

San Francisco Bay Conservation and Development Commission

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August 28, 2015

TO: All Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)

Sharon Louie, Director, Administrative & Technology Services (415/352-3638; sharon.louie@bcdc.ca.gov)

SUBJECT: Approved Minutes of July 16, 2015 Commission Meeting

1. **Call to Order.** The meeting was called to order by Chair Wasserman at the Ferry Building, Port of San Francisco Board Room, Second Floor, San Francisco, California at 1:07 p.m.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted (represented by Alternate Chappell) and Commissioners Addiego, Bates, Chan (Represented by Alternate Gilmore), DeLaRosa, Gorin (Left at 2:54 p.m.), Hicks, Lucchesi (reported by Alternate Pemberton), McGrath, Nelson, Sartipi (represented by Alternate McElhinney), Sears, Spring (represented by Alternate Vasquez), Wagenknecht, Ziegler and Zwissler. Assembly Representative Ting (represented by Alternate Sweet, Arrived at 1:10 p.m. and left at 3.22 p.m.) was also present.

Chair Wasserman announced that a quorum was present.

Not present were Commissioners: Association of Bay Area Governments (Techel), Santa Clara County (Cortese), Department of Finance (Finn), Speaker of the Assembly (Gibbs), Contra Costa County (Gioia), Governor (Randolph), City and County of San Francisco (Kim), San Mateo County (Pine).

3. **Public Comment Period.** Chair Wasserman welcomed the new Commissioner Raul DeLaRosa. Chair Wasserman called for public comment on subjects that were not on the agenda.

There were no public speakers present to comment.

Chair Wasserman moved to Approval of the Minutes.

4. **Approval of Minutes of the June 4, 2015 Meeting.** Chair Wasserman asked for a motion and a second to adopt the minutes of June 4, 2015.

MOTION: Commissioner Wagenknecht moved, seconded by Commissioner Gilmore, to approve the June 4, 2015 Minutes.

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VOTE: The motion carried with a vote of 16-0-1 with Commissioners Addiego, Bates, Gilmore, DeLaRosa, Gorin, Pemberton, McGrath, Nelson, McElhinney, Sears, Vasquez, Wagenknecht, Ziegler, Zwissler, Acting Vice Chair Chappell and Chair Wasserman voting, "YES," no "NO," votes and Commissioner Hicks abstaining.

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

a. **New Business.** Chair Wasserman asked: Is there anything somebody would like us to address in a future meeting this is one of your opportunities to raise it. I see none.

b. **Two Reports.** We have two reports to talk about. The first is on the Working Group meeting on Rising Sea Level which we held last week at the Commission offices. We had a report on the ART Project focusing on the Hayward shoreline which was interesting and thorough. One of the interesting things was a very good presentation of some basic alternatives.

There are four alternatives and they will not be the same four in each place along the Bay shore. One is to do nothing in the face of rising sea level in which case we will lose significant infrastructure and commercial operations as well as potential threats to the entrance to the San Mateo Bridge. Second is to retreat, at least in part; to move things that would be affected by rising sea level. One of those things is a water treatment plant with a very, very rough guess of cost of moving it at about \$400 million. There might be some interesting alternatives because there are advances and changes in water treatment as we begin to reclaim more and more water. And so, in fact, there might be some things done instead of fully moving it incorporating some of the capital for those changes that would help. The third is a traditional levee, horizontal levee. The cost of a horizontal levee, again, very, very rough terms, is about \$100 million a mile. I think this is about a mile, somewhere between a mile and two miles. The fourth is what has been called a horizontal levee or green levee which is essentially filling the Bay as a regular levee would as well to provide a basis for building up marshlands which would spread on a much more gradual slope out into the Bay and serve to minimize wave action and serve as a sponge that model tests indicate could be as effective as the horizontal levee with much better impact on habitat and natural wildlife. The cost of that is roughly the same as the typical regular levee, maybe; we have not done them so we don't know. A lot of the costs will depend on whether we can obtain the dirt that would be spread from other sites in the Bay Area at no or little cost. It is a very specific example of what we are going to be facing.

The other report we heard was from a group called, Four Twenty-Seven which is a non-profit that provides consulting to private companies about ways to adapt to climate change. They have been in existence for about ten years and appear to have a fairly good and widespread client base. They talked about doing some fairly interesting things. One of the interesting observations they made is that many of the companies that are, in fact, thinking about climate change, don't want to talk about it very much. For competitive reasons, for shareholder reasons and for a whole range of reasons they do not want to talk about what they

are doing. It makes learning about it, communicating about it a little more difficult and challenging. They do an adaptation survey that we can make available to you which talks about what kind of things corporations throughout the world are thinking about, what they are concerned about and how their concerns relate to their business needs.

There is some very good information in it in terms of our efforts of outreach and communication as we think about reaching out to the private side. Much of our efforts are focused a little bit more inward to ourselves and other government agencies, federal, state, regional and local. It was a very useful report and we will keep in touch with them. The second report is the Working Group on Bay fill policies which met this morning and I would ask Barry Nelson to give that report.

Commissioner Nelson reported the following: Our meeting today was an organizational meeting. We spent the bulk of the meeting discussing our schedule and work plan for the coming year. Staff had done a nice job of developing a summary of the Bay fill policies that we need to think about.

We have been discussing those over the course of the last several meetings. They have gone through the process of identifying what Bay fill policies we need to think about in this process, what speakers and expertise and so forth we need. And then we need to turn that into a schedule and so there is a matrix and a rough draft schedule. Anyone who is interested should ask staff and they would be happy to provide you with a copy. This meeting was really helpful to give us a game plan moving forward for the next year to year and a half.

Chair Wasserman added: Thank you. The reports are not yet but will be online. I want to give a very short report on another meeting we had this week. Larry and I called a group of people together to sort of brainstorm on what we have all been talking about: the what should we do, what can we do, how are we going to pay for it, coming from a wide variety, not private industry, but a number of non-profits and government agencies and people who we have heard from and seen.

I want to make a couple of observations or really more teasers, I will admit. We spent a fair amount of time about governance about adapting to rising sea level in the Bay Area. Who is going to lead, who is going to control, who is going to collaborate and how we get a little bit more effectiveness in the efforts that are going on because ultimately we are going to have to do that. It was not surprising that although control might be nice, we were not going to go there. One of the questions that I threw out is, if BCDC were not to lead that effort, who would make sense to do so? And there was not any good answer. There were some answers if you jump ahead and take a very comprehensive view of bringing some unity to the flood control and water agencies that maybe there might be something there. But you are talking about years of effort to get that going. And it may be worthwhile but it is not going to lead and help to coordinate the efforts in the meantime. One of the things that this reinforced for me is that it really is on our shoulders.

In the Bay Plan some of that responsibility was, “punted,” that was the word we used to the then Joint Policy Committee, now the Bay Area Regional Collaborative (BARC). But as that has developed, it is clearly not fully been punted back to us but certainly in a cooperative way accepting our significant leadership on it. We need to recognize and continue to fill that role not in a controlling way but in a leading way. The other interesting piece of the governance was doing some comparisons to other issues that we might learn from. And one of them was transportation. There is a huge difference because MTC provides a very significant coordinating role largely because they are the pipeline of federal and state funds to this area which does give them a certain level of control. We do not and are unlikely to have that kind of resource to help lead and control. The model of the Regional Transportation Plan based on the county-wide transportation plans, based on input from the cities and others, in a sort of up and down process, has some value.

One of the conclusions is too strong, but a shared observation is that it may well be that the work that we have been doing, are doing and will do with ART as we replicate it in the other counties and around the Bay, may have an element of that. And I think we are going to think about that more seriously and put it into some of our new efforts. I will toss out one other potentially provocative teaser. In this control issue one of the things that BCDC has not really done is that as we are considering permit applications as part of our adapting to sea rise elements, think a little bit more specifically about what is the impact of whatever is being proposed on the surrounding areas. We have not faced this yet but the clearest model is, if the solution is a seawall that is a quarter of a mile long or half of a mile long and tapers off so it is protecting whatever is being built; all that does is spread the water to the two sides which creates issues including fill which will need to be addressed. So, we may start thinking about how to put that more into our permit process. We are going to have another meeting and we will keep you apprised of that and it will help infuse our discussions and was very useful.

My last report is, we continue to plan for our celebration for the 50th on September 16th with our summit in the morning at the Exploratorium and a party that evening at the Exploratorium. We are out actively fundraising. We have had several productive discussions at different levels with the San Francisco Planning Department and the Rebuild by Design Group. We are hoping that we can synchronize our efforts and have a major announcement regarding Rebuild by Design and the contest for some solutions Bay-wide at the summit starting to put our panels together. If anyone is interested in a packet I will be happy to send it to you.

I should note that in part of our fundraising effort for the 50th we are including some solicitations or at least inviting consideration of larger contributions to the ART Program which staff estimates is roughly a 15 million dollar cost over three years to take it through all nine counties and then to do some coordination with it. We are hoping we can get about half of that from various state sources.

c. **Resolution for Clem Shute.** We have before you a resolution which we would like you to approve by motion. It is a resolution saluting Clem Shute who we had make a presentation a few meetings ago. He was the first Deputy Attorney General to advise BCDC and who provided us history about our activities in the past. He is receiving the second annual Award for Lifetime

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Contributions to the Field of Environmental Law from the State Bar Environmental Law Section. To honor Clem, we have placed in front of you a copy of a resolution that I propose we approve and transmit to him. I would appreciate a motion for it.

MOTION: Commissioner Nelson moved approval of the Clem Shute Resolution, seconded by Commissioner McGrath.

VOTE: The motion carried with a vote of 16-0-1 with Commissioners Addiego, Bates, Gilmore, DeLaRosa, Gorin, Pemberton, McGrath, Nelson, McElhinney, Sears, Vasquez, Wagenknecht, Ziegler, Zwissler, Acting Vice Chair Chappell and Chair Wasserman voting, "YES," no "NO," votes and Commissioner Hicks abstaining.

d. **Next BCDC Meeting.** We do not think that we are going to have an August 6th meeting. Expect a message on Monday regarding this meeting but in all likelihood it will not be scheduled. We do expect to have a meeting on the 20th. That brings us to ex-parte communications if anybody wishes to make one.

(1) Ex-Parte Communications. Chair Wasserman received no reports of ex-parte communications from Commissioners. He moved on to the Executive Director's Report.

(2) Executive Director's Report. Executive Director Goldzband reported on the following.

6. **Report of the Executive Director.** Executive Director Goldzband reported:

As we approach midsummer, I hope that your Fourth of July included lots of fireworks. At BCDC, we try to minimize fireworks in the regulatory arena and I think that you will see some of the effects of our work today. That being said, in honor of the marvelous All-Star game that was played we expect you to put on your Madison Bumgarner uniforms and throw some hard questions at staff to that you can prove that William Shakespeare was right when he wrote in "A Midsummer Night's Dream" that "the course of true love never did run smooth." How's that for a mixed metaphor?

a. **Budget and Staffing.** I am pleased to let you know that the Governor has signed the state budget and it included the Governor's augmentation for BCDC. This will allow us to become more stable from a staffing perspective and fill our vacancies.

We have another new intern for the summer to announce. Mark Berghouse (stood and was recognized) is interning for us through August. Mark is a sophomore at Columbia University majoring in Earth Sciences and hails from Redwood City. He is also a nationally ranked fencer. He is working two days a week in the Sediment Management Unit helping us update the dredging footprints in GIS, performing sediment data analysis and assisting on a permit. Simultaneously, he is interning in the Office of Planning of the City and County of San Francisco. We are making sure that one does not touch the other. He is getting a great vantage point for a young person seeing the permit side, the regulatory side and the applicant side.

Unfortunately, we are losing a couple of people. First is a valued member of our Engineering Criteria Review Board. Due to conflicts with other commitments, Dr. Ron Mayes has resigned from the volunteer board that advises the Commission on issues relating to the safety of fills and of structures on fills. Dr. Mayes is a noted structural engineer and his expertise on the eleven-member Advisory Board will be sorely missed. The staff will endeavor to fill the vacancy in the coming months.

On the personnel front, I am sorry to let you know that Rebecca Coates-Muldoon, from whom you will hear in just a few minutes, will leave us shortly after this meeting to become a graduate student at Cal. Although Rebecca has not been with us long, she certainly has become part of the family and performed her duties in an exemplary fashion. We shall miss her.

b. **Policy.** A few things to note. You will remember that Chair Wasserman urged us to go out into the field and bring ART to the various counties who are asking for it. We are going to be going to Napa this fall. The Golden Gate Bridge Highway and Transportation District has officially withdrawn its application for the Sausalito Ferry Terminal. The District intends to resubmit the application in the future, hopefully after the District and the City of Sausalito can agree on a plan moving forward and we fully appreciate the efforts of Supervisor Sears in that regard. It is a work in progress.

Under the heading of, it's always nice to hear good news; I am happy to report that research by the University of California has shown that the Port of Oakland has experienced a 76 percent drop in black carbon emissions from harbor trucks due to state and Port programs that have modernized Oakland's Harbor truck fleet. In addition, nitrogen oxides, which create ozone, are down 53 percent and the Port's truck programs eliminated 14 tons of diesel particulate emissions between 2005 and 2012. Another 151 tons of particulate matter has been eliminated from ocean-going vessels. The Port is on target to reach an 85 percent overall reduction in diesel emissions by 2020.

I think that is good news and we were thrilled that the Port of Oakland shared that with us. That completes my report and I am happy to answer any questions you all may have.

Chair Wasserman continued: Any questions for the Executive Director? (He received no questions) That brings us to Item 7.

7. **Consideration of Administrative Matters.** Chair Wasserman stated: We were provided with a list of them. Bob Batha is here to answer any questions. (He received no questions) The Chair moved on to Item 8.

8. **Vote on Proposed Coastal Management Program Assessment and Strategy.** Chair Wasserman announced: Item 8 is a vote on the proposed assessment and strategy for the Commission's Coastal Management Program. Rebecca Coates-Maldoon will make the presentation. Take it away.

Planner Rebecca Coates-Maloon presented the following: The staff recommendation is that the Commission adopt and forward to NOAA's Office for Coastal Management the San Francisco Bay Coastal Management Program Assessment and Strategy for the 2016 to 2020 enhancement cycle. The Commission held a public hearing on the draft Assessment and Strategy on May 21st. As you recall, BCDC must complete an Assessment and Strategy every five years to be eligible for Coastal Zone Management Act, Section 309 funding from NOAA.

The assessment evaluates nine coastal issue areas identified by Congress of being of national importance and identifies elements of the Commission's Coastal Management Program that work well and those needing improvement.

The Strategy addresses high-priority issue areas that will guide future Section 309 grant expenditures to improve the Commission's Coastal Management Program.

A public comment period on the draft Assessment and Strategy was held from May 8th through June 7th and NOAA reviewed the draft concurrently.

Only minor comments were received and mostly focused on clarifying content; in particular, about how the strategies would be implemented.

All comments received were incorporated into the final Assessment and Strategy and changes between the draft and final versions were minor.

Please let me know if you have any questions on the Assessment and Strategy. Thank you.

Chair Wasserman asked: Are there any questions or comments? (He received no comments or questions) This does not require a public hearing. We have no public comment. I would ask for a motion and a second on the staff recommendations as presented.

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

Commissioner McGrath commented: Some of the things that were done during this period on abandoned boats are really exemplary. There is very difficult legislation. What was accomplished by a group of parties is worthy of a secondary applause.

VOTE: The motion carried with a roll call vote of 16-0-1 with Commissioners Addiego, Bates, Gilmore, DeLaRosa, Gorin, Pemberton, McGrath, Nelson, McElhinney, Sears, Vasquez, Wagenknecht, Ziegler, Zwissler, Acting Vice Chair Chappell and Chair Wasserman voting, "YES," no "NO," votes and Commissioner Hicks abstaining.

Chair Wasserman had an additional comment: Woven into this is the ART Project because it is the major communication method of getting this out which is one of the strategy pieces of this plan. Thank you very much. That brings us to Item 9.

9. Public Hearing and Possible Vote on Tesoro Refining & Marketing Company LLC's Reconstruction of and Upgrades to the Golden Eagle Refinery/Marine Terminal, in the City of Martinez, Contra Costa County; BCDC Permit Application No. 2014.006.00. Chair Wasserman stated: Item 9 is a public hearing and vote on the application by Tesoro to upgrade a marine oil terminal in Contra Costa County to meet State of California seismic standards. Jaime Michaels will provide the staff recommendation.

Principal Permit Analyst Jaime Michaels presented the following: On July 3rd you were mailed the summary of Tesoro Refining and Marketing Company's permit application to undertake a Marine Oil Terminal Engineering and Maintenance Standards Compliance Project, also known as MOTEMS, at its Golden Eagle Refinery in the City of Martinez.

The proposed project is located in a water-related industry priority use area and mostly in your Bay jurisdiction.

As proposed, the project involves the demolition of an existing berth and a pile-supported approachway. It also involves the construction of a new berth which is known as Berth 1A, a new approachway, and a new pipeway trestle to support pipelines.

The project would result in an approximate 12,000-square-foot net increase in open-Bay surface area and an approximate 240-cubic-yard increase of Bay volume which is related to supporting pilings.

The project would impact both permanently and temporarily marsh that is suitable for federally-listed endangered species, namely, the Salt Marsh Harvest Mouse and the Ridgway Rail.

These impacts would be mitigated through Tesoro's funding of marsh habitat restoration at locations in the City of Martinez, the North Bay, and in the Suisun Marsh.

As discussed in the summary, the Commission's Engineering Criteria Review Board reviewed the project in June 2014 and provided Tesoro with input on various issues.

One of those issues concerned the criteria used to design the proposed pipeway. The ECRB requested additional information to help it understand the potential for pipeway movement under different seismic scenarios.

The applicant responded but not to the ECRB's satisfaction which in turn recommended an independent third-party review of the pipeway which did not occur.

Consequently, the ECRB's review and advice on this aspect of the project remained inconclusive at the time that we mailed the staff summary.

Since the mailing we have been working very closely with the applicant, State Lands Commission staff, the ECRB and the State Attorney General's Office to reach a resolution on this particular issue, which will be discussed further when we present the recommendation.

In evaluating the proposed project you should consider whether the project would be consistent with: your laws and policies on Bay fill and the project site's priority use designation for water-related industry use, the McAteer-Petris Act's and Bay Plan policies regarding natural resources, the Bay Plan policies on safety of fills, the Bay Plan policies on climate change and the Bay Plan policies on navigational safety and oil spill prevention.

And with that I would like to introduce Tom Lu from Tesoro who will present the project.

Mr. Lu presented the following: I am Vice President with Tesoro and I am the General Manager for Tesoro's Golden Eagle/Martinez refinery.

Today I will give you a brief overview of who we are at our refinery and then Matt Buell, our Environmental Manager, will go through more of the detail of the project and answer whatever questions you might have.

I also want to thank the BCDC staff for working with us over a couple of years to get to this point where we hopefully have an affirmative vote.

It is critical for us to proceed with this project during the over-water work window of August 1st through November 30th. And the timing of that is really essential that we reach a conclusion today to go ahead and proceed with that.

First of all, this is a brief overview of who we are at our refinery. We have roughly 650 employees at our plant. We are located in Martinez. With that number of employees we have a very substantial ongoing day-to-day business that impacts not only jobs at the plant but at an eight-times multiplier gives you a roughly 5,200 job impact from our facility and that rely on our business.

In addition, we have upwards of a 1,000, 700 to 1,500 contractors day-in and day-out, depending on the projects and the work we have going on.

Our annual payroll to our employees is roughly just under \$100 million and we pay \$16 million-plus in property tax annually. In 2014 we paid \$16 million.

We are one of five Bay Area refineries. We do supply 15 to 20 percent of transportation fuels, gasoline and diesel to the local businesses.

We just celebrated our 100th Anniversary at our site in 2013. So we have been around since 1913.

Our marine transportation which is really the focus of this project accounts for 20 percent of our product movement in and out of the refinery.

As I'm sure you are aware MOTEMS standards were developed to ensure California's marine oil terminals meet the highest levels of safe operation and protection of the environment.

One of our primary missions at our site is safe compliant and reliable operation of our facility. Our employees and contractors work tirelessly to impact safe compliant reliable operation. This project takes us to a new level in terms of our wharf.

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The project specifically will consist of upgrading the existing Avon Marine Oil Terminal to the current MOTEM standards. The current timber-pile design is 1913 vintage. We are bringing it up to state-of-the-art requirements and engineering standards.

It is important to recognize that there is no additional capacity for product transfers that are associated with this dock.

The Avon terminal does not handle crude oil. A lease condition that we have for the terminal does not allow us to unload crude without state approval.

The State Lands Commission has required that we have this upgrade in place and in service by June of 2017. That may seem like a ways away but the size of the project and complexity of getting the timbers in the ground and the build out of that begins as soon as this permit gets issued, hopefully on August 1st.

With that I would like to turn it over to Matt Buell to go through some of the project details. Feel free to ask questions as you have them along this. We have a number of people here that can answer those.

Mr. Matt Buell addressed the Commission: I am Mathew Buell. I am the Environmental Manager at the Tesoro/Martinez Refinery. With me I have Dominick Tagalog who is the lead engineer for this project.

I want to start by echoing what Tom said earlier. I want to thank the BCDC staff for all the effort over the last two years in getting this project to this point. Although this is a, "simple compliance project," where we are looking to construct this does not make it a simple permit in any way shape or form.

I am going to give you an overview of the project. This slide shows a general overall setting of the project. This is set near the Benicia/Martinez Bridge. The Avon Wharf actually sits to the east of the Benicia/Martinez Bridge.

Tesoro does operate another dock, the Amorco Wharf as we call it. That is our crude oil facility in which we primarily bring in marine crude oil through that dock. That dock has already been upgraded to meet the MOTEMS standards.

We do think it is critical that there were comments during the EIR that we would use this dock to bring in crude oil. That is not the case. The Amorco Wharf is our marine crude dock. This is a water-related industry we are talking about.

Area C on this slide has been historically wetlands and area D is open water and Berth 1A is also shown. Berth 5 will be demolished as part of this project to create more open water and meet the BCDC criteria to decrease Bay fill.

We have an existing structure in Area C and D. It is an existing wood structure that is essentially a light rail system which we use to transport personnel back and forth to the existing dock. We also have a second wooden trestle which we use to support the pipelines that go out there.

In Area C and D we will be driving piles and installing new state-of-the-art steel trestles that meet the MOTEMS standards to support access out to the wharf and also support the pipelines that will go out there. It also includes the installation of the new Berth 1A which we will use for loading and unloading operations that occur at this dock. There is a state-of-the-art control room.

The demolition of Berth 5 is being done to decrease Bay cover as a result of this project.

There will be new mooring dolphins at Berth 1A. These are systems that we use to moor ships and make sure they stay where they are supposed to be.

One of the elements of the MOTEMS standards is making sure you have the ability to respond in an emergency out at the docks. The emergency boats are just one small aspect of the upgrades for emergency response.

The new control room is an improvement over the current control room that we have at the facility.

There was a fair amount of discussion about sea level rise. What we have incorporated into the design of the pipe way trestle a significant ability to raise these pipes at a later date if there is sea level rise that impacts the pipes.

We need to do this project to initially come into compliance but MOTEMS requires regular routine audits to make sure we remain in conformance with the MOTEMS standards. We will be looking for sea level rise and when we see that there is sufficient sea level rise we will be able to raise the pipes up and adapt to sea level rise.

This project is primarily engineered by three companies. Anvil Engineering did the electrical and piping work. Ben C. Gerwick who is now known as COWI did the structural engineering. And then Langan Treadwell and Rollo did the geotechnical work. These are three very respected engineering companies with very good reputations.

An integral part of this project was developing a CAD three-dimensional design of the project. It really helps with the design making to be sure you have a functional operational dock. Each of these companies has an extensive quality-assurance process to make sure the engineering work they do is of sufficient quality. This process is integral to their business and is also required by the MOTEMS standards as well.

MOTEMS requires oversight by the California State Lands Marine Facilities Division. They have done a very detailed look at this project and we have answered a number of questions and resolved issues. They have let us know that they are okay with us proceeding with going ahead with construction of this.

And finally, the ECRB looked at this and there were a number of questions that were raised. There was one question that we have not been able to resolve yet. We have resolved 12 or 13 questions and this was the only one we were unable to resolve. I think there will be a special condition as part of the permit that will require us to resolve this before we can fully put this new Berth 1A into service.

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The new design for the control room is a very compact design compared to what we have. Before we can tie the new pipes in we have to resolve the ECRB question.

We have an in-water work window of August 2015 to November 2015. During this time period we are going to install 401 new steel pilings. It is a significant amount of work. We do not have a ton of float in that schedule.

Between December of this year and August of next year there is a whole lot of work that goes on above the water. We cannot do this work unless we have these piles in place to allow us to do the work on the water.

The approach trestle is above-water work. We hope that by November or December 2016 we are in a position to cut over. We are required by State Lands to make this cut over by June 1, 2017. We want to be in a position to make that cut over in November of 2016.

If we miss even a portion of this on-water work window it really puts this project construction schedule for the safety upgrade in jeopardy.

The one aspect of MOTEMS that I think most about is the seismic standards. They are very stringent seismic standards. It makes a great deal of sense that they are as stringent as they are for this seismically active area.

There is a requirement for rapid pipeline shut-off valves. If there is an unlikely release from a pipeline we have rapid shut-off valves to stop that release as quickly as possible.

Commissioner McGrath had a question: Pipeline safety has been in the news in southern California and in the news about the lagging federal oversight of pipeline safety in terms of new regulations. I was a little bit surprised by the language in the staff report. It is on page 14.

It talks about a 30 minute lag time. I believe there was a substantial lag time in the Santa Barbara spill. Your response here is, "the most rapid response technically achievable." Can you explain that to me? I do not understand shut-off valves.

Mr. Buell responded: I will let Dominick talk about the shut-off valves. I think where the 30 minutes comes from is that we do operate and there are a series of Coast Guard regulations that regulate oil spill response. And we have very significant oil response capabilities which we are required to prove out to the Coast Guard, the state of California, OSPRA on a regular routine basis. And part of that is that you have to have a planning basis for how long it might take you to attack a spill. And that tells you how much equipment you need to have immediately on hand, what resources do you immediately have to have on hand. That sets the half an hour planning criteria from a spill response perspective.

Commissioner McGrath asked: So that is the amount of fuel spilled and be ready for it. Is there really no way of shutting down a pipeline more quickly than that?

Mr. Dominick Tagalog replied: Well, in terms of the speed of these quick shut-off valves, it is mandated in MOTEMS for the new emergency shut-off valves that are on the manifold at the new Berth 1A as well as the SIVS that are located roughly one-half mile away; those must be capable of shutting off within 30 seconds. As far as isolation goes, it is mandated that we be able to respond very quickly.

Commissioner McGrath continued: But at that point the pipeline could still drain?

Mr. Tagalog answered: That is correct.

Commissioner McGrath pressed for more detail: And the trestle has quite a number of pipes on it. I assume that all those pipes are going to be new so there is going to be no corrosion issue at all. Is that correct?

Mr. Tagalog replied: We are utilizing our existing pipelines for the majority of the run. The portion that will be replaced is about 200 feet on the very far north end that will be replaced by the project.

Commissioner McGrath clarified his inquiry: The question that I have in here; corrosion happens on some pipelines much more than on others. Is there a step in this before you bring this up where all those pipelines will be checked for corrosion?

Mr. Tagalog responded: Actually, we do have ongoing monitoring programs in place. PCMS, pipeline corrosion monitoring systems where UTs are taken periodically along the entire length of the trestle. We do have inspections that take place for MOTEMS that are mandated as well on a three year period as well as hydro tests that are required on all of our pipelines on an annual basis. There are ongoing inspections that have been in place for quite some time that will monitor that for us.

Commissioner McGrath asked: Is OSPRA in the review loop for those annual reports?

Mr. Tagalog replied: Yes.

Mr. Buell continued his presentation: As noted, we will have enhanced emergency response capabilities so additional firefighting and spill response equipment will be included. The new response and escape boat docks we have talked about.

Our new control room will give operators a better view of what is going on, better control over that.

Systems for remote rapid emergency ship release is tension monitoring of mooring lines are required by lease conditions. A lot of these were driven by the MOTEMS standards but some of them were also driven by the EIR and the mitigation measures in the EIR.

We do have a spill response team. They train regularly, at least monthly along with several weeks during the year where that team is dedicated towards training in the unlikely event that we do have a spill.

Commissioner Gilmore had a question: In the Santa Barbara spill it seems like there were two issues. One was that the shut-off valves did not work or they were not triggered in time. The other issue was that it took a while before anybody realized that there was a spill going on.

My question is, we were talking about valves; it is great if you can shut them off quickly, but how do you monitor whether or not a spill or a break or something has occurred?

Mr. Buell replied: Part of our safety procedures and I'm going to guess that it also will be a requirement by State Lands; we are required to have people attending the actual loading of the ship. The pipes that we are talking run about a mile and we have people at the wharf during the loading integrally monitoring it. If we have a release of any significance we are going to know it very quickly and can trigger those. We have good visual perspectives that will allow us to know that something is going on whereas in the Santa Barbara case that pipeline is operated remotely. This is actually operated by people who are right there at the dock.

Let's talk about what permits we have already obtained to date. First off, we started with the State Lands Commission. They were the lead agency for an EIR that was approved March 20, 2015.

The U.S. Army Corps of Engineers nationwide permit was issued in June of this year. Before that was issued biological opinions from U.S. Fish and Wildlife Service and the National Marine Fisheries Services were issued.

The Regional Water Quality Control Board issued us a water quality certification in May of this year.

As noted here, one of the key things that is created by those permits is the in-water work window that we have talked about. Pile driving can only happen during the in-water work window and that is why it is critical that we get this permit.

There will be 900 creosote-treated piles removed from the Bay. We have provided funding as wetlands mitigation offsets as part of the water quality certification for the McNabney Marsh Restoration. We have provided funding for the California Clapper Rail habitat enhancement. We are going to provide more than 10 acres of enhanced Salt Marsh Harvest Mouse habitat in perpetuity. Part of the water quality certification will be stormwater treatment mitigation for the new terminal approach roadway. There is an Osprey nest on the existing Berth 5 that will be relocated when this project is approved.

This project increases Bay open-water surface area by approximately 12,000 feet. Our design accommodates the potential for future sea level rise. One of the ECRB recommendations that we have adopted is five seismic accelerometers on the new Berth 1A and approach road. There will be special conditions in here that will require us to completely comply with those special conditions.

Finally, I will put this out for questions. This project is clearly an enhancement to the safety of the Bay.

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Chair Wasserman announced: We will open the public hearing. I have speaker cards on this item. The first speaker is George Smith.

Mr. Smith addressed the Commission: My name is George Smith I am an independent consultant and I live in Walnut Creek. I have been a native of Walnut Creek for the past 30 years. I serve on the Hazardous Materials Commission for Contra Costa County. The mission of that group is to be the watchdog for any hazardous waste issues for the County. We report to the Board of Supervisors.

I also represent East Bay Leadership Council and I am on the Board for East Bay Leadership Council which is a group of about 400 members that come from a variety of sectors including private industry, education, non-government organizations and non-profit organizations. The mission of East Bay Leadership Council is to advocate on public policy issues with the overall mission to affect economic vitality and quality of life in the East Bay.

I am here today to recommend approval; that BCDC approve the permit for the Tesoro Avon MOTEMS Project. This is about safety and reliability. The project will modernize a facility that is more than 75 years old.

I think the seismic upgrades are very critical.

There has been some misinformation out in the public regarding this being a potential crude-by-rail or an import dock for Bakken crude. This is an export terminal. It has nothing to do with crude-by-rail, Bakken crude or any other type of import of crude oil.

The project does not increase the volume of ship traffic coming through the terminal. It does not increase the quantity of petroleum product that is transported through the terminal. I recommend approval.

Mr. Curtis Swanson spoke: I am a member of Tesoro's Community Advisory Panel. The Community Advisory Panel is comprised of 15 local citizens. We either work or reside near Tesoro's Martinez Refinery. This panel meets monthly with Tesoro staff to learn about the refinery operations proposed improvements and learn about their impacts on the local economy and the environment.

In turn, we provide Tesoro with advice on how these projects will be implemented, discussed with the communities and ways to mitigate any adverse impacts that may come about.

The Avon MOTEMS Project will improve the ability of Tesoro's Avon Wharf and its associated petroleum piping system to withstand damage from earthquakes. Valves and instrumentation that we discussed earlier would be added rapidly to quickly shut down the wharf piping should there be any product leakage during an earthquake.

Equally important, an improved Avon Wharf would allow Tesoro to resume operations quickly after an earthquake and thereby provide needed energy projects to California during that important recovery period after an earthquake.

The Community Advisory Panel has followed the progress of this project over the past two years. Tesoro has obtained all the other necessary permits and approvals.

The Community Advisory Panel fully supports this Avon Wharf Improvement Project. And on behalf of the Panel I urge the Commission to approve the permit today so they can begin construction on August 1st.

Mr. Dan Ordos was recognized: I am Vice President of Cherne Contracting. We were selected to build this proposed project about one year ago. We have been working feverishly to put together our detailed plans to execute.

As a contractor we get barraged with lots of different project opportunities. We have to select which are the best projects to pursue. We look at a lot of criteria as we vet project opportunities.

As we look at our client, are they a good corporate citizen? Tesoro is a great corporate citizen.

Are they safe? Are they interested in safety, truly interested in safety? Yes they are.

Do they provide the right amount of environmental stewardship? Yes they do.

We look at Tesoro as a great client for this project.

Secondly, we look at the political climate. What is going on around this project? Are there concerns? Does it have a possibility of being built? Are we trying to increase throughput? Are we trying to get crude-by-rail? The answer to all of those is, no.

The third one is, do we have the experience that Tesoro needs to build this project safely? And yes, we do. As a contractor in California for many years, San Francisco/Oakland Bay Bridge and Benicia Bridge; all projects we have worked on in this area with the experience necessary to build this project.

The fourth is labor availability and skill. Do we have the skilled and available labor in the area to build this kind of project? Yes we do. We have project labor agreements in place with Solano and Contra Costa County Building Trades with adequate workforce to support roughly 140 people at the Martinez facility as well as another 40 people at our Solano fabrication facility in Vallejo.

And then last and a bit subjective is, does this project make sense? When you are looking at projects you have to ask yourself, does the project make sense? Replacing a 100 year old facility in some places and 50 in others is definitely, this project makes sense.

Please vote for the project, thank you.

John Coleman addressed the Commission: The Bay Planning Coalition fully embraces the approval of Tesoro's Avon MOTEMS Project. This is really a win/win when you look at it.

It is a win for the environment. It is going to make the Bay safer in terms of seismic activity that may happen in terms of spills.

It is going to be taking out the creosote pilings which we know is an impact for the fish.

It is going to be able to move us in a direction of more people being employed and the oil issues that were addressed It is not going to be dealing with the controversial issues that so often are thrown out as a red herring.

This has been a process that has been going on for a long time. It has gone through numerous entities where they have had to sign off on it. In order to have State Lands Commission to move forward so they can do their work and so Tesoro can do its work within the fish windows, you are the last check in the box that needs to happen.

They do need to do this work because we cannot afford to have Tesoro go offline as a refinery. If the work cannot be done and they do not meet the timeframe that is set by the State Lands Commission then that is what could happen.

Today you have before you a win/win. You can approve this which I highly recommend that you do and it will be a win for the environment and it is a win for our economy and it is a win for the jobs here in the Bay Area.

And I hope that you do support this, thank you.

Chair Wasserman stated: With that I would entertain a motion to close the public hearing.

MOTION: Commissioner Vasquez moved to close the public hearing, seconded by Commissioner Wagenknecht. The motion carried by a voice vote with no objections and Commissioner Hicks abstaining.

Chair Wasserman asked: Do we have any questions or comments from the Commissioners before we hear the staff recommendation? (He received no comments)

Ms. Michaels gave the staff recommendation: In front of you should be an errata sheet which is key to the recommendation.

Before presenting the recommendation I would like to bring your attention to the errata sheet which identifies proposed revisions in language contained in the version of the recommendation that was mailed on July 10th.

As mentioned in my presentation on the summary, the ECRB's review and advice on the criteria for the pipeway design was inconclusive at the time of mailing our summary. After that, the staff worked with all involved including your ECRB and the applicant to resolve this issue.

Among other things, the ECRB clarified the specific technical data needed to fully assess the pipeway reaction in a seismic event and thereby fully understand its stability.

Tesoro concluded that it could provide the information at a later date prior to use of the pipeway.

The recommendation mailed on July 10th authorized Tesoro's construction of the pipeway and further use of the pipeway but only after Tesoro met Special Condition II.J as it is shown in the recommendation.

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This condition required Tesoro to return to the ECRB with a pipeway analysis so the Board could review the information and advise the staff and Executive Director on the pipeway's seismic stability.

The condition also allowed the Executive Director to take an action on your behalf regarding use of the pipeway.

The condition included a provision that Tesoro could bring a possible dispute on the Director's action back to him, the Chairman and, if necessary, this full Commission.

Upon review of this condition and related language in the recommendation, the Attorney General's Office advised the staff that if it took this approach the Commission would not have substantial evidence at the time of making a decision on the project for a vote to support a finding that the project is consistent with your laws and policies, particularly regarding safety of fills.

To address this issue the following changes are proposed to the recommendation and they are identified in the errata sheet.

The first recommended change: the authorization section of the recommendation should be revised to clarify that all of the activities are authorized to proceed with the exception of one. That one is the tie-in of the new and existing pipelines along the pipeway which is the critical activity for allowing the new pipeway to carry product at the terminal.

The second change is a change to Special Condition II.J. We recommend that it be revised in several ways. The condition identifies this tie-in event as the point before which Tesoro is required to return to the ECRB for further analysis of the pipeway's seismic stability.

After that time Tesoro is required to seek an amendment to the Commission's authorization to allow the tie-in to occur.

Lastly, the condition clarifies that without this process in place, which would involve notification of the public, and without an amendment to the permit, the tie-in could not occur which effectively makes the terminal not fully operable.

The third recommended change or revision, Special Condition II.K addresses potential abandonment of facilities authorized in your Bay jurisdiction. In the original recommendation, a slightly modified version of this condition was included in the standard conditions Section IV. We recommend moving it to the Special Conditions section in order to highlight its importance: if any as-built facilities were to remain unused for an extended period of time, Tesoro would be responsible for their removal.

The fourth change is a change to the findings to provide the basis for these changes that I just read; the related finding, which is in Section B, 5d on Sound Safety Standards, those findings need to be revised. That is a very long section.

The last change in the sheet in front of you involves deleting the Standard Condition P on abandonment to reflect the earlier recommended placement of that condition in the Special Conditions.

In addition to the revised conditions noted in the errata sheet the recommendation includes other special conditions that require Tesoro to do the following: provide assurance over time that its lease with State Lands for the project site remains valid, to comply with other regulatory actions or approvals for the project including the Water Board's and the federal resource agencies, provide assurance that the mitigation projects for which it has already provided funding will occur, and if not, implement alternative mitigation projects, to install seismic instrumentation equipment at the terminal and also to address future sea level rise and flood conditions by installing cross beams that are adjustable and can be moved over time as water levels rise and also possibly to install a modified pipeway system, if needed, in the future.

As conditioned, the staff believes the project is consistent with your laws and policies on issues of Bay fill, water-related industrial use, natural resources, safety of fills, climate change, and navigational safety and oil spill prevention. We recommend you approve the project, as conditioned.

Chair Wasserman announced: I would entertain a motion to accept the staff recommendations including the amendments to the staff report.

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

Commissioner McGrath commented: I am going to support this. I thought that there were very good answers to the questions that I raised. I think what we are about is not substituting the judgment of BCDC for the State Lands Commission but trying to make sure that all the important issues are, in fact, addressed. I am satisfied that has been done. I would like to also commend Tesoro for doing it the right way by having and establishing a Community Advisory Panel that meets monthly. That is the way you listen and that is the way you have a heads up on those things.

Commissioner Zwissler had a question: I thought I heard in part of the presentation that the pipeline was not going to be new pipeline. And yet in this amended condition it says, new pipeline. Did I miss that?

Ms. Michaels responded: If I said that this is not, we should change that. There is existing pipeline that is going to remain in place and there is also is about a 200-foot section that will be new pipeline. Where those two meet, that will be the point where there is this critical tie-in. I think it reflects what will happen.

Commissioner Nelson had mitigation questions: I have two questions about the mitigation. The mitigation required in the permit, some of it is at a mitigation bank that has not yet been reviewed or approved by the Commission and the other is at a site as yet undetermined.

Ms. Michaels replied: There are three sites.

Commissioner Nelson added: I understand the East Bay MUD site. With these other two sites could you walk us through the mitigation bank that has not yet been approved and the Fish and Wildlife site that has not been selected yet?

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Ms. Michaels replied: In the San Pablo Bay.

Commissioner Nelson added: And how we are confident that those mitigation projects are going to move forward in a timely way and produce the results we expected.

Ms. Michaels stated: The Cordelia Slough Preserve site which is the mitigation bank is a proposed mitigation bank. And that has not yet gotten your approval. And it really is just a proposed site although Tesoro has already provided funding to restore about 12 and a half acres of marsh.

And that will happen if that mitigation bank comes to be. In addition, Tesoro has already given money to McNabney Marsh which you noted. They have already given money to Fish and Wildlife also.

Mr. Buell stated: It was the San Pablo National Wildlife Refuge but the U.S. Fish and Wildlife was integral in determining that mitigation, essentially a shovel-ready project.

Ms. Michaels added: And that is to restore about four acres in the North Bay in the San Pablo Bay Wildlife Refuge. You are right in that the exact location of where that restoration will occur is not yet known by us. We have asked Tesoro to provide us that information. Tesoro is supposed to provide us with a status report about a year or six months from now and we will know whether or not those projects are in line and ready to happen.

If they do not happen, which is possible, they are required to come back to us to implement alternative mitigation sites which they are solely responsible for funding, implementing, monitoring and managing. And that is a condition that they have agreed to or they will agree to. It will be in the permit when it is issued.

It really is to be determined and we will know more in the future.

Chair Wasserman added: In thanks to Tesoro for all the work on this I know they are active supporters of our ART Project in Contra Costa County and we appreciate that. We now need to ask the applicant whether you accept the conditions as they have been amended.

Mr. Buell and Mr. Lu replied: We do.

VOTE: The motion carried with a roll call vote of 15-0-1 with Commissioners Addiego, Bates, Gilmore, DeLaRosa, Gorin, Pemberton, McGrath, Nelson, McElhinney, Sears, Vasquez, Wagenknecht, Zwissler, Acting Vice Chair Chappell and Chair Wasserman voting, "YES", no "NO", votes and Commissioner Hicks abstaining.

Chair Wasserman moved on to Item 10.

10. Commissioner Briefing by the U.S. Army Corps of Engineers and the Port of Oakland on the Middle Harbor Enhancement Project, in the City of Oakland, Alameda County. BCDC Consistency Determination No. C2000.014.00 and Permit No. 2000.014.00. Chair Wasserman announced: Item ten is a hearing on the status of the U.S. Army Corps of Engineers' Middle Harbor Enhancement Project at the Port of Oakland in Alameda County. Brenda Goeden and representatives of the Corps will present the briefing.

Sediment Program Manager Brenda Goeden presented the following: Last year the Commission had a briefing on the Middle Harbor Enhancement Project, which is a portion of the 50 Foot Deepening Project of the Port of Oakland' federal navigation channel completed by the Army Corps of Engineers in conjunction with the Port of Oakland.

At that Commission meeting, you requested that we provide additional briefings on this project to track its progress and how it is performing. Today, Al Paniccia and Dave Doak are here from the Army Corps of Engineers and Anne Whittington and Tony Chu are here from the Port of Oakland to provide the update and answer any questions that you may have. Al will present the briefing.

Mr. Al Paniccia presented the following: We have some good news to report on the project. I am the Project Manager for the Middle Harbor Enhancement Area and I am with the Army Corps of Engineers. The presentation today is essentially the same as what we presented last November, shortened up a bit and updated. I am going to move pretty quickly through this.

To provide context, this slide is an aerial view of Middle Harbor in 1993 when it was part of the U.S. Navy's fleet and industrial supply complex. It was shuttered under base realignment in closure in 1998 and transferred to the Port of Oakland in 1999. It is a heavily industrialized area with lots of warehouses, docks, ships and the like.

That is what it was like back then and this is Middle Harbor today, one year ago. We have already completed the initial grading in 2012. You can see many of the subtidal peninsulas along the northern shore that we hydraulically dredged and placed. The sand and mud came from the big pool area to the right on the east side of the site. The site is turning into the envisioned design, which is shown in the inset below.

The Middle Harbor Enhance project was a place to take dredged sediment from the 50 Foot Deepening Project and beneficially reuse it through the creation of shallow water and eelgrass habitat. It is also a complementary integral part of the Port of Oakland's Aquatic Park along the shoreline. Through the savings we realized through placement of the sediment in Middle Harbor, we were able to place additional dredged sediments from the project at both Hamilton Wetlands and Montezuma Wetlands Restoration sites.

If we did not have the Middle Harbor Project available to us, chances are that one hundred percent of the sediment from the deepening project would have gone to the deep-ocean disposal site. Middle Harbor played a very important role in getting Hamilton and Montezuma going.

The design was guided by the Technical Advisory Committee which was a group of regulatory, resource folks, environmental groups and the general public. They worked together over many meetings and came up with all sorts of good habitat features that we incorporated into the design. After construction is finished, there will be a ten-year evaluation period in accordance with the 3M Plan, management, monitoring and maintenance.

This slide depicts what the project should look like when it is completed. You can see a lot of subtidal peninsulas, channels, rock islands and various habitats.

The bathymetry references the specific elevations that we are trying to achieve throughout the Middle Harbor from above mean/high water all the way down to minus six feet mean lower low water. We have got eelgrass, salt marsh, bird roosts, fish habitat, nursery areas/coves and then there is the human use area, which is the shoreline park and also non-motorized vessels will be allowed in the area, such as kayaks.

The total Middle Harbor habitat area is 181 acres. We placed about 5.8 million cubic yards of sediment from the deepening project here at Middle Harbor out of a total of 12 million cubic yards dredged. Hamilton and Montezuma wetlands restoration projects received the remainder of that sediment.

The eelgrass area is about 43 acres and it will be located along the peninsulas, with the elevation between minus two and minus four feet mean lower low water, or up to six feet deep. It will follow the contours of the peninsulas shown in this slide.

We have already completed the placement of 5.8 million cubic yards and the initial grading. It looks like the material that we moved is staying where it is supposed to which is a sign of success. This has allowed us to move ahead with the final grading contract that is in preparation right now. We have about 400,000 more cubic yards to move from point A to point B and to spread it out so that we achieve the final elevations throughout the eelgrass area. That will be a mixture of mud and sand. The open area on the east side of Middle Harbor will be filled in, according to the design for subtidal mudflats.

The east jetty is built of rock. Those rocks will be relocated and will become bird roosting islands. After that, the MHEA will be open to full tidal circulation. There will be a salt marsh constructed as well.

All of this will be done under the upcoming contract that is in the review stage now. By the middle of August we hope to initiate negotiations with our contractor on that work. Hopefully by September there will be mud movement.

The TAC is going to be consulted within the September, October timeframe. The Port of Oakland is in the process of gathering up the TAC and getting them together again. This is the first immediate step.

After the construction work is finished there will be a validation of the hydrodynamic modeling to verify that the new tidal flows are doing what the engineers are expecting it to do. That will take a few months and if everything works out okay, is functioning in accordance with design, then we will be planting eelgrass with a follow-up contract. That would be the next year. After the eelgrass is planted we have the 10 years of monitoring, maintenance and adaptive management of the site.

The cost to construct this portion of the project is approximately \$66.8 million from start to finish. A large part of that is the actual dredging the sediment from the federal channel and pumping it to the site. The \$57.4 million of expenditures to date also includes the initial site preparation. There is \$9.4 million of work left to do for 2015 and 2016. We have \$6.0 million in the work allowance for 2015, which means the Corps received appropriations of \$6.0 million. That will be used for the grading contract and the remaining construction work this year.

In FY 2016 we have more good news. The President's Budget has identified \$1.2 million and that will be used for mostly eelgrass planting. When it is in the President's Budget we are pretty much assured that it is going to be appropriated by Congress. This project is a high priority with the Office of Management and Budget (OMB). Funding looks pretty good as far as finishing the project with the current funding situation. That leaves \$2.2 million for the monitoring and adaptive management part of the project over the next 10 years. This money is contingent on the appropriations process, so it is not guaranteed.

We are going to execute the final grading contract in CY 2015. This consists primarily of moving the sediment and lowering the east jetty, construction of bird islands and consultation with the TAC and eelgrass habitat experts. In CY 2016, we have the hydrodynamic modeling validation to verify performance, followed by the eelgrass planting. From CY 2017 to 2027 we have the 10 years of monitoring. After 2027, the Port of Oakland will assume all ownership and will take the keys. Are there any questions?

Commissioner McElhinney commented: It is always good to see the project complete to the end. During the monitoring in regards to the budget, if the modeling and the measurements do not reach performance goals of the design, have you built into the budget that there needs to be some changes? Mr. Paniccia replied: There are always contingencies built into our estimates. Yes sir. Commissioner McElhinney continued: Once you build what is designed, there are bound to be changes out there. How do you plan for that? Mr. Paniccia responded: Right now we are continuing to follow the original design and there has been no reason to change from that template. During the hydrodynamic modeling, if something is not functioning right, then we may have to go back and look at elevations and move material around to achieve that. But that is something we have not encountered yet. Hydrodynamic modeling phase should alert us to any issues before we plant the eelgrass, so that we are assured that we have the greatest success with the eelgrass. We have to make sure that the eelgrass habitat can survive.

Commissioner Zwissler has some budget-related questions: We are about 75 days away from the end of FY 2015. Are you able to contract all 6.0 million in the next 75 days? Mr. Paniccia answered emphatically: Yes. All we have to do is get a contract signed by September 30th. We plan on using the same contractor that did the initial grading. Right now we are just wrapping the plans and specifications. Commissioner Zwissler continued: And then you made the comment that you had confidence in the \$1.2 million because it is in the President's Budget when, in fact, it is unlikely the President's Budget is going to be adopted this year. I just want to make sure you get good intelligence on what is happening for your future expectations. Mr.

Paniccia replied: I am still hopeful. Commissioner Zwissler added: Don't count on it. It is going to go to a continuing resolution. Mr. Paniccia stated: That does not hurt us either. Even if we are under CRA [continuing resolution authority] we can expend up to what we spent the year before, but we would have to stay within the \$1.2 million budgeted.

Commissioner Nelson had a question about scheduling: I wanted to make sure I understand the next step. You indicated that next steps include opening Middle Harbor to full tidal circulation. That is removing the portion of the existing jetty, right? Mr. Paniccia answered: We are taking those rocks that are peeking above the water line from the east jetty and moving them over to make bird roosting islands.

Commissioner Nelson continued: So a portion of that jetty below the water level remains in place to help contain the sediment is that right? Mr. Paniccia replied: Yes. Commissioner Nelson inquired further: You mentioned that there will be a tidal marsh constructed. I did not see the construction of the tidal marsh in your schedule. I wonder if you could help us understand that portion of the construction. Mr. Paniccia stated: That will be part of this year's construction contract. We are trying to get everything done up to eelgrass planting itself. All construction features are going to be included in this upcoming contract.

Commissioner Nelson delved into habitat details: So that will bring the elevations up to marsh plane elevations. But you are assuming it is going to recolonize naturally or is that going to be part of the eelgrass revegetation? Are you planning on planting the marsh or let it recolonize? Dave Doak of the Corps responded: We expect it to recolonize itself naturally from the sediment.

Commissioner McGrath commented: Dave Lewis is not here today, and we have different viewpoints on this, but I always listen very carefully to him. More mud and silt went into this than originally conceived. More sand went into Hamilton and that was due to any number of factors. It has implications for the long-term settling; the more mud, the longer it is going to settle. I know that you have had settling monitors out there. Are you confident now based on the field monitoring that the rate of settlement has slowed down and you can now put sand on the top? Mr. Paniccia replied: Yes. We did a condition survey back in 2013, a year after we moved the material around. It behaved exactly as the engineers thought it would. It settled six to twelve inches. Commissioner McGrath continued: So you have settlement issue in hand, and then you are going to put sand, which is the right substrate, on top of areas that are muddy. Do you have enough sand to do that? Mr. Paniccia answered: I believe so. We are going to place sand in accordance with the design.

Commissioner McGrath shared an anecdote: When Sylvia McLaughlin and Phyllis Faber were still pretty mobile I took them out to the marsh restoration site. We managed to watch two endangered species, the brown pelican and the least turn feeding in the channel. I have been close enough to the birds to watch them eating. Ms. Goeden stated: I just wanted to let the Commission know that the birds, surf scooters, that were "oiled" with the mystery goo earlier this year, were released by the Cordelia Wildlife Rehabilitation Center at the Middle Harbor site.

Chair Wasserman announced: There is no action required on this so that will bring us to Item Eleven.

11. Lessons Learned from Approved Large Projects. Chair Wasserman stated: Item 11 is a briefing on lessons learned from approved large projects. Brad McCrea will present the briefing.

Executive Director Goldzband announced: Before anyone goes we are going to have to make sure that we still have a quorum. You all asked for a presentation by BCDC staff about how we actually learn from what we do. And that was part of the first time we talked about Middle Harbor.

Brad has been working on this one. I want to you to think not how you normally think because as Commissioners you normally think about the world out there because that is really what you need to focus on. Brad is going to talk about a more internally-focused kind of process which is how the staff actually works and thinks about projects. I am going to ask you the Commissioners to take off your Commissioner hats halfway and put on a new half-hat of being a BCDC staffer.

Regulatory Program Director Brad McCrea presented the following: We are going to talk a little bit about tracking projects, how we do it internally and a couple of the big-picture items that we think about as we move through projects.

I want to go back through the years starting with 2010 because I think the last five or six years gives a pretty good snapshot of what we are grappling with.

BCDC is sort of a lagging economic indicator. We are always a year or two behind what is happening in the real world. Because the overall entitlement process takes time -- whether it is getting property control or local approvals or other government approvals -- it takes time to get through the process.

When the market picks up, it usually takes a year or two for us to see the movement. And when the market slows, applicants continue their entitlement process. They typically want to secure the entitlement even though they know they are not going to get started right away, because they have spent so much time and energy and money and have so much invested in the entitlement process.

Back in 2010, you approved major permit applications like the Exploratorium and Cullinan Ranch. There were about seven or so in 2010. In 2011 things really dropped off, Brooklyn Basin came along and you approved that project as a major permit application. They had no intention of starting anytime soon because the economy was down but they wanted to get their process done anyway.

In 2012, we saw some more public works projects including the Cruise Ship Terminal, America's Cup, et cetera.

In 2013 we saw our first residential project come back. We had not seen a residential project in years. And the first major application for Phoenix Commons came along, as did Dry Dock and other projects.

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Last year was busy. The Veterans Administration proposed their Columbarium, there was the Fremont Bridge, there was another residential project, there was an office complex. The economy was back.

The first half of this year you have seen more than a half dozen major permit applications for the first half of the year.

These applications are all major applications that the Commission held a public hearing and a vote for. But it is only the tip of the iceberg. What you do not see is all of the administrative permits.

Your actions here at the Commission is about four percent of the total applications that the BCDC permit staff processes. For 2010 to present it is about 40 that you have seen and we have processed another 1,000 or so beyond that.

In 2015 we took the number of applications and we categorized them all into, commercial, residential, public works, utilities and other things.

The staff talks to one another and goes out and looks at sites. We make sure we have jurisdictional determinations and we come back and we mark these down. We keep track for future staff decisions and future Commission decisions.

We also have Excel spreadsheets that track the amounts of fill and public access. We track the decisions that have been made about how much public access is appropriate, how much fill has been approved so that when you come back for future decisions we have some idea and can make some comparisons.

It is the same with money. We have mitigation funds that are also tracked so that we can make future decisions about the appropriate amounts of mitigation funds for restoration projects or public access projects, et cetera.

The enforcement staff keeps track of all permits that come along and are issued and entered into this permit compliance log. This log has all the special conditions that are required of each permit so that we can keep track of the dates.

We have all of these different tools. We have lots of projects. Over the last 50 years we have had more and more each year. Around the Bay we have done a lot.

Since 1965, 8,500 permits have been issued. Those permits all have ongoing requirements. Of these permits, 600 of them were major permit applications that came before this Commission.

And then there were projects that you did not see, that never got here. They may have never submitted a formal application. And there are projects that we are currently working on that will submit an application or get to you.

The regulatory staff is busy. Compliance is very important. It is sort of the preemptive strike. It is important because if permittees don't know what is expected, then it turns into an enforcement case. Enforcement cases are very difficult to resolve.

We have about 180 active enforcement cases, some dating back decades. They are very difficult to close and each enforcement analyst can only juggle maybe 15 or 16 enforcement cases. We really want to avoid enforcement and that is why we focus on compliance.

We are real fortunate to have a wide range of professional experience on the staff. We have a wide range of professional disciplines. This provides for rich staff discussions.

We often think regionally when we are talking about site-specific projects. Whether it is habitat goals or public access connections, the staff keeps BCDC's broader goals in mind as it moves forward.

Around the region we are really fortunate to live here in the Bay Area. Most people in our region want the same thing. They want to balance the environment and the economy in an equitable way. And this is the foundation of sustainability. We are fortunate to live in an area where everyone embraces those values.

We focused on being reasonable. Reasonable people can disagree about what is reasonable but we have a pretty good track record of hitting that sweet spot. That has a lot to do with the aligned goals of everyone in the Bay Area.

Customer service is a big part of our process. We educate and inform applicants when they come into the office. We share BCDC's mission and purpose. We welcome applicants into that regulatory process. We articulate not only the policies but our expectations of those policies.

We have weekly staff meetings and coaching and mentoring. We leave a record of decision making.

The Dredged Material Management Office is an inter-agency program that is made up of five different agencies. It has really been a model that works. We are hoping to use that approach in other ways, such as by convening staff of other regulatory agencies to solve other science questions.

One of the challenges we have is we do not have enough people when times are going well. The public sector is very different than the private sector. In the private sector when business is good you just hire more people to meet demand.

In the public sector when times are good, state law does not allow us to just go out and hire. If we want to ask for more people there is a whole process and it takes a year or two. Our staffing is somewhat behind the curve as well.

We need more technology. We need a real regulatory tool kit, a database that would help us track permits and analyze decisions.

Bay Plan requirements do not always result in permit requirements. Just because an approach is required by the Bay Plan it does not necessarily mean it is going to make it into a permit.

One example is monitoring of wetlands restoration. Everyone wants wetlands restoration. Your BCDC policies require wetlands restoration. But monitoring of these wetlands for a five to ten year period takes money.

The restoration projects do not often set enough money aside for that. We get into disagreements about projects not being consistent with your policies. The restoration community has trouble meeting that policy.

Another example of this is, the federal government and public access. Getting a promise from the federal government to maintain public access is difficult. We have BCDC permit requirements that are in place for the life of the project and we have Congressional funding that has a certain lifespan. This is in part because of the Anti-Deficiency Act which is a federal law that prohibits federal employees from promising future commitments like maintenance and public access.

What should be straight forward is not always straight forward.

We do pretty good job of collaborating with our other partners, agencies, both state and federal. This takes a lot of time and it takes a lot of commitment. This continues to be a challenge.

BCDC permits are complicated. We have lots of policies. We have lots of requirements that come out of those policies. Permits are full of information and they can be lengthy.

We are working really hard to make sure that the permittees understand their permits and comply with them.

Details are important. We have a whole staff that looks at details. We take details very seriously. When you are building a shoreline around the region it develops project by project.

Our preemptive approach to compliance and monitoring is a full time job. We do not have someone to do compliance assistance full time so we rely on the good nature of unpaid interns to make phone calls and send emails out and remind people of what it is they are supposed to do.

Breuner Marsh Restoration is a project you approved recently and it was a terrific example of public access and wildlife being created and planned for at the same time over decades. Sea level rise was taken into consideration. We talked with and worked with the East Bay Regional Park District to figure out how this will change over time and how it will adapt.

The Exploratorium Project in San Francisco was a lesson learned in public access. When a development comes along we take the public access and we set it aside and separate it to make sure it is really preserved. This is an example where the private uses and the public uses have been blurred. The private paid space within the building spills out into the public space and activates it. Sometimes this is done in a pretty interesting and profound way.

The last project is Blu Harbor in Redwood City. This was the project where there were some concerns about creating an island effect. The adaptation strategy for sea level rise was to raise the whole site about five feet. By raising the site, it will be resilient in the face of sea level rise, but the surrounding area will be flooded unless something is done. This is a conundrum that we have. We look forward to seeing how this site performs over the decades.

Although we try to be consistent in our approach we also try to innovate and come up with new ways and iterate those changes. We try to adjust so that we can move new ideas into those pre-application discussions.

Commissioner Zwissler inquired about compliance: Since compliance is a big heartburn, do you make an effort to prioritize compliance? Is all compliance equal?

Mr. McCrea replied: Such a great question. It is one of the hardest things that we struggle with because there is always something that is coming in from the side.

Chief of Enforcement Adrienne Klein commented: The Permit Compliance Program is very new. We spend most of our time doing defensive enforcement. I have been relying on interns and we are wrapping our arms around how to do this well. We have not done a lot of prioritizing.

We looked entirely at the year 2012 and conclusions that we know for a fact compliance assistance works. It saves time. It is efficient. It is good government. It makes sense for us to prioritize the major permit applications and the large administrative permits and amendments so it is not so much by type but by project size. We are slowly working in the direction of doing that more systematically. We are not there yet.

Mr. McCrea continued: An example is Sinbad's. This is in the public eye and something that people are concerned about, why is it not closed? It was required to be closed months ago. We are spending some time on that project even though if it was someplace else in the Bay it might not be a priority.

There are different categories we have looked at as far as prioritization is concerned. Perhaps we can prioritize the oldest ones first, the smaller ones, the harder ones because they are more egregious and they add more value to the Bay. We have an action plan team internally that is looking at how to prioritize this.

Chair Wasserman commented: A particular piece of this is the funding for monitoring. In Middle Harbor funding had bigger consequences. It seems to me that one of the things that we need to start doing in order to push for a change of attitude is we have got to be harder on saying, where is the funding for monitoring?

Today we do not have much choice but to accept what the Corps said to us. But I think as we look at new projects where there is monitoring we have got to be harder and part of the reasoning to be harder is that as we are approving some of these projects which will be smaller in scale and sort of mini-experiments on softscape solutions for rising sea level, if we do not have the monitoring money, if we do not have the ability to monitor we are going to lose, not only huge opportunities, but major time to figure out what we really do need to do.

There is also on some of these projects, Middle Harbor was a big and bad example, where you want it to go forward, it is federal and multi-year so you cannot guarantee the phasing. I do not know that there is a solution to this. It is one of the things that we need to look hard at.

In transportation there are similar problems except that you can deal with useable phases. That is harder to do with most of our projects.

Executive Director Goldzband stated: So, this is what staff is going to do over the next 24 hours. Bob Batha is going to go to Sharon and say, I want a recording of what Chair Wasserman just said. He is going to print it out and give it to every pre-applicant who comes to BCDC because Bob has spent a huge portion of his time being very sternly gentle with every applicant who comes in talking about monitoring and the need for monitoring.

It is really, really hard. They will print this out and tell every applicant, this is what our Chairman expects. Whether it helps or not, I don't know. It certainly can't hurt.

Commissioner McGrath commented: I would like to bring up a comment that John Coleman made this morning in the Commissioner Work Group. And that is the need for a more rational mitigation process that includes mitigation banking.

When I look at a staff report with 0.02 acres of fill and mitigation I just go crazy because I have put together mitigation projects and when you are doing it at that scale the administrative overhead is about 10 to 15 times the actual construction and you are talking about projects that are very fragile.

It is the other side of that is that we need to think of a better way to mitigate. We need to look at what the regional experts are telling us about what this Bay needs in terms of how it has been modified and what opportunities are and try to be rigorous in holding applicants to it but also try to provide a better pathway.

Mr. McCrea commented: Bob and I were talking about whether mitigation should be required for some fill that was about 20 feet wide and I took my baseball cap off and threw it and said, Bob I can throw my baseball cap farther than this plot of fill. It's not very analytical, but it demonstrates the difficulty in defining mitigation for small projects. This is sort of the types of conversations we have.

Chief of Permits Bob Batha spoke: I just want to say that the staff agrees with what Commissioner McGrath just said. About 25 years ago we did a report at BCDC on small fills and came to that exact conclusion that the only way we were going to be able to assure that some of the impacts of small fills would be offset would be if there were a robust mitigation banking program around the Bay.

Chair Wasserman moved on to Item 12.

12. **Commission Review of Progress on the Commission's Strategic Plan.** Chair Wasserman announced: Item 12 is an update on the status of the Commission's Strategic Plan. Larry Goldzband will present the briefing.

Executive Director Goldzband presented the following: I took your Strategic Plan and broke it down by goals and objectives and then underneath each objective you will see the actual actions that we need to take to move the Strategic Plan along.

On page one the big action is to update our policies. We are going to do that in three different ways. We are going to do data-driven enforcement and permitting procedures and guidelines.

What you see in the yellow is what we are doing now to further those actions. The first thing is that during the last year or so we have started to be very proactive. We are using the telephone to talk to permittees and assist them in complying with permits. This is because a former staffer was able to use an Excel spreadsheet and input permit requirements into the spreadsheet. We are continuing with that process.

With regard to enforcement, you should know that I tend to look at enforcement envisioning a 2x2 matrix. It has a vertical axis of importance or value to the Bay. The horizontal axis is resources. Everything that is of strategic value to the Bay should be our number one enforcement priority.

The second priority is that which is most important to the Bay but which costs a lot compared to what is not quite as important and does not cost so much.

By cost it is not just dollars, it is staff time because Adrienne and her crew spend hours on minutiae because that is what you have to do in enforcement because you are ultimately talking to a judge.

That is how I envision our prioritizing what is important and how we do it. That is what we are talking about in the Enforcement Action Planning Team.

We now are starting to develop and think about an actual honest-to-gosh database. We are without one on the regulatory side and now we are developing one. We are developing ideas of how it should be done.

Imagine how easy it will be for compliance to actually happen if you have a working database that can be linked up to an email system. It is not hard to do.

You have permit requirements with a certain date, by a certain date permittee is required to do X and you figure out a way so that 60 days before that happens the email comes out from BCDC to the permit person at that organization and says, 60 days from now blah, blah, blah, please contact us if this is going to be a problem. And if there is no response, 30 days later – you know what I mean, this is what happens in the private sector. This is what happens probably on the county and city level too. Heaven forbid if it should happen at the state level. It seems to me that this is what we need to plan for and that is what we need to put together.

We have been very fortunate, Brad and the gang have done a great job and we have been trying to keep up to date and we just need to make sure that if we can do a database we can arrange it so it can actually help us.

On the public access side Brenda and I are starting to look at activation. The real important part about that is that we need to actually know what we have. We need to inventory what is out there and we need to be able to have typologies about what is out there. For us to do that we need to have a program and I am going to be talking with Kristina Hill at Cal to see if we can get a regular supply of graduate interns who know GIS and who know how to drive and who can actually do projects that will enable them to be better graduate students to help us populate that inventory.

On public access and diversity; that is what we are going to deal with after we have the inventory. We will start with that inventory process.

Consistent adaptable decision making; one of the great things that ART is doing for the planning team is that it is regularizing how they look at certain things. Planning is very good at that. The regulatory side does that a lot in terms of trying to make sure that they are consistent. We need to make sure that this is transparent.

On the innovative partnerships; I don't think that there has been a more active participant in the Bay Area Regional Collaborative than BCDC. We will take advantage of that.

In terms of local resilience, the ART Program is national.

On the outreach; the 50th Anniversary is going to be the kickoff on outreach. It is going to drive more people to know what BCDC does than anything it has done in the past.

On organizational performance and better technology; this is really hard. It is really hard because the state is not as easy to work through on technology as cities and counties are. We are doing our best within the process to get more.

All our duty statements are now current. We now have a performance review document that will be used universally starting this month. Staff development is now part of our budget.

There are some really good things happening. On work flow; the database will help us in a huge way. There is an awful lot to do. We have actually done a lot too.

Take a look at this report and give me your thoughts. I have asked Chair Wasserman to think about whether it would be helpful to reengage the Strategic Planning Work Team and have a meeting this fall and say, here is where we are at, here is how we have progressed; how do we think about the next steps?

Chair Wasserman continued: I want to reemphasize Larry's request. I really would like each of us to go through this with two thoughts; one, from your individual perspectives based on your Commission experience, what is the most important thing in here to really emphasize?

The other one is to say, what is missing? What are we not doing? Send it to Larry. With that I would entertain a motion to adjourn.

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13. **Adjournment.** Upon motion by Commissioner Vasquez, seconded by Commissioner Nelson, the Commission meeting was adjourned at 3:32 p.m.

Respectfully submitted,

LAWRENCE J. GOLDZBAND
Executive Director

Approved, with no corrections, at the San Francisco Bay Conservation and Development Commission Meeting of July 16, 2015.

R. ZACHARY WASSERMAN, Chair