

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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January 7, 2011

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 December 16, 2010 Commission Meeting

1. **Call to Order.** The meeting was called to order by Chair Randolph at the MetroCenter Auditorium, 101 Eighth Street, Oakland, California at 1:07 p.m.

2. **Roll Call.** Present were: Chair Randolph, Vice Chair Halsted, Commissioners, Bates, Chiu, Fossum (Represented by Alternate Kato), Gibbs, Gioia, Groom, Jordan Hallinan, Hicks, Lai-Bitker, Lundstrom, McGrath, Moy, Nelson, Reagan, Sartipi (Represented by Alternate Richards), Shirakawa, and Ziegler. Legislative member Charles Taylor was also present.

Not Present were: Association of Bay Area Governments South Bay (Vacant), Association of Bay Area Governments West Bay (Vacant), Secretary of Resources (Baird), Sonoma County (Brown), Department of Finance (Finn), Governors Appointee (Goldzband) Marin County (McGlashan), and Napa County (Wagenknecht).

3. **Public Comment Period.** Chair Randolph asked for any public speakers and Mr. David Lewis was the first to address the Commission.

Mr. Lewis stated: I'm the Executive Director of Save the Bay. We have been updating you on our efforts to reduce trash from getting into San Francisco Bay.

I wanted to call to your attention two ordinances in different jurisdictions that passed this week to place restrictions on the distribution of free plastic bags, single use shopping bags.

The city of San Jose enacted the toughest ban in the state of California starting a year from this January. This ban will eliminate the distribution of free plastic bags at most retail outlets in the City of San Jose and place a 10 cent charge on paper bags.

And in the county of Marin the Board of Supervisors adopted a similar ban on the distribution of free plastic bags in Marin.

Other cities and counties are poised to take a similar ban and we hope that this will lead to enactment of statewide legislation that will reduce one of the leading sources of trash in San Francisco Bay.

Chair Randolph asked Mr. Lewis what the thinking was behind charging for the paper bags since these are recyclable.

Mr. Lewis responded: Paper bags also have a significant impact on the environment. They are a significant source of trash and there is a significant energy and water cost to create



Bay Conservation and Development Commission

these paper bags.

When plastic bags are prohibited it seems that people just increase their use of paper bags instead of replacing it with reusable bags. So this charge is an incentive for people to use reusable bags.

Mr. Steve Lowe commented: I am the Vice-President of the West Oakland Commerce Association. We are upset that there has been such little outreach from the Gateway Park Planning Process to West Oakland.

We have a tree planning program that we have been developing for the last 10 years and the currently proposed plan does not coordinate with this plan.

Please give more consideration to the groups and organizations that are in West Oakland.

4. **Approval of Minutes of December 2, 2010 Meeting.** Chair Randolph entertained a motion and a second to adopt the Minutes of December 2, 2010.

MOTION: Commissioner Lundstrom moved the item, seconded by Commissioner Reagan. The item passed with Commissioner Gibbs abstaining.

5. **Report of the Chair.** Chair Randolph stated: We've losing a few members of our Commission either because they have been elected to other offices or have terms that are ending.

That includes Rich Gordon and Bob Wieckowski, who were elected to the State Assembly; and Sophie Maxwell whose terms of office are ending. Our staff has prepared draft resolutions of appreciation for these departing Commissioners. We realize Alice Lai-Bitker's term is also coming to an end.

I would welcome a motion, second and affirmative vote to approve four resolutions.

MOTION: Commission Lai-Bitker moved the item, seconded by Gioia. The item passed unanimously.

a. **New Commissioners:** The San Mateo County Board of Supervisors has appointed Carol Groom to succeed Rich Gordon at BCDC. And the State Lands Commission has agreed to the reappointment of Grace Kato as the Alternate to Curtis Fossum, the newly appointed Executive Officer of State Lands.

I'm sure the Commission joins me in expressing our appreciation for these two members of our Commission.

b. **Next BCDC Meeting.** We are going to cancel our next regularly-scheduled meeting, which falls on January 6th, because the mailings for that meeting would have to go out on Christmas Eve and New Year's Eve.

Therefore, our next meeting will be five weeks from today on January 20th, 2011. At that meeting, which will be held here at the MetroCenter in Oakland, we will take up the following matters:

**BCDC MINUTES
December 16, 2010**

(1) We will vote on an application for a large mixed-use development on the Oakland waterfront called the Brooklyn Basin project. We're holding a public hearing on this application today

(2) We will hold public hearings and vote on initiating the process to consider two proposed Bay Plan amendments. The first amendment deals with a water-related industry designation in the Collinsville area of Solano County and the second deals with the San Francisco Waterfront Special Area Plan.

(3) We will consider approving an agreement with the Delta Stewardship Council as to how we can best coordinate our work in the Bay and the Council's work in the Sacramento-San Joaquin River Delta.

(4) We may begin to discuss specific language options for the Bay Plan policies on climate change.

(5) We will receive a briefing on the regional Sustainable Communities Strategy.

(6) We will consider a status report on the progress we are making in carrying out our strategic plan.

c. **Ex-Parte Communications.** That completes my report. In case you have inadvertently forgotten to provide our staff with a report on any written or oral ex-parte communications, I invite Commissioners who have engaged in any such communications to report on them at this point.

Commissioner Kato commented: During the normal course of business in the State's Land Commission I discussed the Brooklyn Basin Project with the developers and other interested parties of the public.

6. **Report of the Executive Director.** Executive Director Travis reported in regards to Personnel. We're finally able to move ahead with hiring a Regulatory Program Director, a position which has been vacant since Steve Goldbeck was promoted to Chief Deputy Director in September.

We've selected Brad McCrea to take on the big challenges that come with managing all our permit, enforcement and dredging staff.

Brad has been our Bay Development Design Analyst for the past 12 years. He holds a Bachelor of Arts degree and a Masters of City Planning and Landscape Architecture from the University of California at Berkeley and is a registered landscape architect licensed in the State of California.

I'm delighted that Brad has agreed to accept this promotion. If you agree with our selection, we'll fill the vacant Bay Development Design Analyst position as soon as we can.

At this point, I would appreciate a motion, second and affirmative vote to confirm the appointment of Brad McCrea as BCDC's new Assistant Executive Director for Regulatory Affairs.

MOTION: Commissioner Nelson moved, seconded by Commissioner Kato and the item

passed unanimously by voice vote.

James Stillman has joined our staff as a planning intern. He received a B.A. in Environmental Studies and Urban Planning from Sonoma State University and has six years of professional experience, including four years as an associate planner with the City of Woodland.

We're planning two special meetings that I want to call to your attention to see if the dates we've selected are appropriate.

The first is an orientation briefing for new Commissioners. Local governments and ABAG typically make their appointments to BCDC in January.

Therefore, unless we get some unexpected permit applications, we'd like to hold an orientation briefing in lieu of our regularly-scheduled Commission meeting on Thursday, February 17th, 2011.

The other meeting is our annual Strategic Planning Workshop. With the passage of a measure allowing the Legislature to approve a state budget by a simple majority vote, there's an increased likelihood that we'll know what our budget is by July 1st.

Budget change proposals for the fiscal year that begins on July 1, 2012 have to be submitted in early September.

Therefore, July would be the best time for our strategic planning workshop, preferably on Thursday, July 21st in lieu of our regularly-scheduled Commission meeting that day.

Please let me know if you know of other meetings or obligations that would conflict with BCDC meetings on these dates.

a. **Local Government Outreach.** As part of our efforts to outreach to local governments concerning the Bay Plan climate change amendments, since our last meeting our staff has discussed the proposed amendments with the Contra Costa County Mayors' Conference, the Contra Costa Council, the Alameda County Mayors' Conference, the City/County Association of Governments of San Mateo County and the East Bay Economic Development Alliance.

We've found these meetings to be quite helpful and, as you directed, we will incorporate all the input we received at the meetings when we revise our staff recommendation early next year.

b. **One Bay Area.** A new non-profit organization called Friends of One Bay Area has been established to support the work of BCDC and the other three regional agencies that make up the Joint Policy Committee.

I have the opportunity of serving on the Board of Directors of this organization. I believe that doing so would not conflict with my responsibilities as your Executive Director; rather, it would advance BCDC's interests in regional planning in the Bay Area.

Therefore, unless you have objections, I will agree to serve on the Friends of One Bay Area board.

7. **Commission Consideration of Administrative Matters.** There were no items to discuss.

BCDC MINUTES
December 16, 2010

8. **Public Hearing on Permit Application No 7-06 from Oakland Harbor Partners, LLC, the City of Oakland and the Port of Oakland for the Brooklyn Basin Redevelopment Project in the City of Oakland, Alameda County.** Chair Randolph mentioned that the Commission would not be voting on this item until the next meeting in January.

Mr. Brad McCrea presented the following: I did work for the Port of Oakland for 14 years and this project is located within the Port of Oakland. I did not work in any way on the development of this project and I have no continued financial interests in it and I don't believe I have any financial conflict of interest. I do believe I can evaluate it fairly under the terms of BCDC's legislation.

This application is for redeveloping 62 acres along the Oakland Estuary in the City of Oakland.

The co-applicants of Oakland Harbor Partners, LLC the Port of Oakland and the City of Oakland seek approval to develop up to 31 hundred residential units, approximately 200,000 square feet of retail and commercial space and approximately 25 acres of parks and open spaces.

The applicants will present the project and it will be followed by a public hearing.

Following the asterisk on page 10 of the application summary, Table 2, Approximate Public Access Areas, the first row for Estuary Park, the words, does not include 3.3 acres of existing dedicated public access at Estuary Park that will be improved as part of the approval for the Jack London Aquatic Center, so the words, will be approved, should be changed to, was required.

The staff believes that some of the issues raised by the project include: whether the project is consistent with the MacAteer Petris Act and the San Francisco Bay Plan policies regarding Bay fill, public access, the public trust, natural resources, recreation and protection of the shoreline.

Mr. Michael Ghielmetti of Oakland Harbor Partners presented the following: Our company has been working on this project for about nine years with the City of Oakland, the State Lands Commission, the Regional Water Control Board, the State Department of Toxic Substance Control and the community at large.

We were selected by the Port to work on this in 2001 and received approvals from the City of Oakland in 2006 and, again, in early 2009.

We've also received approvals from the State Lands Commission and have an approved work plan with the State Department of Toxic Substance Control.

We have worked very hard at community outreach and have unprecedented coalition of folks supporting this.

There's about 65 acres on the water in three different peninsulas that have been separated from the City of Oakland for many years and our goal is to reunite this with the Oakland.

The concept for a mixed-use, mixed-income neighborhood has been created to

accomplish this. Public transportation and services have been accessed for this.

The site is currently an industrial area. All of the tenants have various industrial uses. There are some areas that are in disrepair.

The open spaces make up about 50 percent of the project and we're counting on people coming and viewing this as a regional amenity.

We have dealt with issues of climate change by building the site up three feet so we're well past your 2060 goals.

We are proposing to preserve the Ninth Avenue Terminal and the rest of it will become a public park.

We are planning on ground floor retail with residential above and all of this being very active and vibrant.

On the residential side there will be stoops and front doors on the street to enliven the sidewalks.

The plan will be implemented in four phases.

We have agreed to establish an interim trail until the project is completed.

There are a number of view corridors that were of concern to the Designer View Board at BCDC and we spent a lot of time educating them and being educated by them and made some changes to our plan in response to some of their thoughts and queries.

The shoreline conditions are of particular concern to BCDC and we intend to improve public access in many areas.

We took great care to minimize Bay fill and worked with BCDC staff and the Regional Water Control Board staff to accomplish this.

I am available for questions and I thank you for your time.

Mr. Bill Threlfall a citizen of Oakland stated: I'm here to speak to the Interim Bay Trail. The language of Measure DD, 2000 bond issue, waterfront improvement bond issue, calls for, quote, trail acquisition and construction along the estuary waterfront to provide continuous public access from Jack London Square to Martin Luther King Jr. regional shoreline.

The bond measure language explicitly provided for three new parks and the Bay Trail in the area of the project before you.

However, due to the intervention of the project there's been no progress on those goals yet every other significant Measure DD goal has been attained or is now in progress.

This is frustrating the intent of the voters, limiting public access and has the potential to continue for years.

The development agreement with the city does call for the developer to install an interim Bay Trail but on a timeline which may involve a delay of a decade or more.

I urge the Commission to require as a condition of your permit that the developer

complete an interim Bay Trail throughout the entire project area soon on a timeline much earlier than that now called for in the agreement with the city.

This requirement would help mitigate the impact of this project on public access and on the attainment of the goals approved by an overwhelming majority of the citizens in 2002.

Mr. Andy Nelson the Co-coordinator of the Oak to Ninth Community Benefits Coalition stated: We represent three resident organizations whose members live in Chinatown, East Lake and the San Antonio neighborhoods which are immediately adjacent to and within a mile of this project.

Our coalition entered into a process with the developer that resulted in agreements for 465 units of affordable housing and for job training and placement funds as a part of this project for local residents.

We would note that as an added bonus for our residents the access to the open space and those amenities which is extremely rare for folks who live in assisted housing in this manner.

We support this project and hope that you will see the benefits of it as we do. Thank you.

Ms. Mao Nguyen addressed the Commission in Vietnamese. An interpreter stated the following: Ms. Nguyen says that she lives in the San Antonio area that is very close the Oak to Ninth Project.

She is very concerned about this because most of residents who live in that area are low income families and she thinks Oak to Ninth is really needed to improve the neighborhood.

The open spaces and park aspects of the project are especially attractive to the community because currently there is not enough space for seniors to exercise, community activities and for their children to recreate.

The open spaces and parks would be good for the safety of the seniors and residents of this area. Ms. Nguyen thanks you very much for listening.

Ms. Naomi Schiff of the Oakland Heritage Alliance commented: Our organization is a 30 year old, one-thousand member group in Oakland and a key sponsor of Measure DD and its coastal improvements of which we are very proud.

We think it would be excellent for BCDC to do the area plan that is referred to in the staff report and focusing on the open-space areas and the less worked-out areas.

This presents an opportunity to preserve part of the Ninth Avenue Terminal which is a long building of 180,000 square feet. We think that just preserving the façade does not adequately interpret the function of this building which is now unique on the Bay.

This would enhance the Bay Trail and would serve as a real public amenity.

We are hoping to see an immediate, interim Bay Trail. I would like to urge you to preserve a larger section of the Ninth Avenue Terminal and to insist that we get our interim Bay Trail soon. Thank you.

**BCDC MINUTES
December 16, 2010**

Ms. Marina Carlson stated: I'm here today to object to this proposed project. There are too many issues that need to be addressed before any development can be approved.

First and foremost are the issues of public access and the unwise destruction of a public asset.

This location is much more valuable to the public as it exists. If the City of Oakland and the Redevelopment Agency would like to see development go forward they need to rethink the project so that the public access to this area is permanent, easily accessible and leads to a broad, expansive, open space with park-like amenities.

I suggest the first thing to be built should be an overpass starting at the base of Tenth Avenue and ending on the roof of the Ninth Avenue Terminal.

This span is short and the Bart tracks are below street level, a pedestrian overpass not for auto traffic that would also accommodate wheelchairs, bicycles and an occasional emergency vehicle. This would link the neighborhood to our shoreline.

The rooftop of the Ninth Avenue Terminal would become a vast viewing platform for the public.

The City of Oakland went about approving this project as if it were a small infill subdivision. It is our waterfront. It must satisfy the public first and then allow for some limited commercial development only.

Take the residential out of the proposal.

BCDC should study this coastal area further. It may be underwater with climate change. This coastal area would also succumb to liquefaction with the expected and eventual next, strong seismic event.

Do not put future residents in this area at risk. Please deny this permit until all these issues are resolved.

I've also included some letters that were written to the City of Oakland Mayor's Office and planning staff with additional objections and they didn't respond.

Mr. Scott Petersen of the Oakland Chamber of Commerce stated: We urge your support for this permit application.

The extent of outreach and the broad public support for this project is something that BCDC should pay attention to.

What we've been paying attention to is the job opportunities that this project will create, the open-space access that has been accommodated in the design, the effort to clean up the contaminated site and we hope you will approve this project. Thank you very much.

Jim Townsend of the East Bay Regional Park District commented: For over 75 years the Park District has worked cooperatively with private developers and public agencies to make sure that quality public access to the Bay shoreline was provided.

The Park District is concerned that this development would leave the implementation of the Bay Trail within the project to some point in the distant future.

While we understand that the project involves substantial at-risk investment by the developer prior to the construction or sale of any units at the site, we find the delay in the provision of public access to the shoreline somewhat troubling.

Other segments of the Bay Trail along the Oakland shoreline are under construction and design and are being worked on now.

To clarify East Bay Regional Park District's position we would support the inclusion in the BCDC permit of a requirement that the developer use their very best efforts to provide an interim Bay Trail within the project site within 18 months of permit issuance.

The Park District pledges its cooperation, support and looks forward to working with all parties to provide quality public access along the Oakland shoreline in a very timely manner. Thank you very much.

Mr. Andreas Cluver, Secretary/Treasurer of the Alameda County Building and Construction Trades Council and Executive Board Member of the Alameda Labor Council stated: We are here in strong support of the project and would like to see it move forward as quickly as possible.

In addition to the environmental benefits I'd like to focus on the economic benefits.

We are looking at 30 percent unemployment and continued unemployment in the trades for the next couple of years.

In addition to that many communities in Oakland are experiencing 50 percent or more unemployment and it's these types of public/private partnership projects that are going to help us get out this recession.

I think this is a very exciting project in terms of collaboration between the community, labor and the developer. We actually have three very exciting agreements on the table, a project labor agreement, a housing agreement and a hiring and training agreement.

This will provide an opportunity to many Oakland residents to channel into construction jobs for the trades that are going to be doing the work for this project.

I strongly urge your support in moving the process forward and getting this project going. Thank you very much.

Mr. Steve Lowe commented: My feeling is that more attention needs to be given to the Ninth Avenue Terminal. This is an icon on the Bay and if it were in San Francisco there would be a tremendous outcry for the destruction of this building and it would be preserved; because it's in Oakland, it's a different story.

We find it puzzling that this body which is supposed to protect all of the Bay is mostly concerned with historic preservation only in San Francisco.

There are other uses for this building which has been shown frequently in other meetings. This would make it a regional draw, if not, something that could be developed as a

retail highlight of Oakland. And yet, that has always been pushed aside for political reasons.

It's just extraordinary that you have this one time to preserve this one building that it will be thrown away because the process here does not respect the historic preservation.

Mr. John Sutter of the East Bay Regional Park District commented: I am a board member of EBRPD and my district includes most of Oakland including the Oak Ninth area.

I want to emphasize that the area around the Ninth Avenue Terminal and the Bay Trail are linked.

Insofar as the Ninth Avenue Terminal is concerned, it's important to preserve the deck or the apron of the building between the Ninth Avenue Terminal and the water.

The developer's proposal would cut it in half so it would only be about 15 feet wide. That's a loss of a significant amenity because it could be a very exciting stop on the Bay Trail.

This narrowing would make it very difficult for the type of development that Mr. Ghielmetti has referred to.

The view from this vantage point is an intimate one and should be preserved.

I concur with the suggestion made by the Measure DD coalition that the Bay Trail should be completed within 18 months of the issuance of the permit by this body.

And that's important because of very long delays that other speakers have referred to.

We need an interim or temporary Bay Trail now and we need it because the Trail has been completed both north and south of this location and we don't want this to be the last location where the Bay Trail is completed.

Mr. Matt Regan of the Bay Area Council addressed the Commission: The focus of our work is in developing the San Francisco Bay region as the premiere place and region in the world to live and work.

This project is located right in the epicenter of this region. It's adjacent to most the region's major job centers. It's adjacent to the region's major transportation links and it's exactly the sort of place that we should be focusing building new housing.

In the past we have pushed housing development to the fringes of this region and beyond out into the San Joaquin Valley. Today we know what this kind of sprawl does to the quality of life and to our environment and our climate.

From a regional perspective this is a project that needs to move ahead.

From a more parochial perspective the benefits that it offers to Oakland are many. Quality and successful regions are components of quality and successful communities and cities.

This project will many thousands of jobs to this City of Oakland and a lot of new open space, a lot of job training for folks and communities of need and for those many reasons we believe that this will be an asset for Oakland and for the whole San Francisco Bay region.

We urge that you support and approve the permit application. Thank you very much.

Mr. Carl Chan of the Chinatown Oakland Chamber of Commerce spoke to the Commission: I am here today on their behalf and on behalf of many small businesses in Chinatown.

Mr. Ghielmetti came to our community himself and presented this project to us. We believe that this is a wonderful project and it will create many, many jobs which are much needed at this time.

Also our small businesses are suffering in Chinatown. With this project coming in it's going to help to build the business base and the customer base so it will help our small businesses.

We are looking to maximize the use of human talent, resources or materials and the use of land.

This project carries all of these three elements because it's a green project, it creates jobs and it is turning some wasteland into something extremely useful and habitable which is something great.

Laura Chung a 91 year old resident wants to move into this project and she wonders how much longer she'll have to live to see this since she has been waiting now for nine years.

Ms. Ruth Gravanis a member of the Public Trust Group stated: One of the issues we deal with is how to maximize public access where appropriate on our shoreline public trust areas and in that light we wish to support the recommendation of the Bay Trail and others that we get the interim settlement of the Bay Trail into this project as soon as we possibly can and begin it with Phase 1 of the project.

As a San Francisco shoreline advocate we see similar issues raised in this project, what do we do to balance historic preservation view sheds and view corridors, water-related or recreation issues, economic or vitality and job creation and put all those things together.

I urge that you seriously consider the suggestion of doing a special area plan for the Oakland Estuary. Thank you.

Chair Randolph asked for a motion and a second to close the public hearing.

MOTION: Commissioner Reagan moved, seconded by Commissioner Nelson to close the public hearing. The motion passed by voice vote with no abstentions or opposition.

Commissioner Gibbs commented: Several years ago my law firm did some work for the Port of Oakland that was fully and appropriately disclosed on my Form 700 and I have not done any since and am not currently doing any.

And I also ran into Mr. Ghielmetti on a social bases. So after consulting with staff counsel it will be my voluntary choice not to participate in a discussion and to abstain from a vote on this matter.

I did just want to observe one thing. At this holiday time my heart is breaking at the testimony of Ms. Naomi Schiff who appears to fear her imminent demise and that she may not

live to see the outcome of this matter.

I am no doctor but she does appear hearty and healthy to me and I hope and trust that whatever turns out she will be alive to see it.

Chair Randolph asked the following question: On the topic of the interim Bay Trail it looks like this project would be a gigantic construction zone. Are there any barriers or issues from a safety or an access standpoint to having public access along the shoreline during the period of construction?

Mr. Ghielmetti responded: We'd be happy to work with BCDC, the Park District staff and members of the public between now and when we come back to create something that is more to everyone's liking.

There are a number of issues that we are dealing with here and that we'll be balancing and struggling with.

One is that the site is a contaminated site and we want to respect public safety in that regard.

Two, it is an industrial area with working tenants and some of the reasons that we phased the project is that we didn't want to kick out prematurely any of the long serving folks that have been working here.

For instance, there's a lease that runs through 2015 so this notion that the Bay Trail would have been completed if our project was not here is not altogether true.

There are certain constraints that we have even in here because that is a facility that imports and exports aggregate material from the water.

There are other considerations here that involve public safety. For instance, the accessibility of the site, when it's opened, who maintains it, liability, things that you've dealt with and have had other project applicants talk to you about. They are real but we will try and find solutions to them with staff and others.

The primary concerns are, it is a working waterfront, hazardous materials, public safety and liability and public safety with regard to crime and other types of activities.

Commissioner Nelson had a couple of questions: Some of these illustrative public access plans look like they show the public access extending all the way through the in-holding and I was hoping you could explain the relationship with the in-holding with the land around it with the right of public access.

Mr. McCrea replied: I will say that you are correct. There is an in-holdings, the Fifth Avenue community but I'm going to let Mike explain it because we've had this discussion about that future access but I think it's best if he does it.

Mr. Ghielmetti stated: It is an out parcel. It is not owned by the Port as a private party and many of the residents have lived there for 20 or 30 years and have taken an active interest in the project.

If it looks like there's public access across that area then it's an illusion. We're not

showing public access across that because we do not control it and no one has been talking about taking it or anything like that.

Commissioner Nelson then asked: We are allowed to authorize minor fill for public access but we need to make sure that it's the minimum fill necessary.

The staff reports that without some fill at the base of the Clinton Basin the parcel is essentially segmented in two and that looks like it's basically because of the location of Main Street.

So with regard to whether the Design Review Board discussed that to find out if this is indeed the minimum fill necessary to accomplish the purposes of the project and then for Mr. Ghielmetti to see if he looked at alternative design approaches that would minimize the fill in that location.

Mr. McCrea replied: The Design Review Board did look at that issue. Ultimately the decision of whether or not it's the minimum fill necessary to achieve public access is your decision.

The Design Review Board advises the applicant, the staff and you on whether or not the designing of the park could have been achieved with less fill.

In early reviews they said it should be based on a sense of arrival and the activities that are there. And towards the end of the project review they determined that the amount of fill seemed to be reasonable and the minimum amount necessary for the purposes like Farmer's Markets or public gathering spaces.

The pinch point doesn't have to do so much with Main Street as it does with the Embarcadero Roadway that runs along the waterfront and the existing end of Clinton Basin which is a highly degraded situation at that end.

Mr. Ghielmetti added: The pinch point really does get Embarcadero and Main Street is very secondary. So without this you have two peninsulas that really have very little connectivity.

These roads are fixed so we connected the freeway off ramp and those existing road structures.

The real issue here is Clinton Basin and we hope we've mitigated that through the removal of other fill that's out there.

Commissioner Nelson queried: There has been a lot of discussion for the need for an interim plan which could be linked to either the time limit after the permit was issued or the commencement of construction of Phase 1.

The other question I had was with regard to the construction of the public access improvements. Are those going to be financed by public funds or private funds and are the public access improvements scheduled to be completed at the same time as the commercial and residential improvements in each of those phases?

Mr. Ghielmetti responded: The latter question's answer is, yes. It's tied to occupancy so when we start each new phase we will need to commence the construction of the public improvements. So before folks can be living there the public space is done in each of those phases.

One of your other questions was with regard to the financing. This plan contemplates that the private development would pay for and maintain those improvements.

Commissioner Gioia added: Typically, have we usually timed the construction of the public access to the occupancy in those residential or commercial projects?

Mr. McCrea replied: It is. At the Mission Bay Project in San Francisco there was the concept of adjacency; when a phase was built the adjacent public access was built at the same time.

Commissioner Hicks commented: I have a question about the Ninth Avenue Wharf. Could you describe any historic properties evaluation on the terminal and what the conclusions were and whether it is eligible for a listing on the National Register of Historic Properties.

Mr. McCrea responded: It's not listed on the National Registry although I believe they are eligible.

There is a large number of people that would like to see this retained, however, that is not part of the application and it's not what the City of Oakland approved. They approved it to be demolished.

Chair Randolph asked: Was the Ninth Avenue Terminal part of review by the Design Review Board?

Mr. McCrea replied: It absolutely was. Well, yes and no. What was presented to the Design Review Board was the project you have before you.

Several people spoke at the Design Review Board meetings asking for the Pier Shed to be retained and some of the Design Review Members thought that the qualitative experience of the Ninth Avenue Terminal Shed Building might be better than a large park there because it retains the gritty waterfront character that is inherent in the site.

I'm not sure that was a unanimous opinion but in some ways that's not the project that was approved at the local level and it's not the project that is being submitted here.

Chair Randolph continued: The question was raised about the width of the apron. How does that relate to the public access question we're talking about and what was discussed at Design Review?

Mr. Ghielmetti responded: I think the area in question is really an area with an additional 15 feet that we're taking out because it's not far less structurally sound than the rest of it but most of it is actually being preserved.

This is not a lot being removed so the Bay Trail experience would not be lessened here. There are very few ways to save this area without tearing it down and rebuilding it.

Commissioner Hicks reiterated: I had the question about the historic property

evaluation and if it's eligible for listing on the National Register

Mr. Ghielmetti responded: The answer is yes. It was technically eligible, however, we did an in-depth study with three different pier reviews and litigation and a judicial ruling that supported the studies that were put in place that said that it was infeasible to reuse that facility for a number of reasons not limited to retrofit and condition and future uses and benefits.

So the City Council voted to support that and the judge supported the effort as well.

Commissioner Bates asked: Can you identify where it's currently located?

Mr. Ghielmetti replied: Yes, I can. We're talking about preserving 20,000 square feet. We're proposing to save the front of it which is what most people will see.

Commissioner McGrath added: Both of these questions are for staff. There is a note in the staff report about the small habitat restoration project and its utility.

It seems like a very small project relative to the dynamics. So I'd like to get some outside response with people with expertise like the Department of Fish and Game or U.S. Fish and Wildlife Service whether or not that's the best use of mitigation.

Question two has to do with the staff report that initially lost me on the question of a specific design. One of the commenters was substantially more specific on the need to refine the design in some areas. I'd really like the staff's opinion on that question.

What does staff think needs to be refined in terms of the public access design?

Mr. McCrea replied: I'll start with the second one first. For projects of this size it's very common for each phase to come back to the Design Review Board after a permit is issued.

And the reason for that is because when a project is going to be built over a 15 or 20 year period, conditions may change but, more importantly, not every aspect has been determined and the qualitative experience of a site depends on the details.

It would be a very difficult process to look at all of those details as you're just trying to work through the application process.

We don't think the site design needs a lot of work. It's just kind of our normal way of doing business which is to get the template set and then focus in on the details.

Commissioner McGrath added: So the refinement you see is not in the footprint but in the details as each segment goes through.

Mr. McCrea replied: That's correct.

Commissioner McGrath continued: And that is something that could be accomplished through conditions for subsequent design review.

Mr. McCrea answered: That's exactly right.

Commissioner McGrath continued: Okay, so let's go to the question on the habitat area.

Mr. McCrea responded: With regard to the best use of mitigation of the existing wetland there's different opinions about whether that is functioning as it was intended.

Some experts say that it's a beach. It was a beach. It wants to be a beach and it's trying

to be a tidal marsh.

At this time the application includes an allowance to augment it if necessary based on expert opinion in the future as that piece comes along to see if there's something that could be done that doesn't get cross ways with the mitigation requirements that were required of the Port of Oakland.

If there's a way to make that a better habitat then that's what this project would bring forward if everyone agreed that that was the best thing to do.

Commissioner McGrath asked: Is there a mitigation burden for this project that could be accomplished either there or in some other location? Or is it just kind of try to keep that previous project functioning?

Mr. Ghielmetti replied: I think what we've tried to do here is pull back the shoreline and create tidal marshes in a number of areas here that we think will be successful over the time.

The main portion of that area we think will have a high probability of success here and it's more of a passive area as well. We anticipate that this park will be a quiet park versus the more active areas.

Commissioner Lai-Bitker added: I want to point out that there is a discrepancy in the numbers of what is being preserved for the Terminal Bulkhead. The staff report says 15,000 and I heard Mike say 20,000.

Mr. McCrea replied: You're absolutely right. There was a point in time when we thought the number was 15 and later we found out that it was up to 20 and I apologize if not all the numbers got changed.

Commissioner Lai-Bitker asked: So how would the process of pushing up the interim Bay Trail completion within 18 months look?

Mr. McCrea answered: It's our expectation that between now and January 20th we'll sit down with the applicants to develop a plan that maximizes the opportunities for interim public access recognizing that there might be other requirements from the Department of Toxic Substances Control, DTSC, there's existing lease holds there and to some degree there may be with regard to public safety only so much we can do.

Our plan is to over the next month to maximize it to the extent possible.

Commissioner Lai-Bitker commented: This project is actually located in my district and I think the last briefing I got from Mike was five years ago or even earlier.

At that time some of my constituents came and they had a lot of concerns about this project. I'm so happy today to hear from different people about how great you have been working with them and hearing their concerns.

I heard earlier that you're going to increase the height of the land by three feet. What will be the impact for the development and will this sufficiently address sea level rise?

Mr. Ghielmetti replied: We think it does and we are one of the first to start planning for it actually.

We would be raising the grade level by about three feet and you can't really go much

more because you still need your utilities to connect to the existing city utilities.

We think we meet the spirit of this Commission's thoughts on protecting the Bay.

I should also mention that we have room to do other measures if science takes us in different directions as to what's going to happen in 50 or 100 years.

Commissioner Lai-Bitker added: I definitely want to applaud your efforts because it's wonderful to see a developer willing to take this challenge on.

What are the difficulties you're seeing as you're implementing this?

Mr. Ghielmetti replied: From a technical level the utilities issue is significant, from a design and planning level we had to consider what the shoreline looks like and how it integrates to the rest of the city.

Executive Director Travis added: This project is a very good illustration of why when we're planning for sea level rise it has to move from the project basis.

When you think about raising this whole area by three feet you realize that this project could be an island.

So the long-term solution will have to engage the community of Oakland and it can't solve the problem unless Emeryville and San Leandro are also solving the problem which raises the whole issue to a regional level.

Commissioner Gioia added: I think it's important to note that given that the next item on our agenda is the Climate Change Bay Plan is that these policies could potentially prevent development from happening and here is an example of a development that actually did plan for sea level rise and it made it successful.

This could be a model and a showcase for future development around the Bay area given that we're developing policies to have the whole region think in the same way that the planners thought in this project.

The second thing I wanted to say is that there needs to be a balance in prioritizing different issues involved going forward.

Commissioner Bates commented: This is really a remarkable project and you're to be congratulated for sticking with it and making it happen.

You're so separated from the rest of the city and I'm wondering what the issues around affordable housing and how that's going to relate to this project.

Mr. Ghielmetti replied: Well that's one of the reasons we worked so hard with the Oak to Ninth Community Coalition in which there were actually 16 community organizations that came together and worked with us for three or four years.

The plan that came out of this is a good one in which there is mixed-use and mixed-income that is an inclusive project and Oakland does not have an inclusionary housing ordinance. We are well above what was required.

Earlier on we met with A/C Transit and they were very excited about this project because it was dense enough for them to serve without subsidies.

Commissioner Bates added: I would just call your attention that our city has started

having where we actually require developers to provide a transit pass for people as part of their rent.

Mr. Ghielmetti responded: We've actually talked to the agency about doing a transit pass for the entire development. We've also talked about car-share types of programs, bike parking and so we're trying to make it a modern-day, transit-friendly project.

Commissioner McGrath commented: On the question of use it might have been very fortunate if the Port of Oakland had in the 80s had the foresight to look at this building and put it to constructive reuse.

I am willing to defer to the City of Oakland if the city staff vets the questions of feasibility and only some of the Ninth Avenue Terminal is in our jurisdiction.

I want to make sure that in creating a new neighborhood we have not created something that will eventually require Bay fill or relocation of the public access ways.

I think we need to be a little more specific about what we think the clearance is.

We have some real models about what the water levels have been like and they've been about 24 inches higher than normal. So we already have some pretty good idea about what sea level can be like in terms of what will flood and what occasionally sea level anomalies are like.

I don't think you have to build for forever. I think you build for the useful life of your facilities and you make sure that people know that if it doesn't make sense economically to build the wharf high enough to have the public access that's fine but when you rebuild it you're going to have to accommodate it and not fill the Bay.

9. Commission Consideration of Alternatives for Bay Plan Amendment No. 1-08 Concerning Climate Change. Chair Randolph explained Item 9 is a discussion on approaches for revising our climate change policies.

I want to preface this to make it clear what we're doing. That we are not discussing specific language. We are not taking a straw vote. We are not giving directions to staff because actually the period for submitting written comments is still open and it's open through tomorrow.

And there are additional consultations that will happen at the county level so we wouldn't want anything that we say today to preempt an open floor for those comments that may still come in and those that we received already.

So really this is more set up as an option opportunity for members of the Commission to discuss together and with staff some different kinds of structural approaches to how we may organize ourselves in presenting language at a future time.

So with that said, Joe LaClair is going to outline some of the options that we'll be talking about.

Chief Planner LaClair stated: Today we continue the Commission's consideration of Bay Plan Amendment Number 1-08 concerning climate change.

Staff has provided you with a staff report with policy approaches for three of the proposed Bay Plan climate change policies and also copies of letters that the Commission has received since its last meeting commenting on the proposed amendments.

The staff requested the Commission discuss the various policy approaches outlined in the staff report or others that you think are appropriate and provide the staff with some general advice on how to address the public comments on proposed climate change policies 1, 5 and 6 in the Bay Plan Amendment that we sent to you in September.

As Chair Randolph mentioned in his remarks, the public hearing for written comments remains open until tomorrow, therefore staff recommends that the Commission take no action on the options today but simply provide us with their recommendations.

The staff has identified a range of options for each of the three policies. Proposed Climate Change Policy 1 would require for projects within the Commission's jurisdiction that a risk assessment be prepared based on the current 100-year flood elevations that take future sea level rise into account.

The staff has suggested a range of policy options for the Commission's consideration including retaining the policy direction in the language with any appropriate language modifications; refining and narrowing the language so that it would apply only to certain types of large projects; or eliminating the policy so that a risk assessment is not required.

The second policy staff requests the Commission discuss is Policy 5, which calls for the preparation of a regional adaptation strategy to address sea level rise. The staff's proposal recommends that a regional strategy should address a number of issues and considerations.

The staff proposed three options for today's discussion including retaining the policy direction in the language recommended by staff with any appropriate modifications; refining the language to call for a regional strategy without identifying goals for the strategy; or eliminating the language.

The third policy staff is requesting the Commission consider guidance on is Policy 6, which proposes that development in low-lying areas within the Commission's jurisdiction be limited to a broad list of project types.

Suggested alternative approaches to address this policy include retaining the policy with any appropriate modifications; the language could be revised to call for a case-by-case evaluation of each proposed project based on a set of criteria with a list of the types of projects that would be acceptable; or the language could be revised to call for a case-by-case evaluation of each proposed project based on a set of criteria but without a list of the types of projects that would be acceptable; or the language could be deleted so there would be no additional criteria for evaluating proposed projects in areas vulnerable to flooding.

The options suggested by staff for each of the policies are not an exhaustive list of options but staff believes they sufficiently bracket the possible options to assist you in your deliberations.

And with that I conclude my presentation. I'm available for any questions you might have, thank you.

Chair Randolph thanked Mr. LaClair and stated that as Mr. LaClair had said, there are different ways to shuffle this deck so these aren't definitive options but they bring some clarity to different directions.

Before we turn to the Commission. We hadn't scheduled a public hearing on this subject but we do have some requests to speak.

Mr. David Lewis from Save the Bay made the following commentary: You have a letter from us responding to the questions posed by the staff for guidance and also making specific language suggestions.

And I just want to underscore that we have been making comments and specific language suggestions for the last two years on this policy while it's been pending before the Commission as you've requested.

In sum, we want you to move ahead with the general outline of language and approach that the staff has previously proposed with appropriate amendments to clarify that. And this is long overdue.

The risk assessment in Policy 1 should be guided by the State's guidance, interim guidance on sea level rise, updated by scientific updates as they come.

On a regional strategy, for BCDC to play a strong role you need to walk in there with guidance from the Commission about what you're trying to accomplish and what the regional strategy is trying to address.

And on development in low-lying areas. This is the part I really want to emphasize. The Commission gave staff strong guidance, Commissioner Nelson and many others over a year ago, that they really wanted the final version of this Bay Plan Amendment to reflect the state's Climate Adaptation Strategy.

And in particular to underscore not only should there be a very cautious approach to new development in developed areas but there should be an even more cautious approach and discouragement of new development in undeveloped areas that are vulnerable to sea level rise where there is either habitat or the opportunity to create habitat.

And that was the Commissioners' guidance to the staff and we would encourage you as Commissioners to repeat that guidance. And that really addresses not only Policy 6 but also Policy 3.

You'll see in the language that we've suggested that there is a very simple way to do this and that's to clarify that for undeveloped areas Policy 3 is the policy that should apply and for developed areas, Policy 6 is the policy that should apply. And this is a very simple way of clarifying what the Commission's intent is.

And so in addition to the guidance on 1, 5 and 6 we wanted to offer that additional guidance, encourage you to give that additional guidance to the staff on Policy 3. Thanks very much.

Mr. Scott Peterson with the Oakland Metropolitan Chamber of Commerce commented: Our understanding based on the direction you gave to staff at the last meeting is to proceed with the public meetings. I attended one yesterday here in Oakland and appreciated Director Travis and Mr. LaClair joining us to talk about the issues and the different perspectives.

We also heard at the last meeting a direction to move forward to draft language that

would restrict the amendments within the jurisdiction of the Commission and we appreciate that.

And we'll look forward to re-engaging with you should you decide to reopen the public hearing in 2011 and move ahead with approving amendments to the Bay Plan. So thank you very much.

Ms. Margaret Kettunen Zegart stated: I live in Marin and I belong to a group which is called Tamalpais Planning Area Bayfront Coalition. I wrote a letter so I'll read it to you.

I'm appreciative of BCDC's extraordinary opportunities for input regarding climate change impact guidelines offered to partnerships, stakeholders, council persons, supervisors and other groups. And as a public member I offer my suggested primary recommendations for your coordinating visions.

On risk assessments I believe that you should follow One, the policy direction, but the language should be retained. However, you should add the risk of seismic evaluation.

Regional strategy on Option F. Assuming that a dense, affordable housing policy of 35 units per acre, site choices along transit lines, then BCDC should suggest guidelines that will finance and assure remediation of existing infrastructure and future flood-free roads, highways or levees before construction or occupancy.

Association of Bay Area Government current preferred sites should not be automatically accepted as SPUR and the City of San Francisco have suggested but the development should be reevaluated now in terms of the long-term public safety and for social equity standards.

And on the interim development policy, C is something I would like to speak to. You should provide a bond or builders communities or sub-regional bond trust fund at the time of development rather than assume certain development and infrastructure is of such high value that the areas will likely be protected, whether or not infill takes place.

We all are aware of the kinds of financial crises that change directions hoped for or the political problems that occur so there should be some funding mechanism set in place.

And my general comments include: remove the option of existing, planned projects to continue without further evaluation for climate change as some knowledgeable groups have suggested.

Discontinue accelerated CEQA review in mapped areas of rising flood waters or construction on deep Bay mud subject to lateral mud displacement affecting adjacent properties and shoreline liquefaction and sustained shaking in likely seismic events.

So we not only have the risk of the adaptive rising tide features that should be adjusted but also the component to secure the best building methods because of the seismic risk of working in high Bay mud profile sites.

In our particular county some of the sites that are selected are these high-risk sites. Because figures had to be sent to ABAG they weren't carefully chosen with the new knowledge of climate change. Thank you.

Ms. Ellen Johnck, Executive Director, Bay Planning Coalition commented: I just wanted to comment on the process of the county-by-county workshops and clarify the notice to the public on these.

I was a little confused myself as to when the meetings were being held and by whom. I encouraged BCDC to work in collaboration with our local nonprofit organizations to have a partnership there. So some of those notices I might get from them, others not.

It's important to really do a thorough job on this process and I appreciate that. It's just that at this juncture as we move forward and we're closing in now on the language, we've already sent our comments in on the language.

But I would like you to clarify how that is being coordinated and if you are doing the best job you can to promote those workshops. Thank you.

Commissioner Gibbs stated: I think the staff should respond to that for the record.

Executive Director Travis replied: We worked through the local government representatives on the Commission and got direction from them.

They in turn in some counties and some communities directed us to particular organizations, in other cases it was working with the mayors associations, the council members association, the county supervisor associations. So it was their meetings, not ours. We were making ourselves available and we continue to make ourselves available to them.

Commissioner Gioia commented: Just observing. Based on what occurred in Contra Costa, there's been a lot of outreach to the community of electeds in the region in which it is being held and I think that's appropriate.

And my understanding is that those are all to get input, not to negotiate language changes at these meetings but to get input about the proposals. And it appears that that's what they are doing successfully.

Commissioner Lai-Bitker shared that in Alameda County she assisted in having our staff make a presentation at the mayors' conference meeting.

And then just yesterday staff gave a presentation at the East Bay EDA and there was a lot of dialogue and discussion about the issues.

Commissioner Lundstrom added that in Marin County Joe presented a briefing to the Marin Mayor and Council Members, of which some of the members of the Board of Supervisors also come.

And then the elected in turn of each of the 11 communities in Marin then communicated that to their jurisdictions. And as Trav pointed out, the noticing is all up to the public body.

Chair Randolph asked: What county meetings have yet to be held? Are there some outstanding still?

Chief Planner LaClair responded: Yes, Chair Randolph. We've scheduled a meeting with Santa Clara County for early January, as well as we're working on getting one set for Napa County.

The other January meeting, which will be held on the 14th, is with Solano County in Suisun City. And we are still trying to get a meeting scheduled with Sonoma County but we expect to have that set very soon.

Executive Director Travis stated: The plan is to release a revised staff recommendation for public hearings in February or March, probably March.

This round of outreach has been so effective we are already starting to set up a next round to do much the same thing with a new draft. So we'll be making the grand tour of the Bay Area again.

Commissioner Groom added: In San Mateo County we worked through our Congestion Management Association, which supervisors and a council member or a mayor of all 20 cities is present.

What we also did is we made a lot of telephone calls and emails encouraging people to attend.

We had fairly good attendance, higher than usual, and I think that we had a very lively

and spirited discussion.

And I just wanted to thank Joe and Mr. Travis for attending and all three of their staff people speaking at that meeting.

That was really very well appreciated by members of our council members, that Mr. Travis came himself and made a presentation and Joe also.

Commissioner Bates commented: Travis and the crew came to the Alameda County Mayors just this last week and they did an excellent presentation.

Commissioner Gibbs commented: The reason I asked for that response on the record was because several months ago concerns were raised about the process.

And I know all of us took those concerns very seriously and we have tried to put in place a program so that there would be access throughout the Bay Area.

I think we have heard a comprehensive report now on what that has been. I'm sure we're willing to do more in the spring.

And so to Ms. Johnck or anyone else, if there are any concerns please, submit them in writing so we can address them because I know we are all committed too.

Executive Director Travis added: I hesitated to comment because I think that the record speaks for itself but I appreciate the opportunity to do so.

I want to do one other thing. Ellen Johnck is going to be leaving the Bay Planning Coalition and her successor, John Coleman, is here.

And I think we ought to give both Ellen and John an opportunity to say a few words about that because this has been a long partnership we've had with the Bay Planning Coalition. And we've enjoyed working with Ellen and I personally have worked with John and have a great deal of respect for him and I think that this partnership will continue.

Ms. Johnck responded: We hadn't really organized a date for introduction of John but John has been hired as the Bay Planning Coalition's new Executive Director effective January 1st and so it probably would have been logical at your next meeting to do that. But that's great to do it now because it's real and we sent out a press release I think just a little while ago.

I'm enthusiastic about my new life but I won't be going too far away. I've had a great experience being part of the formation of the Coalition in the fall of '82 and it's been a terrific experience.

I recently got a degree in archaeology and was listening attentively to Jane's question on historic resources. I want to do some more in archaeology and I will be out continuing my career and expanding it as a consultant in environmental services and archaeology as well.

And starting January 1 I will consult back with the Bay Planning Coalition half-time to ensure a successful transition for the Coalition. So with that I introduce John. And John, do you want to give a little bit about your background?

Mr. John Coleman stated: First of all, I have tremendous shoes to fill with all Ellen has done for 28 years at BPC. I have a big learning curve to go forward with and Ellen being in the capacity of a consultant is going to be clearly assisting and helping me in that role.

I am currently on East Bay MUD Water Board, Vice President of it. I also had worked for a home builder, KB Home, at one time so I dealt with Mike and others in the room. And I have been very active in the community. I'm a sixth-generation Bay Area resident. I have no intention of leaving the Bay Area, I love it. I'm here for a reason.

And I look forward to developing a good working relationship. As Trav mentioned, we have worked together, we have sparred. But at the same time we have sparred and we have been able to smile and have a handshake.

I think that's what is really critical when we work towards consensus is to be able to do just that and end up with a plan and end up with goals that everybody wins with.

Commissioner Reagan stated: Our sea level rise strategy seems to coincide with the Corps of Engineers district boundaries and that, of course, if not what naturally happens with tidal action, which goes much farther inland.

And my suggestion is that the nine Bay Area counties' planning needs to be expanded to include the other several counties that are affected by tidal influences and need to be included in the planning. It doesn't stop halfway through Contra Costa or Solano County.

The values that you're trying to articulate here ignore agricultural land, which is development and it's the food shed for the region. I don't see it called out as something that must be protected and enhanced. It is not undeveloped land.

The other comment I have here is in most cases as I looked at the two, the second option seemed to resonate stronger with me than the other options in each case. And there's problems in language that will be addressed during these hearings in the counties.

Commissioner Gioia added: So I assume, if we want to make this easy, you want to take these item by item, right? So I'm willing to make a motion and then we can have discussion on the first item and then get to the next if that's the way you want to do this.

Chair Randolph replied: We're not going to do motions, we're not voting.

Commissioner Gioia stated: It seems to me that we're getting very good input about language modifications. I think Option 1, which is the policy direction "the language could be retained with any appropriate language modifications" rather than narrowing that particular policy to apply to only certain types of large projects. It seems that we can handle the issue through the language modifications that we want to make. So that's my suggestion on 1.

And really the same on 2. The second one is with regard to the Regional Adaptation Strategy. Option 1 basically says, we're going to look at some appropriate language modifications but that we would continue to call for a regional strategy.

And remember, the language says this regional strategy isn't adopted by BCDC alone, it's adopted by the region with local government. It says, "The Commission in collaboration with the Joint Policy Committee, other regional state and federal agencies, local governments and the general public should formulate a regional sea level rise adaptation strategy." So it's not BCDC doing it alone, it's others.

So that's why I think Option 1. The only difference between 1 and 2 is that 2 says we shouldn't have identified goals. I think it is appropriate for us to identify some goals.

And again, the language of those goals could get modified based upon the input that we receive. But I think as a regional agency it clearly makes sense to put out some goals and ultimately though the Plan may or may not include all the goals that we've set forth. But we at least are putting out what we think makes sense at this point in time. But again, language modifications, that's number one.

And then getting to the third point. The policy direction could be retained to limit development to the types of projects identified with appropriate language modifications.

I'm fine with that as long as I think what we're seeing in some of the language modification is the types of projects identified may be broadened a bit because we're seeing like the whole issue of the ABAG priority development areas that have been identified. That could be a type of project.

I'm concerned that having 2 and 3 go to a case-by-case evaluation, that's not providing any guidance and it's very open-ended.

But the types of projects identified may get changed based upon the language modifications. Specifically I think we saw some of the SPUR language that talked about looking at redevelopment and infill and priority development areas so that may be the kind of modification. So with all three cases I think number one makes sense.

Commissioner Bates added: I think that it makes sense to have a broader case and have more opportunity for input.

Commissioner McGrath commented: I agree with Commissioner Gioia but I have a couple of other comments that I think are important.

First, we have had a lot of comment about maps. And we know that the map doesn't reflect the actual physical infrastructure that limits flooding. And so one of the questions that I think is important to ask the staff is what's the best way to get a more accurate map that does reflect sea level rise in existing hydraulic constraints?

Second, I need to talk a little bit about infill because it is very germane to whether or not we change the language on number 2. A lot of people have tried to say that we should endorse all the priority uses identified in the Bay Plan already, ABAG's infill.

If you look at a completely regional context, a dense urban footprint that minimizes carbon emissions per person may absolutely make sense. Since we have already decided to limit this to our jurisdiction I am reluctant to go beyond that to our jurisdiction without understanding the implications of that in terms of what the footprint might look like, whether or not it would entail Bay fill for protection and so forth.

And whether or not the hydraulic modification might give us concern in terms of sustaining the sediment supply for the wetlands. So I think we have to be very careful about over-defining infill. I don't think we know everything about the perfect criteria for a smart, urban form.

Third, I share the concerns of Libby Lucas and Mitch Avalon that we don't really address fluvial flooding in this. Maybe we shouldn't. I for one as a regional board representative where we do have a fluvial responsibility I'm going to continue to poke around with that.

I'm compelled to comment at least briefly on the argument that there is a nexus between our policy recommendations and a disparate racial impact or dis-investment. That is something that is a concern to me. We're recommending consideration of flood hazard. And we know and suspect that there are a number of areas that probably don't have the current economic base to afford flood control benefits.

All we're recommending is that we start to work on that. The options include intensification of development, modification of the structure to provide a funding base for flood control and it's going to be on a collaborative basis.

Unfortunately, whether we intensify development and bring about gentrification, we manage retreat or we provide benign neglect, all three of those pose some kind of threat to the existing fabric. But I don't think it's a direct nexus from these policies we're considering, I think it's a direct nexus from the flood hazard. So I'm just compelled to comment on that.

And then finally I have to take exception to the comment that's been made that BCDC should just leave all concerns about standards and flood risks to the Corps and the Federal Emergency Management Agency. We're here because we know the current mapping is not sufficient to provide a realistic assessment of risk and that it won't be changed quickly. And to completely ignore that is something I can't support. That's all I have to say.

Commissioner Lundstrom commented: I agree with Commissioner Gioia because I have been following since last year BCDC working with the Flood Protection Engineers Association. I sit on a flood control board in an area that gets flooded. Like every ten years it goes underwater, San Anselmo. And we're getting a big storm again and we might have a flood again.

So I have been looking at how these policies accommodate flood control engineers where they have to maintain existing levees or having to collapse levees and so forth. And I believe that staff has been working very closely with the flood control engineers. And that working with them to define the projects identified and the wording involved with that will meet that section/segment of projects and I think this will address their concerns.

Chair Randolph added: I would just make my own point of view on the third set of options. We don't want to wordsmith in this session but the way it's phrased here it says "language could be retained to limit development." I think when we actually get to the actual wording we're going to want to avoid that kind of phrasing because the decisions will be case-by-case.

But we've if we have a statement of kinds of development that will have essentially preferred status because they're important to the region as a starting point and our criteria for evaluation are clear, we'll probably end up in a good place.

Commissioner Gibbs commented: I too wanted to support Commissioner Gioia's framework on 1 and 2 and that's because of my strong belief that staff has given us a well thought out framework and everything that could be accomplished and needs to be accomplished can be accomplished within that framework through changes to the language.

On number 3, the interim development policy, I take a slightly different view. I think both the most substantive comments and concerns we received on this have to do with not so much having black and white regulations or framework but taking into account more of a cost-benefit analysis in terms of what development is permissible in these areas.

I also think that in carrying out our responsibilities with the other multi-jurisdictional bodies that we serve on the Joint Policy Committee with in terms of a sustainable development community for the Bay Area, that can be how we can perhaps best contribute to that, to a much more cost-benefit type analysis towards what's permitted.

So to me that implies a kind of a combination of 1 and 2 under number 3. And you

might say that the policy direction in the language could be retained to permit development that satisfies certain cost-benefit criteria. So that would be my comment on that.

Commissioner Jordan Hallinan added: So I think the only area that I feel I would like to see is the interim development policy area. I don't like listing, this is what you can do or this is what will be encouraged or discouraged.

Rather I think the most important line in this whole thing is that the permanent financial strategy that will guarantee the public doesn't have to be burdened with the cost of protecting a project. If somebody builds a project and they've put that in place that pretty much covers everything. So it seems to me unnecessary to list all of these other uses.

Commissioner Nelson commented: I want to start by saying that I also agree with Commissioner Gioia regarding his support for the first approach outlined here.

I went back to look at the State's Climate Adaptation Strategy and I'd like to make sure that as the staff comes back to us with recommendations and then again before we take a vote the staff really highlights what the climate adaptation strategy directs us to do. This is exactly what the climate adaptation strategy directs us to do. It is not easy to go from a statewide policy to a regional policy and then ultimately to a local policy but that's precisely what this agency was directed to do by the Adaptation Strategy. I think given how long this process has been I think it's really important that we don't lose track of that.

I also want to highlight that fact for another reason. There has been an enormous amount of discussion about potential CEQA issues. I'm not sure that anything we do will overshadow what the state has already done. The state already offered extremely strong language that is far less equivocal than the language the staff has offered us.

So to the extent that there is a concern about CEQA, I think that bell has already been rung. And frankly I think it's a little bit like being concerned that a flood risk shouldn't be identified because then it will show up in future planning processes.

It should be. These are very real, very serious concerns. We want to make sure that at the state level, the regional level, the local level we do pay very serious attention to these concerns because of the enormous financial and human cost if we make the wrong decision. So I think by starting with the State Adaptation Policy we can highlight both charges as well as put in context the concerns we have heard about CEQA.

The last comment I want to make is that there has been quite a bit of confusion about the advisory nature of our goals outside for our advice regarding lands outside of our jurisdiction. And I think we need to pay real attention to that.

I am not a fan of a separate document. I think that would likely involve Xeroxing policies that apply within our jurisdiction and then putting a new header on them. I think many, not all but many of those policies would be identical.

But I think we can do a much better job of drawing a clear, bright line between the binding policies within our jurisdiction and the truly advisory policies outside.

I'm not sure what the right approach is. I don't know if that means we need to have a

side bar, a separate section. There might be a variety of different approaches. But I think we need to take great care to make sure that we dispel the myth that these proposed amendments represent a change in the Commission's jurisdiction, which they simply don't. Thank you.

Commissioner Gioia stated: I appreciate a comment Commissioner Hallinan made. I do think that you have to have other principles other than money when you set the interim development. Because frankly there are other values you are trying to protect.

You may have a potential part of the North Bay, a wetland area, that deserves to be protected. And just because a developer community has the money to build seawall protections around it and you say, we want to allow that development. I'm not sure that's what you intended. But I think money alone can't be the determining factor. I mean, financing is a factor but there has to be the consideration of these other issues as well.

Which is why I think we're looking toward expanding possibly the kinds of development like whether it's priority development and redevelopment.

Commissioner Jordan Hallinan added: Well, in a way, yes. But I will clarify that. If somebody was going to develop an area there was a lot of debate locally as to whether that should remain open space or whether it should be developed. And I think those kinds of discussions take place in city councils and in unincorporated county areas by the county planning and the county supervisors.

I just don't see where in terms of our job with being at the shoreline, talking about, hey, let's not put a burden on the public because somebody isn't protecting a particular area from flooding. I see that as the only relevant part.

Why we would get involved in saying beyond that area that we would say, these are the kinds of things that should be considered and limit it to certain things, then I think we're getting involved in a lot of private property areas that we shouldn't be.

Commissioner Gioia stated: But I think what we're doing is we're saying this is only applying to our shoreline band. Remember, these policies only apply to our shoreline band or our jurisdiction areas, which include other areas as well.

But what we're saying is, within our jurisdiction these are the interim policies we want to apply. And it has to be more than just money. And I want to make clear, my suggestion, as some people have taken it, is that it's not just limiting it to money. It's limiting it to the other factors and types of development.

Vice Chair Halsted added: Just briefly I wanted to say that I share Commissioner Gioia's perspective. I do think though under the third on Policy number 6 that we should look at the wording in limiting development. I share that concern. I think that we need to integrate something between 1 and 2 there. So that's my input, thank you.

Commissioner McGrath commented: I find the comments of Commissioner Gibbs and Commissioner Hallinan partially but not completely compelling. I think we want to take a look at the wording in here.

This is now limited just to our own jurisdiction. And I agree that it shouldn't just be fiscal. But I do think we want to allow minor projects without burdening either the staff or the Commission.

Perhaps we don't want to define those really precisely. But for culvert repairs, these are things which shouldn't take a lot of work and don't.

What you do in the interim isn't going to materially affect what your overall strategy is.

So you want to provide some mechanism for interim projects and minor projects. And you might be better off actually not defining those.

I do think that cost effectiveness and fiscal soundness to make sure that the Bay impacts are not unforeseen are really the primary input.

I want to make sure that we don't approve a project where the footprint would commit us to either losing our public access or future Bay fill because they don't have enough. And that's got to be a combination of the footprint and the fiscal arrangements.

I think we're doing that as a practical matter on the projects that we're seeing right now. So I do think that there's probably some wordsmithing in the middle that can capture those ideas and perhaps do a little better job than we've done so far.

Chair Randolph commented: I think this was useful. And staff will take this away with all the rest of the input they have to help come up with our next formulation. We will now move on to Item 10.

We've lost our quorum so we need a motion and a second to adjourn into committee.

MOTION: A motion to adjourn into committee was made by Commissioner Nelson, seconded by Commissioner Hicks. It passed and the Commission went into Committee.

10. Consideration of the Adapting to Rising Tides Project Sub-Region Selection. Ms. Lindy Lowe addressed the Commission: This is an overview of the Adapting to Rising Tides Project, also known as the ART Project and a recommendation on the selection of sub-region for the ART Project.

The goal of the ART Project is to increase the preparedness and resilience of Bay Area communities to sea level rise and other climate change impacts while protecting the things that make the region a wonderful place to call home.

BCDC conducted a regional assessment of the possible impacts of sea level rise on shoreline communities and published a report, *Living With A Rising Bay* in 2009.

In order to better understand the possible impacts the ART Project was designed with two scales, a sub-regional scale which is generally county sized and a community scale within the sub-region.

BCDC staff identified the sub-regional scale as a scale that will allow for a better assessment of shoreline vulnerability and one that will provide the best opportunities to develop true partnerships with local and regional agencies.

The community scale will allow for a more detailed analysis of impacts, vulnerabilities and adaptation strategies.

Working at both scales will facilitate the testing of strategies and processes that can inform a climate adaptation plan for the entire region.

The ART Project will fit into the development of a regional strategy in two possible ways.

First, the information gathered and the process for conducting the work within the ART Project sub-region will inform the development of a regional strategy by clarifying the appropriate planning scale, the data needs and the necessary level of detail for devising an effective climate strategy.

Second, if the regional strategy is detailed and includes characteristics, assets, vulnerabilities and risks within Bay area communities and contains specific guidance on adaptation strategies that respond to these conditions then the data and information developed within the sub-region can be included in the regional strategy.

If, however, the regional strategy is designed as a broad guidance document without specifics then each community within the Bay Area will need the type of information and data that will be developed within the sub-region to use within the strategy.

Working closely with our JPC partners the ART Project will build towards a comprehensive climate strategy that is coordinated with the Sustainable Communities Strategies and the other mitigation initiatives in the region.

The staff has established partnerships and obtained funds to support the ART Project.

The National Oceanic and Atmospheric Administration Coastal Services Center is providing funds for three public meetings.

BCDC staff in partnership with the Metropolitan Transportation Commission and CalTrans successfully obtained grant funding from the Federal Highway Administration to test a vulnerability model within the sub-region to assess vulnerability of transportation infrastructure.

To fund some of the work at the community level staff obtained Federal Coastal Zone Management Act Grant to support work within the community and ICLEI will be supporting the community by providing resources from its National Inaugural Adaptation Communities Program.

To aid in providing information about the project BCDC and NOAA CSC also developed a website for the project, www.risingtides.csc.noaa.gov/.

The criteria for selecting a sub-region were identified at the meeting and on the website as, the desire and capacity of decision makers within the sub-region to become partners in the project, a diversity of land uses and characteristics along the shoreline and the presence of regionally significant transportation infrastructure.

Staff from BCDC, NOAA CSC, MTC and CalTrans identified the sub-regions and compared each sub-region to the selection criteria.

Capacity and interest were determined based on the number of agencies that submitted information.

Alameda County from the Bay Bridge to the San Mateo/Hayward Bridge submitted the most comprehensive application and included the cities of Oakland, San Leandro, Hayward,

Alameda County Public Works Department, East Bay Regional Park District, East Bay Discharges Authority, Ora Loma Sanitary District, BART and ABAG's Bay Trail.

The shoreline of this sub-region is diverse and this sub-region contains a large amount of regionally-significant transportation infrastructure.

Based on the strength of the submittal and the characteristics of the shoreline it is recommended that Alameda County sub-region be selected as the ART Project sub-region.

The staff recommends that the Commission endorse the selection of Alameda County sub-region for the ART Project.

Chair Randolph mentioned that a public hearing on this item was not scheduled but if anyone wished to speak on it they were invited to do that.

There were no public speakers so questions and comments from the Commissioners were entertained.

MOTION: Commissioner Gioia moved the recommendation of Alameda County, seconded by Commissioner Lundstrom. A vote was taken by a show of hands and the item passed with no abstentions or opposition.

Commissioner Nelson stated: I think that for a lot of Commissioners this selection is not a surprise. I think the staff has done a good job of looking at the applications received.

11. **Consideration of Strategic Plan Status Report.** Executive Director Travis presented: There are two deadlines we would like your approval to change in the Strategic Plan.

I would appreciate a motion and a second.

MOTION: Vice Chair Halsted moved that the two dates be moved that were noted in the agenda, seconded by Commissioner Lundstrom. The item passed by voice vote with no abstentions or opposition.

Ms. Ellen Johnck commented: Our concern is the provision in BCDC's three year goal for dealing with global climate change. In that provision it says, sea level rise legislation by June 30th 2011 the staff will provide for the Commission's consideration draft language that will empower, fund and direct the Commission to prepare a sea level rise adaptation strategy.

And we do not agree that you need legislation. In other words, we have not seen any analysis. We did ask for an analysis a year ago because this came up again. This was in your plan that you adopted.

You actually had December 31 of this year as the deadline to prepare draft legislation. At the moment I have no information whether this is needed or not. We think it is not.

We would ask that it be amended or removed.

Commissioner McGrath commented: Ellen as you may recall that Barry and I were both in agreement that when the issue of legislation and seeking new authority which had been recommended to us by Save the Bay came up, we didn't support it.

We said, at the end of this time we may need legislation. And in the event that we all reach a consensus that some type of collaborative planning program is needed we're probably going to need legislation to fund that program.

So, for that reason I want to keep it in here. You will have plenty of opportunity to comment if there's anything in the legislation that might concern you.

Right now there's no staff time being spent on it. But it is a place keeper for possibly funding a collaborative process that comes out of this. I just want you to understand that there is nothing nefarious here.

Ms. Johnck stated: Well you know too that over the last 20 years there have been some occasions when we have supported funding additional staff for whatever BCDC needed.

I did want to put in the record that our organizations were concerned about what this was all going to amount to.

Commissioner Gioia responded: The other thing I would say is that clearly before any legislation is developed in any area there's going to be a lot of public discussion and public input.

And I understand that there is normal tension that folks believe that BCDC is trying to do some type of land grab and expand its jurisdiction.

We're just keeping the option open for legislation that could be used for many collaborative efforts. It's not a proposal to expand jurisdiction in any particular area.

Chair Randolph added: The variable here is the timing. Obviously the timing of when that might happen is being affected and will be affected by the pace at which our discussion on the Bay Plan goes forward.

12. **New Business.** No new business was discussed.

13. **Old Business.** No old business was discussed.

14. **Adjournment.** Upon motion by Commissioner Wieckowski, seconded by Commissioner Richards, the meeting adjourned at 4:02 p.m.

Respectfully submitted,

WILL TRAVIS
Executive Director

Approved, with no corrections, at the
San Francisco Bay Conservation and
Development Commission Meeting
of January 20, 2011

R. SEAN RANDOLPH, Chair