's not currently permissible or legal to develop this site; it's extremely unwise to try to develop on this site; and it would be very beneficial to the Bay and the people of the Bay Area to restore all of this site to habitat, including tidal wetlands, for the benefits that would bring.

This 1,400 acres, larger than San Francisco's Golden Gate Park, is part of the Bay. It was diked off and borrowed for salt evaporation and it's not suitable or appropriate for development. It can and should be restored to tidal marsh.

(Mr. Lewis showed a series of slides.) You can see that the diking occurred in stages and is clearly visible. This is from 1943. On the right-hand side of the site, still dendritic channels showing that it was active tidal marsh even then. The people of Redwood City, including the Mayor, would tell you that the city now appreciates the benefits of restoring salt ponds instead of just developing them. Bair Island was bay tidal marsh and it was diked off for agricultural and salt evaporation ponds; there were several proposals to build on it. You will hear in a minute from the person who ensured that Bair Island was not developed on, and it was bought by the Peninsula Open Space Trust after development was overturned by the people of Redwood City after being approved by the city council several decades ago.

This is just north of the Cargill site and it's a great example of what could happen on the Cargill site as well. The Cargill site includes crystallizers that have been repeatedly scraped of evaporated salt, but even these kinds of ponds are restorable.

This is LaRiviere Marsh, a before and after shot, in Newark, near the Dumbarton Bridge Toll Plaza. It's a former crystallizer pond previously used to make salt, now thriving, restored

tidal marsh supporting Clapper Rail and Salt Marsh Harvest Mouse populations.

And there's another set of crystallizers formerly owned by Cargill along the Napa River that was sold to the State Department of Fish and Game a few years ago.

You have now permitted this site to be restored to tidal marsh by the Department of Fish and Game, and the Army Corps of Engineers found that all of these crystallizers were jurisdictional, within their jurisdiction, former waters of the United States under the Clean Water Act and the Rivers and Harbors Act. So you know well the benefits of tidal marsh restoration. I won't go through all of those.

I will underscore that this site is within the authorized expansion boundaries of the Don Edwards National Wildlife Refuge, and as you know, salt ponds all around this area are being restored.

We have in the Habitat Goals Project an aspiration endorsed by scientists and agencies in the region to get back to a hundred thousand acres of tidal marsh and that's something this site would contribute to.

Among the benefits of wetlands restoration are they help in the fight against global warming because every acre of restored healthy salt marsh captures and converts carbon dioxide to plant material every year from the atmosphere. And per acre the amount of carbon sequestration is equal to not driving 2,300 miles.

Peter Calthorpe underscored the costs of driving from the Central Valley but if 1,400 acres of restored tidal marsh were on this site it would offset 3.2 million miles of driving each year -- that's about 25,000 round trips to Tracy.

Because this property is private, it doesn't have the protection of a resource agency now and it has been targeted for development. It is the largest at-risk parcel anywhere on the shoreline of San Francisco Bay.

And this is the greenbelt along the at-risk map and you can see it in pink on the left. So the developer you heard from talked about this as a regional scale opportunity for development. It's also a regional scale opportunity for restoration.

Redwood City's general plan that's currently in place allows for salt production on this site, but not development. It's zoned tidal plain, just like Bair Island, and the only other allowable uses besides salting are open space like parks, restored marsh, and other passive recreation, but not buildings.

Redwood City is working on a general plan update right now that is not slated to propose any change for the Cargill property. And, in fact, the planning staff during this general plan update made clear that *"this is a unique land-based resource and there are only certain parts of the city that can become wetlands, unless we recognize that the highest and best use is sometimes a use that does not result in development, but rather a use that supports and sustains the community in other tangible as well as immeasurable ways."*

And maybe this is the most compelling reason to restore the site instead of building on it -- sea level rise. These are BCDC zone maps -- you're very familiar with them. They put this

issue on the map of sea level rise in the Bay Area, and you can see that, as Executive Director Travis has highlighted, that in some places it may be better to abandon plans to allow development and face the cost of protecting it from flooding which may be inevitable. And he has rightly underscored that wetlands are like magic because of their additional carbon sequestration benefits and the flood protection they can provide.

Redwood City, as you've heard, has focused their restoration, their development downtown; and in the new general plan that they're developing there is substantial capacity for new residential development well beyond the regional housing allowance that is currently set up. And that is focused downtown.

Let me just highlight something that Rich Gordon has been a key player in, this Threshold 2008 Process in San Mateo County, [which] brought together residents and tried to figure out when would people support more housing and development in San Mateo County. And by a two-thirds margin, the people who went through this exhaustive process said they would support more infill development to provide housing but not on open space.

This is not an infill site, this is not a developed site. They put industrial in the title, but this is not an infill site that has previously been developed.

Cargill and DMB have done what they call an exhaustive process. It's been a wonderfully well-orchestrated and richly staffed and lavishly catered affair over the last several years and we've enjoyed a lot of that catering ourselves. But, as Mayor Foust underscored, there hasn't yet been a formal city process or an actual public process, there hasn't been an EIR process.

But the City Planning staff did note over the last few months that the vast majority of public input during the general plan process was opposed to more development on this site. Even in some of DMB's own public input sessions we saw majority support for not developing on the ponds.

So we've called on Cargill not to develop on this site, to make it available, to become a willing seller and enter into negotiations to transfer the property.

I will say that now that I'm becoming a veteran, after almost 11 years in this particular position, I have heard it suggested a number of times that the only way to restore property on the shoreline of the bay is to let a developer pave half of it to pay for restoration on the other half. We know it isn't necessary to destroy one part of the bay to save another part. We've been very creative with financing and the general public, the State of California, the federal and local, have all been willing to pony up when there's been that opportunity.

The Bay Area rejected this false choice of having to destroy part of the Bay to save another part -- as Sean well knows -- during the SFO runways battle, when the airport said the South Bay Salt Ponds would never be bought and restored unless BCDC and others approved expanded runways. Well, clearly that wasn't true then and it's not true now.

Cargill owns this property, they have the right to make salt there as long as they want, and when they're done it should be returned to San Francisco Bay. So what DMB is proposing is not permissible, it's not right, and it's not wise.

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Richard Panelli, co-founder of Citizens for a Sustainable Redwood City, stated that the mission at Sustainable Redwood City is to educate and represent a majority of the citizens, as opposed to any special interest group or a minority interest. Regarding major issues and projects within the city limits, their goal is to obtain a high degree of sustainability for these projects.

You can find out more about us, we're about a year old, and we are on the web at sustainableRC.com.

I'm attending this meeting today to express my organization's support for DMB's process of thoughtfully engaging the residents of Redwood City in the planning of the Saltworks site. For almost three years, as you've heard, the Saltworks team has listened to our community for their suggestions as it pertains to the Saltworks site. In fact, to their credit, not only have they listened to the residents of Redwood City, but they've incorporated most of the thoughts and the needs of Redwood City. Other than just one need, they've looked at all the needs. And they've incorporated those -- at least we believe that most of them are incorporated, we haven't seen the final plan yet -- within their 50/50 plan.

Sustainable Redwood City is excited about DMB's forthcoming application. We look forward to discussing its merits through the normal state's environmental process. We would hope other groups would welcome this proven process and not try to impede Redwood City residents' rights to a thoughtful and deliberate evaluation.

Peter Hughes began by saying that most of his life he'd heard about BCDC, but now he can say it actually exists. He also said that this is the most beautiful conference room he'd ever been in, in his life -- it's spectacular, it's like out of a movie set.

My name is Peter Hughes and I have lived in Redwood City for 51 years. I represent only myself. I've been active in local civic affairs almost as long as 51 years. It's obvious to me that this is the opportunity of a lifetime for our city. The Saltworks would turn over to us a planned community with improved transportation corridors, public facilities, a complete levee system, and, most of all, over 700 acres of open space, playing fields and restored wetlands.

We will never get an opportunity like this again and if it fails and we look out on our field of salt -- which is the present and maybe future of the property -- we will hate ourselves for not seizing the opportunity.

Redwood City held an election last fall on this project and it was easily approved. The Saltworks Project was not actually mentioned in the ballot measure, but after three years of debate everybody knew what they were voting for.

We will continue to debate various aspects of this project and expect the Saltworks to bend over backwards to satisfy the needs and desires of the residents of our city. If it does not meet our expectations they will lose the election when their final proposal is put to a vote. And it will face a vote. Thank you for your time.

Jim Bigelow with the Redwood City, San Mateo County Chamber, stated that he came to Redwood City in 1947 as a wee tad.

I've made rafts, went out on the sloughs, and had a good time. Times change and from

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the business perspective we've generated a lot of jobs and we've created a lot of impacts on a family's life, coming from the Central Valley over here to the peninsula to work. All of you come from communities where you have housing elements, and I would ask that anybody generate a hundred percent of your housing goal assigned for ABAG for a seven-year period, let alone subsequent seven-year periods.

In Redwood City, the last seven years, about 20 percent of the goal was reached in actual production. And up until the slight economic hiccup we're experiencing, which will hopefully go away, the traffic and everything continues to grow in good times when we have to plan ahead.

This is an opportunity -- with the 50/50 approach which our chamber board unanimously supported -- to provide and address carbon footprints, make things closer to the workplace, have more dense land use close to the jobsites, enhance transit connections within Redwood City, and to look forward to the future in a thoughtful, tender, loving way with the Bay as well as our downtown.

The general plan that currently is under way addresses a lot of quarters and looks at intensification and the anticipation of being more compact to address housing near jobs. And going through this process in the last three years, a lot of our business members and a lot of residents participated in these very nicely facilities where we had tables and marked things up and participated in groups to figure out what the bayfront should look like on the lands of Cargill and the Saltworks.

So, there's been a great outreach so far, there's been a voter discussion which carries the conversation on, and the city is committed to doing an outreach process through the normal environmental inputs, which we totally support.

So we need to look ahead, we need to think about how people get to and from work, the quality of life for their kids and long commutes and the carbon footprints, and this is an opportunity to restore the bay at no cost to the taxpayers and address our carbon footprint.

Ralph Nobles, a retired PhD nuclear physicist, spoke on behalf of the Friends of Redwood City.

Our group helped to preserve Bair Island and ensure that it was added to the San Francisco Bay National Wildlife Refuge. Now, I have great respect for your executive director, Will Travis. During the past few years I have been somewhat dismayed by his public utterances regarding the development potential of the Redwood City Saltworks property.

He wrote to Cargill, implying that the Commission would approve a development project preserving 50 percent of the site in open water. Relying on this advice, Cargill's development agent, DMB, has conducted a three-year campaign in Redwood City promoting its 50/50 plan. And they have just reported to us that a high majority of the people of the Redwood City was in favor of their plan.

And I was a Planning Commissioner for Redwood City and later the San Mateo County for a quarter of a century, and one thing I learned later on is that you couldn't place a high reliability on a public opinion poll conducted by someone who had a financial interest in the

result.

We don't have the extra water in Redwood City to support the development of this proposal, nor do we want to put as many of our future citizens in harms' way for a Katrina-like disaster when the levees fail in a winter storm or earthquake.

I think it is unwise and irresponsible to allow development in areas that we know are well below sea level and cannot be filled to be above sea level, and any development on the land can only be protected from inundation by levees resting on a foundation of unstable bay mud. Instead we should take this opportunity to restore these ponds to the bay and incorporate them into a protection strategy that will protect the inland development and provide much needed habitat for bay wildlife.

Your salt pond policies require that every effort should be made by the public to acquire salt ponds before determining that they can be developed. And, in 2003, these 1,400 acres were falsely appraised at the ridiculous value of \$243 million, whereas at the same time a similar 16,000 acres of Cargill wetlands were sold to the public for only \$100 million.

I've also been pleased by some of your director's comments. He has often said -- and I quote -- *"tidal wetlands are about as close as you can get to magic in dealing with climate change. They are wonderful for absorbing flood waters, and tidal wetlands are actually adaptive to climate change and they mitigate it, they help prevent it."*

I hope the Commission will advise Cargill that the days of urban development on San Francisco Bay lands is over. So it's BCDC's policy to acquire San Francisco Bay wetlands for public restoration when available and at an affordable cost, and I strongly request and recommend that it is in the Commission's purview to do so to request a new appraisal of these lands, an appraisal that fulfills the state's conditions for the acquisition of public land. And I think if they can do that we'll have no more worries about this. Thank you.

Cynthia Denny, the Wetlands Chairperson for the Loma Prieta Chapter of the Sierra Club, started her comments by stating that, just for the record, the Sierra Club's national policy is to not allow compromises on wetlands for restoration versus development, just as background.

You've heard from the dream team here today, DMB and Cargill, quote, unquote, the invisible giant. And I'm here to represent that part of the green team. And I'm going to address restoration and sea level rise.

Redwood City's bayfront salt ponds are a critical site that would benefit from the protection and should be restored. Congress included Redwood City's bay lands within the boundaries of the Don Edwards National Wildlife Refuge and the 1,433 acres were originally part of Cargill's south bay salt pond sale.

The final salt pond sale of 15,100 acres was completed in 2003, but the 1,430 acres in Redwood City were taken out of the purchase due to their high price, associated with Cargill's hope of developing the site, as you've heard previously. That price has since been found by a court to be based on the extraordinary assumption that development would ever be permitted there and the appraiser lost his license. In my last look at the court website, he may be headed

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for jail as well.

The Cargill property, which stretches from Redwood City's Seaport Boulevard to Bayfront Park in Menlo Park, is the last major tract of restorable land in this region. Most of this site was part of the Bay as late as 1943 and its location marks it a critical habitat linkage between Bair Island and the 15,100-acre South Bay Salt Marsh Restoration Project, something we're all extremely proud of.

According to the 2005 BCDC South Pond staff report, *"a tremendous opportunity exists to link existing or potential habitat values found at the Cargill Corporation plant site with habitat values found nearby. The Redwood City plant site is bordered by Greco Island, Bair Island, and the Ravenswood evaporation pond which are all part of the Don Edwards Wildlife Refuge."* And I hope you've all been there to see it, it's quite wonderful. *"The former salt ponds are eminently restorable to tidal action and, depending upon their depth, different sections should become tidal wetlands. Shallow tidal areas are extremely valuable transitional upland habitat for endangered and other species."*

I have further comments and I will submit those in writing, but I would like to add that over the last year we've seen a tremendous amount of pollution in the Bay with the oil spill and the sewage spill and in many ways that was outside of your ability to control. But you have permitting control for this development and I would encourage you to weigh it seriously and to return the wetlands to restored wetlands. Thank you.

Robin Winslow Smith, Conservation Coordinator for Sequoia Audubon Society, which is the Audubon chapter for San Mateo County, stated that she was there to speak as an advocate for the birds.

Our chapter is already on record as strongly supporting restoration of the 1,433 acres of salt ponds in Redwood City. And also on record as being firmly opposed to any development there. This area is adjacent to the boundaries of the San Francisco Bay National Wildlife Refuge, which provides important wildlife habitat functions to resident and migratory birds, including populations listed under federal and state endangered species acts, specifically Greco Island, which is home to the largest number of endangered California Clapper Rails in the south bay, and the ponds beside Bayfront Park where endangered Snowy Plovers reside.

The area in question and its surrounding refuge lands are a major stopover point for water and land birds that migrate along the Pacific flyway. Due to the great loss of bay wetlands over the years these areas have assumed major importance. BCDC is being asked to consider developing on water and wetlands, not land. The salt ponds only exist because of the previous diking of wetlands that were interspersed with salt water channels and sloughs. They need to be returned to their natural state, not further impacted.

Other speakers have pointed out the myriad problems with putting housing on the salt ponds in question. I won't repeat them. But with development, the things that accompany human habitation -- cats, dogs, raccoons, crows, and feral cats -- will decimate much of the bird life that is reliant on the bay lands and on the Pacific flyway. With the advent of sea level rise and area that abuts these ponds, they would be at risk of increased flooding. Restored wetlands not only offer a haven for birds and wildlife, but offer the ability to help control flooding and to sequester the carbon implicated in global warming.

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The citizens of Redwood City have consistently voted against housing developments on their wetlands. They need to be heeded. Sequoia Audubon Society respectfully asks that no development be allowed on the Cargill lands in Redwood City and that they be restored to their original status as wetlands.

Marianna Raymond, Redwood City resident and member of Sierra Club and Friends of Redwood City, noted that those present had heard and seen a very thoughtful presentation today. DMB spent a lot of money and hired some fantastic people with some very good thoughts.

I've been a recipient of the surveys and the forums and the fair trade coffee and all of it's been very interesting. But you will notice, even in this beautiful presentation, there's some notable omissions. One thing I have never yet heard is the number of housing units that are proposed. You see a lot about the land and the restoration which is very appealing and the recreation and the boating and so on, but there's nary a picture of much of a house, and there's never an explanation of how issues such as water would be dealt with.

San Francisco Bay is one of California's most important natural and economic resources. A healthy bay is vital to the economy and the quality of life in our region. The Bay Area public has repeatedly demonstrated that it's broadly opposed to further filling the bay to support private development and deeply supportive of bayfront open space, public recreation and access, and wetland restoration.

The citizens of Redwood City have shown their concern, as we've heard Ralph explain, by voting in 1982 to stop development at Bair Island, and more recently by defeating the proposed high rise residential towers on the bayfront adjacent to Bair Island through a citizen referendum, Measure Q.

The Cargill site is designated open space in the general plan with a partial urban reserve planning overlay which also appears on Bair Island. The City admits that this overlay was placed on the property without any process due to, quote, *"a desire to imply possible future development of these areas without conducting the environmental review that would have been necessary if these areas were given specific land use designations,"* unquote.

And as has been said, but I will just reiterate, development on the salt ponds would occur in flood prone areas subject to sea rise, required expensive protection such as higher levees and costly fill. The area is not near public transit. Highway 101 capacity in this area is really beyond its limit.

Redwood City has also reached its limit with respect to water use. And many housing plans currently in the works, developing the salt ponds is not necessary to meet Redwood City's current housing goal.

Meanwhile Redwood City has approved a precise plan for the downtown area that guides housing development to the downtown core.

I'll just have to leave a little bit off and give you this paper, but I urge you to support the sustainable direction of the Redwood City bayfront which is conservation and restoration.

Lennie Roberts, Legislative Advocate for the Committee for Green Foothills, began by
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stating that, for those who don't know, they are a regional two-county organization in San Mateo and Santa Clara Counties. They were founded in 1962 before the McAteer-Petris Act.

We have been very involved in bay protection over the years, even though our name mentions the foothills. We thank you for your work over the years. We believe that the best outcome for Cargill's 1,433 acres of retired salt ponds is restoration, for a whole host of reasons, not the least of which are environmental. We strongly encourage the Commissioners to respond strongly to the very bad idea of development, diking, filling, and paving over this last remaining portion of the bay.

This, of course, is not a permit hearing, the developer has not taken the first step of filing an application and there are no local approvals in place. We saw some very excellent graphics presented today, but there's no detail in those graphic as to what the development side of all of this is going to be or what the impacts may well be to the infrastructure, particularly bayshore.

From our work and from experience with other proposals, we know that the public is strongly opposed to development on Cargill's salt ponds. These ponds were once thriving wetlands and they can be again. Scientists say that we need them restored to protect water quality, combat global warming, offer flood control, and preserve open space for recreation for people and natural bay habitat for bay animals.

As the Bay Area gets denser, we need to ensure that we protect our remaining open spaces because they're going to be needed more than ever before.

BCDC was created specifically as a voice for the bay, a heavy counterweight against the parochial local planning that was rapidly destroying the bay at the time. For that reason, it's been disconcerting to hear your Executive Director quoted as saying that the Commission would approve half of Cargill's Redwood City salt ponds for development. This messaging, which sounds disappointingly close to the developers own 50/50 campaign, has been articulated by Mr. Travis at various speaking events, including one that I was at on the peninsula -- the Grand Boulevard Task Force where there's elected officials and community leaders discussing El Camino. And we did have a very nice presentation about the Bay and climate change.

Mr. Travis has also repeatedly stated that both sides of this dispute are correct, when we have diametrically opposing views. I'm wondering if that means that we would just divide these restorable former bay lands into equal halves, one for development and one for preservation. I hope not.

We rely on BCDC more than any other agency to protect the bay for our region's quality of life and economy and we look forward to the Commission's close engagement on this issue in the future. Thank you.

Arthur Feinstein, representing the Citizens' Committee to Complete the Refuge, began by commenting that he doesn't come to Commission meetings often enough. Many of the people are new faces to him to some degree. So just to let you know who the Citizens' Committee is, it's an awful name to have to - but we're the group that actually established, led by Congressman Don Edwards, the San Francisco Bay National Wildlife Refuge back in 1968.

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Twenty years later when we discovered that – there were only 200 acres of uplands in that refuge, it was all salt ponds bought from Leslie Salt at that time. Twenty years later we realized that around Fremont, the whole south bay that used to be duck clubs was becoming Fremont and Newark and Milpitas and the open spaces were disappearing. And we worked again with Congressman Don Edwards to form the Don Edwards San Francisco Bay National Wildlife Refuge which got another 20,000 acres.

In that effort the Senator from Minnesota, Cargill's home, put a hold on our bill for a month. We think that that was perhaps because Cargill was afraid of what's happening right now, which is the fact that part of its property, right here in Redwood City, is within, entirely within, the boundaries of the San Francisco Bay National Wildlife Refuge.

So I hope that means something to you, I'm sure it does. That boundary was not lightly created, it took into account endangered species such as the California Clapper Rail. Greco Island, which is just a couple of hundred yards away from this site, is one of the major homes of the California Clapper Rail, a species which, despite all our efforts, is still not even close from extinction and still faces grave threats.

Once you've put a significant amount of housing next to a Clapper Rail colony, you start discovering that that colony starts to decline. And as has been mentioned before -- everybody said everything before me so I'm going to be repeating things and I can't help it -- but cats, rats, crows, all of the critters that we attract as humans because we bring food, all prey upon Clapper Rails and their eggs, and all the other bird species, and we have a bunch of endangered species in our tidal marshes. All are at risk when there's human development near them.

All of the east shore coastline from Oakland south is in public ownership in large part because the Fish and Wildlife Service Endangered Species Division recognized that human development does not mix with endangered species, tidal marsh species. And so a lot of that area, all of that area, is now publicly owned.

So when Cargill comes forward -- and it's so refreshing to have developers now saying how important wetlands are, it's really delightful. We have been successful in the environmental community in getting that message across -- but, you vitiate the value that you achieve with the restoration if you put housing right next to it.

So when this comes to you, if it does -- and many of us hope it never does and it quite likely won't -- please remember what maximum means. Maximum is not 50 percent, maximum could be the entire amount.

You've seen this picture before, but I just want to refresh your memory in ten seconds. Crystallizer, this is the Don Edwards Refuge right behind the refuge headquarters, tidal marsh. This was done 20 years ago with not a lot of expertise, they dug a channel, they breached the levee, presto. Within ten years they had tidal marsh. So it's great we have, you know, high paid consultants, but with salt ponds like you have here and crystallizers, you don't have to do a lot, add water, presto, magic. Thank you, very much.

Noting that there were no more public commenters, Chair Randolph then asked for Commissioner comments. Before moving to those comments he asked about the graphic that

went up, showing the lagoon -- on the map it looked a lot more like a channel than a lagoon. Is that just a question of the graphic or is that a lagoon with some width? The map also showed about 50 percent as being restored area and that included an upland zone, a transition zone --. And so, what are the relative elevations from sea level here, would there be fill to create the upland zone and then the development zone or would there be diking, or both, looking at it from the context of possible sea level rise?

Mr. Bruno responded by first stating that they have not finalized their plan. They have several different scenarios. And part of today's meeting is for the Commission to give them an opportunity, as they go through the final stages of finalizing that plan, to understanding, in recognition of Commission's authority over the site, about what is important that they should focus in on. Mr. Dramov had stated that what they were showing is a line in the middle of the area -- and it was shown as a line -- but that was only to indicate that in the midst of that fairly significant area there will be a lagoon of some size that will become a part of that area as a whole. So I certainly see it as a fairly substantial amount of water that will be retained within that area in the specific design. It was shown diagrammatically, but it is really of significant size.

One of the things we're looking at is to create -- as Keith showed you in one of the cross sections -- very gradual transitions. If you look at what happens today when levees are built they look like engineered structures. You end up with a very hard definition between one side and the other. By creating very gradual transitions, both internally and externally, we really create an environment that brings together both the tidal and the muted tidal in a whole new kind of way. And in fact, I don't think the kind of restoration that we're talking about here exists anywhere in the south bay.

I think part of the challenge is how do we redefine the shoreline that was in many ways industrial and service-oriented for many years and how do we redefine it because there are, as I showed you in those contextual slides, there have been a lot of urban uses including the port itself and all of those, and how do we redefine it in a way in which it does create the kind of habitat and wetlands restoration values but also transitions into the urban development that is there and could also be added to the site as well for people to use.

I'm sorry, I don't think of development as being the evil half of the whole formula, I think of it, if it's done well and as we have said, would really enrich the way in which the bay and the city come together.

Chair Randolph followed by asking if that transitional rise would be an alternative strategy to diking or would you plan to be diking as well?

Mr. Dramov responded that it would have to prevent flooding and sea level rise, so it would have to come up to the right elevations. But rather than coming abruptly it can come in gradually so that there is a very soft transition. But certainly the protection of the upland which goes beyond the site and goes right into 101 and beyond would have to be part of the consideration of the design of those areas.

Mr. Bruno added that, as he mentioned previously, the purpose of this meeting was to be looking forward, but in the context of some of the comments that were said he would like to

clarify the record.

The first point I would like to clarify is this discussion around the appraisal process in 2003. It's important to note that DMB had no interest in the Redwood City site in 2003 when this deal was consummated. When confusion about this appraisal arose, we asked our partners, Cargill, to provide us some factual information about what transpired and I actually have a copy of a letter from Bill Britt, who is responsible for the salt manufacturing process for Cargill, that I would like to enter into the record.

In particular, I would like to highlight a couple of occurrences since 2007 and the articles that were referenced about that. The appraisal at issue was prepared by the US Fish and Wildlife Service, not Cargill, and it was reviewed and approved by the Government Services Agency. When disciplinary action was taken against the appraiser revoking his license, he immediately appealed to the Superior Court. Superior Court vacated the order revoking his license and told the Office of Real Estate Appraisers to consider its actions. In its revised ruling, in October of 2008, the Office of Real Estate Appraisers found: one, that there was no impropriety or cause for discipline related to the Redwood City plant site valuation; and two, immediately upon issuance of the revised order the appraiser's license was fully reinstated without restriction. And I actually have a copy of that that I would like to enter in, both of the department appraiser's opinion as well as a letter from Cargill that will finalize that.

I would also like to clarify that a lot of discussion has taken place about who said, what said, who represents what and who doesn't represent what. As was mentioned in Mr. Hughes' comments to you, there was an election in November, Measure W. Measure W was aimed and geared toward stopping any development or restoration on this site. We all live by metrics. Measure W was defeated by a vote of 63 to 37 percent, a difference of 26 percent, and that was by the residents of Redwood City. And I think that we take a look at how the residents said everything else you can talk about, but metrics as we've learned in elections are rather binary, and I think it's important to note that the residents of Redwood City -- they weren't approving a project, but they were approving a process. And so we take what was said very strongly and certainly from the residents and voters of Redwood City by this difference and in conjunction with that, you know, are continuing the planning process.

And again, as I reiterate, the purpose for us coming here today is to listen to your comments and take note -- as we have done since we started this process -- to listen to your concerns, your opportunities, your priorities, to make certain that when we do formally submit an application to the City of Redwood City in about several months or so that we've incorporated all of the various stakeholders that we deem important to this process. And obviously in our deference to BCDC, that's the purpose why we're here.

Commissioner McGrath commented that there's a lot of process between now and the time this comes back, so these are bits of guidance. First, he expressed appreciation for Will Travis' decision to bring this here and the mayor's comments, because there's a lot of things that need to be ironed out. And in going forward he is assuming that whenever this returns there will be fairly clear baseline studies which answer the water question, the jurisdictional question, not just under BCDC but also under the Corps of Engineers, and also the state waters question.

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So how much should be water will have been covered by baseline, and there will be Endangered Species Act consultation, if that's appropriate, and those will all be here.

So I wanted to just focus on two things that he thought were extremely important, levees and sediments, because they have to do with the flood control issue and sea level rise. Poking around -- not for this project but for the whole question of sea level rise -- He spent some time with Ray Seed, who is the professor at UC Berkeley who led the studies, the post mortem studies in Louisiana for the Katrina earthquake (sic), and he spent three years there, he's the levee guy.

And his advice to me I think is very appropriate here. Obviously there has to be a structural design that takes into account the loadings, the flood levels, and earthquake issues, but also you need to look at sea level as something we don't really know exactly how much there's going to be, you're not going to build the ultimate levee right away, so you have to have a dynamic structure.

So there needs to be enough cross section in the levee so that it can be raised over time. There needs to be enough cross section in the levee and the adjacent areas to be able to manage water movement through the levees. Whether we like it or not, there's going to be rodents, they're going to dig holes, and the truly at risk levees are going to have to have a process to deal with water management.

There has to be enough cross sectional area to be able to do construction both for maintenance and increasing the elevation without destroying whatever habitat value you were counting in that and ultimately our objective, the public access which is going to be at the top.

Now, it's particularly of a concern here because of the fingers of development that are all around, which means there has to be a lot of levees, which means maybe there's levees between this and the wetland, I mean that stuff has to be all ironed out pretty thoroughly.

And then of course there needs to be monitoring and fiscal resources, money available on a present worth basis, or a flood control special assessment area which guarantees that there will be money to monitor the condition of the levee and to make whatever adjustments -- and there will be adjustments. So that's levees.

And then, just briefly on sediment, there's been a lot of work done in the salt ponds about the importance of an ongoing supply of sediments to good quality wetlands, whether that comes from the upstream area, as is generally most important, or from the bay, that needs to be thoroughly vetted.

So I think, in terms of this system to work as advertised as they say, the devil or God is in the details. So those are things I would like to see.

Commissioner Wieckowski had a question for staff on which laws the Commission will be applying, because there's been some references made that once upon a time on the wildlife refuge there were boundaries of what properties were supposed to be acquired. Since those properties haven't been acquired or they are within the line, are we applying just California law that we would normally apply or are there federal laws, and are there special federal laws that would apply in a wildlife boundary that may be more stringent or less stringent when making

decisions? And some briefing on that would be helpful because it is an interesting jurisdictional question.

Executive Director Travis responded that the delineation of the area which is within the boundaries of possible expansion of the San Francisco Bay National Wildlife Refuge defined, for the purposes of the Fish and Wildlife Service, what areas they can look at purchasing. This is within there. It makes absolutely no difference to the Commission, as we apply the McAteer-Petris Act whether it's in or out.

Commissioner Nelson first thanked both staff and DMB for coming and making the presentation and to the public for testifying as well and giving the Commission an opportunity to think how we prepare for considering an application of this scale. It's been a long time since there was an application of this size in a salt pond around the bay. And that means that the Commission is not overwhelmingly familiar with those salt pond policies. It would be useful to have a refresher course on those salt pond policies before this application comes to us.

Another suggestion, that we've heard both from DMB and from some members of the public on the one hand suggesting that this project would advance progress toward regional restoration goals, others saying it could get in the way. Commissioner Nelson stated that to find our way through that is for the Commission to have a better understanding of the progress we're making towards achieving those regional wetland restoration goals, to allow us to reach a judgment about the extent to which this is helping us reach those goals or whether there is a lost opportunity here. I think if we had that context it would be helpful.

For the DMB team, the first is that -- obviously this comes at a time where it makes the discussion of sea level rise a very real issue for the Commission. The bay delta is one of the places in the country where we're going to have to wrestle with the very real impacts of sea level rise over time, not just on the ecosystem, but on our landscapes, on the land forms around us; and planning for that is going to be a tremendous challenge and we're unfortunately at the cutting edge of that conversation. So we're going to have to think about this project as we contemplate our sea level rise policies.

A question for the Applicant, a simple one, and that is can you give us a sense of the elevations of these ponds currently?

Mr. Bruno responded that currently the ponds they use, from the geotechnical perspective, range from 101 to 102, so they are actually one or two feet above sea level currently.

Commissioner Nelson asked if the court has done a jurisdictional determination on the site?

Mr. Bruno responded no, but -- as we are with BCDC staff, we have been engaged both with the regional office and in Washington, DC, engaging in conversations like this with the Corps of Engineers -- and including EPA as well -- just because of the fact that we are exceedingly cognizant of the scale and scope of this project and the various agencies that touch it. So we have been engaged in a conversation with them very much like we are with you.

Executive Director Travis stated that as the Commission thinks about climate change and sea level rise and developing a regional strategy for dealing with it, it almost all boils down

to what do you do with sites like this that are low lying, that have the potential of being restored to wetlands, but that also can be developed? And -- as Lennie Roberts said -- that's why I say when you look at this site you listen to both arguments and you look at them and you say both of them are right. And that's why it's going to be so difficult for Redwood City and for us.

As staff indicated in the background report, this gets further complicated because under advice we have from the Attorney General, all of this area is within BCDC's jurisdiction. Cargill believes none of it is within BCDC's jurisdiction.

The Commission has had this difference of opinion now for a quarter of a century and staff has worked together with Cargill to try to find solutions that they were satisfied with and that we were satisfied so we never had to litigate this issue. But this is something the Commission is going to have to deal with.

Executive Travis continued, referencing the "infamous letter" that he wrote in which he said "well, it looks like half of the site could be developed." That was a letter that was interpreting policies the Commission had in the Bay Plan which said a substantial portion of the site should be preserved and restored to wetlands or open water. And we made it very clear -- this is the staff's view -- well, the Commissioners made it very clear it was the staff's view because the Commission changed the policies, they don't say that anymore. They say "maximum area consistent with the project." So that letter, whatever it had been used by either side, is irrelevant. It is interpreting a historic document and policies that no longer exist.

Executive Director Travis continued, stating that this is going to be a really tough one for the Commission for a whole variety of reasons. And as you know I always love crises because I view them as opportunities. I think this is going to be a great opportunity for the Commission to grapple with this big public policy issue and figure out what you want to do about it.

Commissioner Jordan Hallinan stated that she felt like she was having a *déjà vu* with all her old Redwood City colleagues -- not old, but, you know, ex-Redwood City colleagues.

She mentioned a couple of things. One thing is there was an equally engaging process that took place for a very big project in Redwood City called Glenborough Pauls. It finally got defeated in the end because there was an election and it was turned down because there wasn't enough water supply in Redwood City. She was very impressed by how engaged the development team was in meeting with all parts of the community and it was really a surprise to her how it turned out because she thought that they did all the right things -- just as this development team is doing -- and it is impressive that they are, you know, taking this amount of time to really try and engage all sides of the community and that's very much appreciated by the residents. Well, most of them.

Commissioner Jordan-Hallinan continued, saying that she bought her first house in Redwood Shores and is very emotional about that place. That turned her into a bird lover. And ironically, you know, well, it's been noted, my statistics may be old, there's 57 different species of birds that inhabit the Redwood Shores area. And I don't know that I would have really fallen in love with birds as much if I had not been so close to them and gotten to, you know, go jogging in amongst them and see the snowy egrets roosting in the trees. A very adaptive bird.

That is, I think, a really important concept and I hope that that gets a lot of attention, the idea that you're really engaging people. You can turn people that are maybe not very environmental into environmentalists in a way because you're starting to connect them with something very special.

The other thing I wanted to mention is the proposed trail extensions that you mentioned. I'm just interested in just a little elaboration. I know this is all conceptual, but this is one of those dreams I had about the bay, you know, the Bay Trail being connected to downtown Redwood City, what a fabulous thing. Yeah, if you're going to have to get in your car to drive over to the CalTrain station, you know, forget it, I'll just get on the freeway. But if I can ride my bike or walk there. So can you just elaborate a little bit on those plans?

Mr. Bruno responded that the idea of the Bay Trail actually came out of the fact that in the outreach process they did, they actually were contacted by a woman, Patrycja Bossak, I believe her name was -- who actually works for ABAG and is responsible for the Bay Trail. Mr. Bruno continued, saying that he is a life-long resident of San Francisco and never really thought of the Bay Trail. Ms. Bossak came into the office and said "have you thought about the Bay Trail," and they didn't. So, she did a wonderful presentation to their team about the Bay Trail. They took that as part of the input from all of the various folks and incorporated that into the plan.

And you can see that we've actually got in the proposed proposal that we shared with you today, it's over three miles of new Bay Trail and that's just on the exterior part of what we refer to as the transition area. There's actually another three miles that runs behind that, as well as we haven't even figured out the lineage that goes into the lagoons but we could be talking about maybe an additional ten miles worth of Bay Trail and/or waterfront public access as part of this.

If you think about the Guadalupe River in San Jose and how that's become a beautiful promenade -- you know, where at one time it was filled with shopping carts and all types of debris -- they've taken that as inspiration about can you create that type of an experience connecting their site, being able to go and walk back and forth and celebrate the heritage of Redwood Creek, which obviously is the start of Redwood City.

Mr. Bruno continued, saying it's a fool that doesn't learn from history. And so we took a look at the Pacific Shores project in great interest. We also, in addition to what we presented to you today, we've come out with ten various commitments that we have made, solid commitments to the residents of Redwood City that I won't bore you with. But two of them are that we learned that one of the things that was objectionable to the residents of Redwood City was height. That particular project was about 15 towers at 18 stories. We've made a commitment that any structure on our site won't be higher than 75 feet which is the ordinance within Redwood City. So, no high rises.

The development team also heard water is an issue. Redwood City currently right now is about a thousand feet overdrawn in its supply assurance for potable water. So we have made a commitment that we will not impact any existing water supplies in the city of Redwood City or its existing residents. And, as Peter had mentioned to you, that we will benefit from the fact

that -- location, location, location. There's a 26-inch force main recycled water pipeline that is the work of our City Manager in his prior life as Public Works Director. It's the most robust recycled water system in the Bay Area and we are looking forward to, you know, taking on the opportunities to utilizing that recycled water and do things that currently people aren't contemplating. You know, as I mentioned to you in my earlier presentation, it's about change. You know, why can't we dual plumb single family residences and use recycled water to flush the toilets? And why can't we capture that water and be able to take it to anaerobic digesters and so that becomes a captured system on the particular site. And so we absolutely intend to take this as an opportunity to push the envelope as it relates to all the things that we currently, you know, now hold true in building structures and residences.

Commissioner Jordan-Hallinan added that she wanted to bring up one of the big projects -- actually, the first time she ever heard of BCDC was when their beloved levee was shut down by the Fish and Wildlife Refuge in part through action taken by this group here to protect the Clapper Rail, because the Clapper Rail doesn't like to breed around people, and -- at least that's what has been discussed for years -- even though there are places where apparently they do. That is a topic that she still hasn't been able to reconcile and, as a request, as we get nearer to this gigantic project and very complicated issue, she would very much like the Commissioners to have -- I mean, with the endangered species, I mean -- this is so big and she really wants the Commission to have an opportunity to hear more about that more specifically from experts on both sides.

And then the last thing she wanted to mention is just to remind everyone that it is the Bay Conservation and Development Commission, and it is part of their role to support good development.

Commissioner Bates asked if BCDC has jurisdiction over this particular piece of property?

Executive Director Travis responded that, based on the advice of the Attorney General of the State of California, absolutely yes. Based on the advice of the attorney for Cargill, absolutely not.

Commissioner Bates continued by stating that it's relevant for the Commission to think about this because normally, in his experience on the Commission, it looks to local government and local governments come back with a plan -- the Commission looks to see about access and deal with things, you know, concerned about things like climate change and elevations and flooding and all of those kinds of issues.

But suddenly it is foisted into the situation where this is obviously an extremely valuable piece of property, it could be used in a variety of different ways, and it's important for the Commission to try to come to grips with what role it's going to play. Is it going to be reactive or is it going to be proactive and say "this is what we'd like to see there."

Commissioner Bates expressed appreciation for the comments made by other Commissioners about concern about sea rise, the rise of the bay and how the Commission is going to deal with that. It is an essential question and conceivably the Commission can deal with it in a positive way.

He also expressed interest about the talk about transit-oriented development and stated that he kept thinking he would like to learn more about that because it's on the other side of the freeway. He doesn't know how people are going to actually get from the development to these places unless they get on the freeway. There is CalTrains, but you've got to cross over a major barrier, which is the freeway. The Dunbarton Rail -- and he sits on the MTC with Commissioner Halstead -- and that's years away, if ever. So we'll be waiting here for the next 20 years before that actually happens. And then the issue of the ferry would be terrific. I think they're planning on doing it in any case.

Commissioner Bates concluded by saying he was interested in -- even though that's not their jurisdiction -- as a mayor and as a person interested in land development and transit-oriented development, he doesn't know how it works. He would like to have an off line discussion about how that might transpire. But more importantly he would like the Commission to at some point decide how it wants to proceed with this particular piece of property.

Executive Director Travis added a footnote to the jurisdictional dispute. Cargill has also said "well, we don't think you have jurisdiction but we're committed to moving forward with the planning for this consistent with your policies." And that's why, at least at the staff level, they have been willing to put the issue that has been put aside for 25 years aside for another few years. So, as you look through the policies, the salt pond policies that we've given you in the staff report, and as they are proceeding through this, take a look at it and, based on what you've heard today, give us your assessment. Are they proceeding in a manner that seems consistent with those policies? And if they aren't, give them direction as to how you would like them to change. Because the commitment the Commission has from the landowner is "we don't got to do it but we're going to do it anyhow."

Commissioner Carruthers commented that there's a lot about this that confuses him. Some of the terms like "muted tidal lagoon" or another time it was called a "brackish water lagoon." He doesn't quite understand what that is, and feels uneasy about bodies of water that are not open -- especially if they are convoluted, he begins to wonder about water quality and vectors, West Nile Virus, a whole bunch of stuff like that that he doesn't know anything about.

Also, he was impressed with Mr. Feinstein's remarks about the concerns of domestic animals and feral domestic animals and all in close proximity with habitat areas, particularly with sensitive endangered species like the Clapper Rail. Along with many of the other questions here, Commissioner Carruthers was really uneasy about what actually will be the protection to whatever development might be approved in this area. Is it the dike, is that it, is it intended to raise the -- if there is area to be developed, to raise the ground level substantially and then where does that material come from? The concerns that have been addressed, well, how do people get to all this great transit system when they have to get across the freeway.

Commissioner Carruthers also stated that he was impressed with the photograph from 1953 showing the salt ponds, the salt marsh, because 1943 is within his lifetime, it's not ancient history. It might be ancient history to a lot of the rest of you, but to him it's not. He was running around and doing a lot of things in 1943. So that's not so very long ago. And so, when we're talking about restoring, we're not talking about restoring something that's hundreds of

years past, it is within many of our lifetimes.

Commissioner Carruthers continued, saying he felt very uneasy about such a major amount of fill in an area that is so vulnerable to expected tidal action; the effort that would have to be taken to protect it when the effort to restore it is relatively simple.

Lastly, he expressed concern and confusion about the process -- Commissioner Bates, our process, but also about Redwood City's process. He was told that they are in the midst of preparing and adopting a major review of the general plan and he wonders is this project included in that or is it something subsequent? And then, he thought he heard the gentleman from the Chamber of Commerce mentioning that there's some sort of subsequent election that may be held that addresses this project. And it's possible he misunderstood that.

Mr. Bruno responded that currently the city is underway towards creating a new general plan. This property is not included in that general plan process primarily for the simple fact that the council made a decision that they didn't want to vote on the same piece of real estate twice within a relatively short period of time. And given the scope and the complexity and the energy around this site, they wanted to have a process that was independent of their general plan process to give it the full weight and evaluation necessary for that.

Mr. Bruno continued, saying that on the vote, the jurisdiction on this site is fully within the realms of the council of the City of Redwood City. There is no requirement to have a public vote on this process, but what Mr. Bigelow was commenting on is, given the experience with Measure W, that the development team certainly would anticipate that in some form or fashion -- through a referendum or initiative most likely -- that vote will take place and it's something that they will acknowledge and plan for. But currently, no, there is no need for a public vote.

Commissioner Carruthers expressed his concerns about the prospect of Redwood City pursuing a project that the Commission may turn down. If the Commission can somehow, as Executive Director Travis was saying, if it can somehow get to some clarity regarding what it might be looking for, so it doesn't build in an automatic train crash that will take place over a couple of years -- and yet, he doesn't know quite how to do that. He was certainly not prepared to do it today.

Executive Director Travis commented that the approach that staff has advised to be used is based on an approach that emerged after BCDC turned down a huge Caltrans project and Caltrans said "thanks a lot guys, why didn't you tell us earlier?" So, on major public works projects, staff brings them to the Commission in briefings like this -- two, three, sometimes four times; so that the project proponent gets feedback from the Commissioners, they incorporate that in their plans, they come back, they say "you asked about this issue, you asked about the transportation links, let me show you how we're dealing with that," so that, as the Commission moves through the process and as the development team moves through the process, hopefully everyone gets to a point of some comfort. So, when staff puts the project before you then in a permit application it's not all new, a lot of the issues have been vetted and the Commission can really then focus on the key issues for BCDC and in making a thoughtful decision. So staff's expectation is they'll be back here again, they don't know how soon, but they'll be back.

Commissioner Carruthers followed up by stating that it sounds like one of the things

you're suggesting as the possibility is, rather than have a single pre-nuptial encounter, I guess, that we might have a series of dates that would feel out different aspects?

(Laughter.)

Executive Director Travis responded by saying "Commissioner Carruthers, that's the kind of thing I would say and you would chew me out for saying it."

Commissioner Johnson stated that -- given that description of the process -- a fundamental question that needs to be considered is, is this an area that should go forward for development, because the risk of having them come back and come back and come back is that every time they come back they get a couple of comments like -- here it's very conceptual, there isn't a lot of information, but they're going to come back next time and say "well, we got your comments last time, you had the opportunity to tell us what you think" and now you're sort of locked in. She thought that was a little bit risky for the Commission. And the fundamental threshold question is should this land be developed? Commissioner Johnson stated her personal opinion was that she was just really surprised that this land is being considered for development. You know, growing up in the Bay Area, she thought that -- this appears to be, she didn't even want to call it land, but -- whatever it is, it could easily be restored into wetlands. And it was part of the bay. She had to say that she agreed with many of the speakers who said it was part of the bay, it should be returned to the bay. She saw many mistakes -- She had seen the results of many mistakes of filling in the bay and didn't think that was going to happen again. And this is too large of a part of the bay that has the opportunity for restoration as wetland, and that's why she thought the first thing that this Commission needed to do was -- so that they don't keep coming back and then they're spending more money and they're doing more and more and they say, "you know, you had your opportunity to stop this" --. You know, to decide the fundamental question. And also Redwood City -- Redwood City needs to know - when is this Commission going to make a decision to allow the development or not allow the development --. She didn't think the issue of -- she is an attorney, but the Attorney General's legal position certainly carries a lot more weight than the developer's attorney's position. And she didn't think a dispute regarding whether or not there's jurisdiction between the Attorney General's Office and the developer's attorney was adequate reason to say let's compromise and let them go forward with the development.

Commissioner McGlashan stated that she was very moved by what Colleen said about the need to engage people with nature. That's a very effective thing to do, but -- at the same time, one thing that worried him a little bit about the presentation was perhaps not enough emphasis on areas for nature that's untrammelled so that wild animals -- the Clapper Rail and others -- can thrive without interaction with human beings.

He would definitely at minimum need to see a better description of what's going on in the protected habitat areas that aren't affected by humans. It's fine to have park-like interactions in those fingers if you end up with a development scenario like that, but he hopes that there's upland and wetland area and marsh habitat in a very protected zone that's off limits to humans and dogs and kayaks and stuff.

Also, one of the things heavy on his mind -- nature is so embattled in so many places

that it is hard to resist any and every opportunity for thorough and complete restoration. He is a huge fan of Peter Calthorpe's smart growth theories and yet nature is losing around the world and every natural system on earth is in decline. So the dilemma he is going to face is -- as a Commissioner -- how do we balance the desperate need to provide room for restoration and re-growth of our natural systems and animals and flora, and at the same time provide way better models for the built environment that serves human beings? And it may be better done across the freeway, frankly. And so Commissioner Bates raised some good questions for all of us.

Commissioner McGlashan continued, saying that, as a local guy in Marin, we need to do a much better job of our land use where it's already paved, and we do a miserable job in Marin using our land well. And at the same time we've got to provide untrammelled wilderness and park experiences for our people, so we've got an electorate that cares and a place for animals to live unmolested by us. And there's just too many of us, everywhere all the time, and so we've got to kind of develop some land use models that provide some space. And so he hopes you guys will think carefully about that. Obviously, critically, to discuss that with the residents of Redwood City and San Mateo County as you go through the local stuff, but that will be a subject he'll want to hear a lot more about when the development team come back.

Commissioner Bates stated that -- picking up on Commissioner Johnson's comments -- he thinks it's important for the Commission to agendize this and make a decision whether it wants to preserve this, you know, in perpetuity as a wetland, or is the Commission in fact willing to go with some sort of development. He thought that the Commission should face that issue early on. It's only fair for the developer and it's also fair for Redwood City for the Commission to make that decision. If it decides, yeah, we can see some limited development there, or maximum development, whatever it decides, it's important for the Commission to -- this threshold is very important, and he doesn't want to see this going down the road and then they argue and say "well, God, you should never have done this in the first place." He thought it would be great to make that kind of a decision and then proceed from there.

Executive Director Travis commented that the Commission has already adopted salt pond policies. Staff has given those to you. What the Commission should do is look at those, and that is the policy guidance Commission staff is using because that's what will be used in evaluating any permit application. So the issue really isn't should this area be developed or shouldn't it, it is what happens to an area that is taken out of salt pond production. And the Commission has laid out the process that it should go through there. So look at those policies, and we can agendize this. But the action item would be, given where the process is now, is it being handled in a manner consistent with BCDC policies or not?

Commissioner McGrath suggested an alternative. He stated that there's a very interesting policy question here, as Executive Director Travis has laid out, of this is a flood prone area, we are facing sea level rise, and what do you do about that? On the other hand, it's not the only one. And he's also made it clear that this is going to be a very tough project and I think the developer is fully aware of that.

What might be more useful is to have a discussion of flood control risk that doesn't single out this particular development, but looks at the context. And the choice may well be that this could be an example -- he's not saying that it is -- this could be an example of how we

must think about coastal protection and the mitigation of coastal protection versus with 90 percent of the horses out of the barn do you lock the gate now on a flood control issue? And it's not an easy issue, but he would hate to get into a position well before all the information of what habitat exists on this site, what's the feasibility of development proposal. It is tough to say that you should allow development behind levees at a site, but he would like to see that in the full context, not just on a one project. So the Commission hasn't singled out a developer and put themselves perhaps in some jeopardy. He'd rather see it in a context.

Commissioner Bourgart asked the question, on the presumption -- let's just say that this is clearly within the jurisdiction of BCDC and let us just say that a fully formed proposal came before us for the development. What would be the issues or potential conditions that we could impose, or what are the types of issues? Obviously, public access and water quality. What would be the other key issues that we would be looking at to determine whether or not we would grant the permit?

Executive Director Travis responded that, again, staff has given the Commission the policies and they lay out how you should go about this and what the issues should be that you would confront. And the reason the development team hasn't talked about how much housing, or what it would look like, is because the advice he gave them was that's an issue that you work with the local government on. That's what Redwood City decides. BCDC is going to be looking at how much of the area -- has there been a good faith effort to acquire it by the public, should there be another chance for the public to acquire it? If there isn't that, how much of the site should be developed and how should it be planned? But the Commission's focus is primarily on the wetland side of it.

As he said, they're addressing sea level rise. He reminded the Commission that they don't have authority over that. If somebody wants to build something in an area that is susceptible to flooding, BCDC works in partnership with three other regional agencies. None of them has the authority to say "no, you can't do that." In fact, none of them even has the authority to say "it's stupid. At least you have to build a levee to protect the poor people that will live there." That authority rests with local government.

Commissioner Bourgart commented about whether or not the Commission should essentially cut the process short now by deciding whether or not this is an appropriate location for development. He stated that he would not be in favor of that. Obviously he doesn't want to keep making the development team and the City of Redwood City continue to spend time and money on something which is ultimately going to be futile, but that's obviously their choice. The Commission knows way too little about what the proposal is going to be. It needs to fully understand what those key issues will be, whether or not it has jurisdiction over them. So, he would suggest that it sounds like it's a process that's going to take a couple of years at least before it comes to fruition. The composition of this Commission may very well change to some degree over that period of time. He believes that the Commission should give them the opportunity to continue to develop their plans, work with the City of Redwood City, and come before them again, and perhaps again after that, as the plans become more fully formulated and more detailed, so the Commission can really pinpoint what those issues may be and can address them -- or perhaps they're unable to address them. But it needs to give them the

opportunity, rather than to shortcut the process at this stage.

Chair Randolph said that he also thought that it would be difficult for the Commission to make a preemptive decision in the absence of an actual proposal where you can actually see the terms of the impacts. His suggestion was that, for a future meeting not far down the road, the Commission should agendaize the salt pond rules they've adopted and the Commissioners can all get a better understanding from staff about what those actually mean and how they might apply to this particular case.

Commissioner Johnson stated that the policy regarding salt ponds needs to be looked at probably in context with the wetland restoration goals also.

Commissioner Addiego remarked that he hasn't enjoyed a classic battle like this, or the beginnings of a battle, since the 1980s. The housing issue is foremost in everyone's minds, and we know we don't want people to travel to Tracy and commute to our communities for work -- it's just not healthy on so many levels. But if you've driven in San Mateo County you understand that the El Camino corridor is the transportation spine of the whole county. And, except for pockets in Redwood City -- to their credit -- and San Mateo, it is a development wasteland. The potential holding capacity for population is not even a fraction of what's currently being enjoyed, and the transportation infrastructure is there. So he looks for a day where the Commission can work more regionally. He understands Redwood City and trying to meet their immediate demand.

Chair Randolph noted that the ferry terminal, proposed terminal, is adjacent to the property. He remembered being involved in the blue ribbon task force on water transit back around '99 or 2000 when that idea of a Redwood City terminal was discussed -- and he recalled that it was an amazingly high percentage, maybe 40 percent or so, of the employees in Redwood City lived in San Francisco and commuted down 101. So there is from the standpoint of transit and access and smart growth, it is significant that a ferry terminal could be immediately adjacent to the property. It sort of fits into the Commission's regional growth plan or strategy, so that sort of factors into what the commute and mobility patterns are if the Commission is looking at it in that larger context.

He thanked all the Commissioners for their comments and thanked the team for coming today from Redwood City. He also thanked the mayor for joining the Commissioners.

9. Briefing on Climate Change and the Public Trust Doctrine. Staff Chief Counsel Tim Eichenberg briefed the Commission. He began by stating that BCDC's 2008 Strategic Plan calls for a legal analysis of property rights and takings issues and the use of the public trust doctrine to address climate change and sea level rise. He summarized staff's background report:

The report examines three things:

(1) climate change and sea level rise affect BCDC's jurisdiction and the authority in the Bay;

(2) How the public trust Doctrine affects government actions and the 5th Amendment takings clause;

(3) How the Public Trust Doctrine can be used to address climate change and sea

level rise in the future.

The dilemma facing the Commission regarding this issue is that BCDC was created to address a shrinking bay, but the bay is now expanding. BCDC has extensive authority in the bay itself and in its certain waterway jurisdiction, but only 100 foot jurisdiction in the shoreline band and only for public access. Land uses are chiefly regulated by the 55 local governments within the Bay Area.

BCDC can't really stop development in flood-prone areas out of its jurisdiction. Nor can it ensure the availability of upland areas for the migration of wetlands and marshes, nor regulate greenhouse gases.

BCDC's laws and policies either need to be strengthened or the Commission will need to use its existing laws and policies in new ways, or both.

The public trust Doctrine ensures that the sea and shoreline is common to everyone; that there is public access for certain uses. The courts have strictly scrutinized efforts to convey away the public trust.

Each state has developed their own public trust doctrine. In California the doctrine is enshrined in the state constitution. It accommodates changing public needs; thus, it can be changed as public needs change. The trust also applies to recreation, wildlife habitat, environmental protection and preserving land in its natural state.

The State Lands Commission monitors and manages trust lands in California. About 22 percent of the bay's submerged lands lie in private ownership because they have been conveyed away. About 25 percent of the bay is now in local government jurisdiction. However, those areas remain subject to the public trust, even though they are in private ownership or owned by local governments.

BCDC also has trust responsibilities, which are expressed through its permitting and planning authority. BCDC must be consistent with the Bay Plan uses, and when they conflict the courts have decided that BCDC must err on the side of the public trust doctrine.

The takings clause -- the 5th Amendment of the U.S. Constitution -- also enshrined in the California Constitution provides that private property must not be taken for public purposes without just compensation. Most pertinent to BCDC is a regulatory taking, which occurs when a government action denies all economic use of a parcel of property, or lacks a nexus with the impacts of the project.

How does sea level rise affect BCDC's jurisdiction? Under the McAteer-Petris Act, BCDC has jurisdiction over areas "subject to tidal action." BCDC's bay jurisdiction goes up to the mean high tide line. Therefore, the high tide line rises, BCDC's jurisdiction goes up with it.

Commissioner McGrath asked if there's a dike that impedes that natural movement landward, like there is at Oakland Airport, then would the excursion or the advancement of bay jurisdiction be just up the dike a little bit as sea level rises? So if there's a dike anywhere in the bay that prevents the free flow of the tides, then there may be public trust still on the property even if there is no BCDC jurisdiction?

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Chief Counsel Eichenberg responded that public trust applies below mean high tide and that once BCDC has jurisdiction, even if there is a dike built after that, BCDC still has jurisdiction. The dike does not prevent BCDC from asserting its original jurisdiction. Also, the public trust may still apply to diked land if it is below mean high tide unless the trust has been terminated.

Commissioner Nelson remarked that, on the flip side of that coin, is there a circumstance under which BCDC would not have jurisdiction but the trust applies? Is there a reverse where, sea level rises and we gain jurisdiction over that new bay, and the trust become newly applicable to land that was previously dry?

Chief Counsel Eichenberg responded that it depends. The trust applies to newly flooded lands below mean high tide unless that land is no longer appropriate for trust uses. For example, the area in downtown San Francisco was at one point part of the bay, but a legislative grant of that area to the City of San Francisco extinguished the public trust. The other agency that's capable of doing that is the State Lands Commission.

Commissioner Nelson followed up by asking if in parts of the bay where we still have a natural shoreline, a natural transition from wetland to upland, under those circumstances in a relatively natural area, would the Trust be mobile?

Chief Counsel Eichenberg responded that yes, it would be mobile. And there are even a couple of cases that say that the Trust applies above mean high tide. There's the Mono Lake case and there is a case in the Altamont Pass with the wind turbines where you have public trust rights over the wildlife. In the Mono Lake case you had public trust over non-navigable waters that were draining into Mono Lake that were being blocked, and the court held there is a public trust that should allow that lake to be filled because it was shrinking.

Commissioner Carruthers asked if the dike breaks and the area floods, does BCDC jurisdiction apply--?

Chief Counsel Eichenberg responded that it really depends on where the mean high tide line is.

Executive Director Travis stated that BCDC has a regulation that if a levee breaks -- there was a situation up along the Napa River where a levee broke and the wetlands formed behind it and BCDC claimed jurisdiction. It went all the way to the California Supreme Court and it determined that BCDC did in fact have jurisdiction. The Commission subsequently decided, if a levee breaches we have to notify the property owner just in case he didn't notice that he was wet. And the property owner has a year to repair it. If they don't repair it in a year then our jurisdiction goes into the flooded area.

Commissioner Bates asked if the Cargill property discussed earlier is subject to the public trust? Chief Counsel Eichenberg responded that he did not know. Commissioner Kato responded that that particular parcel was subject to a settlement agreement with Leslie Salt that terminated the public trust. Commissioner Kato stated that she would provide more information on the agreement at a later date.

Chief Counsel Eichenberg concluded by stating that the last part of the report briefly

explores ways in which the Trust can be used to address climate change and sea level rise. Some of these can be undertaken pursuant to existing laws and policies and some may require changes in the McAteer-Petris Act or the regulations or the Bay Plan.

He suggested that the Commission may want to take a closer look at the shoreline band where the Commission has more limited authority; at mitigation fees; at seawalls and coastal armoring that's probably going to become of more immediate concern as sea level rises; at the concept of rolling easements; and at wetland, marshes and salt ponds. Preservation below mean high tide must be consistent with the Trust, but above mean high tide you may need additional authority.

Chair Randolph then asked for public comment.

Michael Warburton, Executive Director of the public trust Alliance, stated that for the last seven years they have been trying to educate both communities and the trustees about their rights and responsibilities under the Public Trust Doctrine. And when public rights have been threatened they sometimes intervene in legal processes to defend those rights when it has appeared that others couldn't adequately take on the task.

We're here today to express our sincere thanks to leadership of BCDC for engaging this collaborative report by both agency staff and local law schools. It's a wonderful example of exactly what a responsible trustee should do. Many trustees are grappling with the impacts of climate change and the Public Trust Doctrine will be important for adaptive strategies for all of them, particularly agencies dealing with water rights and development of the changing boundary between land and water.

In my case, I'm an advocate as well. And for all the voices that see this report as a radical leading edge, I want to express the concern that this might be too modest and timid as we recognize the reality of sea level rise. I know that BCDC is no stranger to the complexity of regulation in the public interest when the development community which you regulate is such an active funder of political campaigns. It's a regular part of the political and legal processes in which local communities participate.

Here in the Bay Area we aren't in quite the continuing emergency situation as San Diego, which has been corrupted into giving away its public trust as a part of regular town business, but we are affected by statewide climate.

Whatever the context, greater understanding of the obligations inherent in the Public Trust Doctrine will help keep public attention on issues of long-term viability. That's an important notion when dealing with businesses with notoriously short-term perspectives, which include developing residential uses on areas of the lowest elevation areas surrounding a rising bay.

The set of practices inherent in long term public stewardship set out in the public trust Doctrine are truly valuable in adapting to changing circumstances. The treatment of takings when the public trust is reclaimed is only one of the conventions and practices that I'm talking about. The most important aspect to focus on here is the obligation to future generations which requires trustees not to be distracted by groups most concerned with short-term financial gain.

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Maybe the Supreme Court of Hawaii said it best in 2000, when they adopted the Public Trust Doctrine as the state's legal framework for stewardship: *"We simply reaffirm the basic modest principle that the use of precious resources of our state must ultimately proceed with due regard to certain enduring public rights. This principle runs as a common thread through the constitution, code, and common law of our state. Inattention to this principle may have brought short-term convenience to some in the past, but the constitutional framers and legislature understood -- and others concerned about the proper functioning of our democratic system and continued vitality of our environment and community may also appreciate -- that we can ill afford to continue down this garden path this late in the day."*

So in any case, -- it's not a radical notion and it's really important and that trust and BCDC's jurisdiction is going to move, and we want to work with you on that. And there are public members, you know, who are learning more about their rights in the public trust domain.

MOTION: Upon motion by Commissioner Nelson, seconded by Vice Chair Halsted, the Commission voted unanimously to close the public hearing.

10. **Consideration of Strategic Plan Status Report.** Executive Director stated that Thursday, September 17 has been selected for the next Strategic Planning Workshop. He asked Commissioners to reserve the entire day.

MOTION: Commissioner Wieckowski moved, seconded by Commissioner Bourgart, to approve the elimination of one of the tasks and change deadlines for five other portions of the draft Strategic Plan. The motion passed unanimously.

11. **New Business.** There was no new business

12. **Old Business.** There was no old business

Chair Randolph entertained a motion to adjourn.

13. **Adjournment.** Upon motion by Commissioner Halsted, seconded by Commissioner Smith, the meeting adjourned at 4:15 p.m.

Respectfully submitted,

WILL TRAVIS
Executive Director

Approved, with no corrections, at the
San Francisco Bay Conservation and
Development Commission Meeting
of April 2, 2009

R. SEAN RANDOLPH, Chair

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