

San Francisco Bay Conservation and Development Commission

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TO: All Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
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SUBJECT: Draft Minutes of June 6, 2019 Commission Meeting

1. **Call to Order.** The meeting was called to order by Chair Wasserman at the Bay Area Metro Center, 375 Beale Street, Board Room, First Floor, San Francisco, California at 1:05 p.m.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted (represented by Alternate Chappell), Commissioners Addiego (Departed at 3:09 p.m.), Ahn (Arrived at 1:39 p.m.), Alvarado, Butt (represented by Alternate Arreguin), Chan (represented by Alternate Gilmore), Cortese (represented by Alternate Scharff), Gioia, Gorin, Resources (represented by Alternate Eckerle), Lucchesi (represented by Alternate Pemberton), McGrath, Peskin, Ranchod, Randolph, Sears, Spring (represented by Alternate Vasquez – Departed at 3:30 p.m.), Tavares (represented by Alternate Nguyen – Departed at 3:03 p.m.), Wagenknecht (Departed at 3:05 p.m.), Ziegler and Governor’s Appointee (represented by Alternate Holzman). Senator Skinner, (represented by Alternate McCoy) was also present.

Chair Wasserman announced that a quorum was present.

Not present were Commissioners: Association of Bay Area Governments (Techel), U.S. Army Corps of Engineers (Vacant), Department of Finance (Finn) and San Mateo County (Pine).

3. **Public Comment Period.** Chair Wasserman called for public comment on subjects that were not on the agenda.

Mr. Arthur Bruzzoni addressed the Commission: I am a former, BCDC Commissioner. I will raise today a possible enforcement issue. As a Commissioner I served as vice chair of the San Francisco Waterfront Advisory Committee a joint, BCDC, Port of San Francisco Committee that submitted amendments to the San Francisco Waterfront Special Area Plan.

One of our primary goals was to maximize waterfront, public access but not just public access – safe, public access.

This April the Port of San Francisco approved a temporary lease for a homeless, navigation center on Seawall Lot 330 which is not located in this Commission's jurisdiction.

But the Waterfront Promenade across the street is an essential part of the Waterfront Special Area Plan. In my opinion the Port of San Francisco and the City of San Francisco have failed to originate a plan to secure and ensure safe, public access along the central waterfront.

During public testimony a San Francisco Police Department representative said that just two, beat officers would be available 24/7 to patrol the vicinity immediately surrounding the center. He never referenced security for the central, waterfront promenade.

As a former member of the BCDC Enforcement Committee I believe that the decision by the Port and the City of San Francisco conflicts with the intent and purpose of the Special Area Plan.

Safe, public access has not been assured. Therefore I offer these three preemptive recommendations. First, that you consult with BCDC's general counsel to determine if the security risks posed by the homeless, navigation, center lease conflict with the specific guidelines and the spirit of the San Francisco Waterfront Special Area Plan.

And if so determined, number two, that prior to the Port of San Francisco implementing the lease BCDC and the Port should work together to initiate a more robust, security plan for the Central Waterfront Promenade.

And finally, I recommend the Enforcement Committee consider periodic, public-access, safety reports from all respective agencies, jurisdictions and property owners who are required to provide public access as stipulated in their approved permits.

In conclusion Commissioners while I believe that retired, BCDC Commissioners should observe quietly and not advocate – I felt strongly about this matter so I decided to bring it to your attention. Thank you.

Ms. Rebecca Schwartz Lesberg was recognized: I am with Audubon California. I serve as our San Francisco Bay Program Director.

I am here today to introduce myself and to offer Audubon California as a resource. Some of you may have seen some recent press coverage about a scientific study that came out of Audubon California regarding damage to eel grass in Richardson Bay.

The damage is from the anchors chains and other ground tackle from anchor-out boats that have been much in the news recently.

Eel grass is critically important in our state's fight against climate change in terms of ocean acidification, carbon sequestration and also buffering communities from the impacts of sea level rise.

That is not to mention the tens of thousands of birds that rely on eel grass beds in San Francisco Bay to feed and the fish like Pacific herring and Dungeness crab that use the eel grass beds as nurseries. Those are both commercially, important fisheries.

Our study which was published last month in the academic journal, Environmental Management quantified what the scale of damage to the eel grass bed in Richardson's Bay has been from the anchor, chains and ground tackle and found that between 50 and 84 acres of eel grass have been directly removed due to that anchor scour as boats turn on their chains.

We also found that each boat tears up about half a football field worth of eel grass in each of the crop circles that is beneath it.

So Audubon California has been working very closely with the Richardson's Bay Regional Agency, with the City of Sausalito, we have presented to the BCDC Enforcement Committee. But in light of the recent press coverage of this paper that has come out it has been in the conversation and I wanted to offer us as a resource if anybody has any additional questions about that study. Thank you so much.

Chair Wasserman announced: I do not have any other cards for public speakers. Did I miss anyone? (No comments were voiced)

Chair Wasserman moved to Approval of the Minutes.

4. **Approval of Minutes of the May 16, 2019 Meeting.** Chair Wasserman asked for a motion and a second to adopt the minutes of May 16, 2019.

MOTION: Commissioner Sears moved approval of the Minutes, seconded by Commissioner Scharff.

VOTE: The motion carried with a vote of 19-0-3 with Commissioners Addiego, Alvarado, Scharff, Gioia, Gorin, Eckerle, Pemberton, McGrath, Peskin, Randolph, Sears, Vasquez, Nguyen, Wagenknecht, Ziegler, Holzman, Vice Chair Chappell and Chair Wasserman voting, "YES", no "NO", votes and Commissioners Arreguin, Ranchod and Gilmore abstaining.

5. **Report of the Chair.** Chair Wasserman reported on the following: Yesterday's edition of the New York Times was very interesting from our perspective. There were four articles of significance on climate change or climate challenge.

One was a front-page article that Joe Biden has come out with a policy on climate change that according to the headline exceeds President Obama's. This is not an endorsement of Joe Biden. But it is of significance that the current front-runner in the democratic primary is coming out with a specific plan which adopts a number of elements of the Green New Deal.

We know we have another candidate whose primary platform is climate change – Governor Inslee. And again it is not the specifics so much as the fact that this is happening.

Second on an international basis there were elections in Denmark – a country very familiar with the problem of rising sea level. The article describes the two sides as being characterized on the one hand, the Social Democrats, by climate-change issues and the party on the right as focusing primarily on immigration issues.

I am very pleased to tell you that today's New York Times reported that the Social Democrats won. Even in this time of concern about nationalist and populist positions overwhelming us Denmark, which has led the way adapting to rising sea level, is continuing to do so.

The third one which has not been decided at all has a report on the lawsuit brought by 22 youth challenging the federal government as denying them their climate rights. The fact that it has been brought and that it is now before the Ninth Circuit and it is not clear which way the Ninth Circuit is going to rule – is also very significant.

As we have talked about before the fourth wave of our efforts in figuring out how to adapt to rising sea level in the Bay Area is going to focus on education and that the absolute, critical part of that is figuring out how to reach our youth.

The last article was in the business section of the Times and it reports that in 2018 more than 7,000 companies submitted reports on how they perceived climate change is going to hit their bottom line in the next five years, to a non-profit organization called CDP.

And one of the things we know from our very early work in our panels is that few corporations going back six years ago were openly talking about the effect of climate change on their operations. They were looking at it. They just weren't talking about it.

And they weren't talking about it in part because once they talk about it they need to start reporting it on their federal reports to the FCC.

That is starting to change. And the fact that this is changing will have a huge effect on the country in general and the federal government in particular paying attention to climate change overall and give us the opportunity to make sure that there is significant focus on adapting to rising sea level which as we know will be a very major problem if we stopped greenhouse gas emissions tomorrow which unfortunately we are not going to do.

So a mixed set of reports but overall very positive for the kind of efforts we are involved in.

a. **State Audit Report.** I would like Commissioner Scharff, the Chair of the Enforcement Committee, to talk to the Commission about how the Committee plans to move forward given the Report's recommendations. Commissioner Scharff reported the following: In light of the Audit Report and talking with staff what we have decided is that we need to basically have two meetings a month to deal with the backlog, to deal with other issues that come up. And so we are going to schedule meetings on days that are not on the same day as BCDC meetings, otherwise we are too limited in the time and it is too difficult and it is too hard on the people to spend all day in meetings. We have talked about having two meetings a month where we are going to look at meeting the second Thursday of the month and the fourth Wednesday of the month. A lot of these dates are based on room availability and things like that. Our next meeting of the Enforcement Committee will be the 26th and it will be in Oakland because we can't get a room. At that point we will also talk to the other members of the Enforcement Committee if those dates work on a long-term basis or we need to somehow schedule a

different day. So we will talk a little bit about that in case that is a problem for people. The hope is that we can get two meetings on a regularly scheduled basis so that when something comes up we absolutely have those dates and that they are on everyone's calendar and we also can start moving forward and dealing with some of the issues that were raised. I think the first meeting is in the morning at 9:00 a.m.

b. Financing the Future Commissioner Working Group Meeting. Chair Wasserman continued: I would now like Commissioner Holzman to give us a brief report on the Financing the Future Working Group which met this morning.

Commissioner Holzman addressed the Commission: We had a full agenda, an action-packed agenda where first we met Mike Montgomery, Executive Director of the San Francisco Bay Regional Water Quality Board. He said one of his priorities was to accelerate adaptation at a rate that keeps up with the problem and hopefully he can do that. He also said that they are already using the Adaptation Atlas and brought a lot of knowledge about different forms of financing for these kinds of projects so hopefully he will become a regular participant in the Working Group. We also had a very nice briefing, a preview of the White Paper from Nick on BCDC staff, the Adapting to Rising Tides White Paper that should be coming out in September. And then last we had a discussion with some representatives from MARSH on different insurance products that could have interest for folks around the region.

c. Bay Fill Policy Working Group. Chair Wasserman announced: I would now like to ask Commissioner McGrath to report on the Bay Fill Commissioner Working Group meeting that was also held this morning since Commissioner Nelson is on an authorized vacation.

Commissioner McGrath reported the following: We had a nice discussion this morning. The staff report on Bay Plan fill policy changes is out. We went through the recommended policy changes. We had a robust discussion of virtually all of the policies and a few of the findings behind them. And we appreciate all the staff work that went into it identifying the possibilities that are available to us to allow needed but not unneeded fill while still protecting the environment and protecting us on the long-term from the vicissitudes of sea level rise. So we went through those policies and had some clarifications and some comments and those will become clear as we get into the public hearing part of the process. Again, good participation and thanks to the staff work. Chief Deputy Director Goldbeck commented: I would like to say from the staff's standpoint that our hats are off to the Commissioner Working Group on Bay fill for all of the hard work that they have done and the input they have put into the draft recommendations that staff provided. We could not have done it without them. Thanks.

Chair Wasserman announced: I am very pleased to make an announcement that yesterday the Senate Rules Committee informed us that they have approved appointing Pat Showalter as an Alternate to Commissioner Alvarado. Pat is in the room and we congratulate you and welcome you back in a formal way.

d. Next BCDC Meeting. Chair Wasserman continued: Our next BCDC meeting will be held in two weeks, on June 20th, and we expect that we will:

(1) Consider initiating a proposed Bay Plan map amendment for India Basin in San Francisco.

(2) Hold a public hearing on the Fill for Habitat Bay Plan Amendment.

e. **Ex-Parte Communications.** This is an opportunity for anyone to report an ex-parte communication if you have not previously done so keeping in mind that you still need to do so in writing on our BCDC portal. (No comments were voiced)

Seeing none we will now turn to the Executive Director's Report.

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

On June 6, 1896, exactly 123 years ago today, Frank Samuelsen and George Harbo left New York Harbor to row across the Atlantic Ocean. It took them 55 days which was a record that stood for 114 years. 114 years – did the record stand for so long because nobody else was as reckless or because there were too many variables to control when somebody attempted to break it? And can you imagine what their last day on dry land would have been like? Living in the last decade of the 19th century facing an uncertain future without a means of communicating with the mainland and relying entirely on themselves – and their physical and emotional strength – to make it across the Atlantic Ocean?

We don't have a rowing team at BCDC and we're pretty familiar with where we work, but in the spirit of such record setters we have started a walking competition. Many of us are keeping track of how many steps we take daily. But those are just the physical steps from the staff – think of the mental steps that our permit analysts take daily to work through the public's ideas about what, where, and how to build something; that our planning staff take as they develop a large-scale vulnerability study or that our administrative staff take as they figure out all the steps required for the 48 of us to move from our current office space to this building in August, and it's pretty amazing. Thankfully, despite the work overload that we all are experiencing, our staff remains committed to BCDC's mission. Therefore, I hope that they don't feel like the singer of the hit song that also was released on this day – June 6th, 1966 – 53 years ago: "I Can't Get No Satisfaction".

a. **Budget and Staffing.** With regard to staffing, I want to introduce to you our new Receptionist, Margaret Stuchfield (Stood and was recognized). Take a look and recognize the face because she will be at every meeting. You will get to know her well. She'll be working to ensure that we know our meeting quorums and handling various tasks during your meetings.

We are also pleased to have hired Katharine Pan as a member of our planning division. Katharine earned her undergraduate degree in Linguistics and Asian Studies from Cornell and her advanced degree in Urban Planning, Natural Resources and Environment from the University of Michigan which makes her part of the Big Red and Maize and Blue. Katherine will use her six years of experience in local and coastal planning and project management to assist with the Seaport Plan update and amendment requests. She will start with us in a couple of weeks unless I hear otherwise from you.

Of course, May and June herald the beginning of summer internship season. We have two legal interns now – the first is Taylor Knecht (Stood and was recognized). Taylor is an Aztec from San Diego State University now between her first and second years of law school at the University of San Francisco. The second is Mitchell Barraza (Stood and was recognized) He is an Aggie from U.C. Davis who completed his first year of law school at Hastings. We are pleased that they are with us for the summer.

Joining the planning team this summer will be Emily Mann, a graduate student at Cal earning her Master's Degree in City Planning after graduating as a Golden Bear with a degree in Political Science. She'll be working on Shannon Fiala's team concentrating on the upcoming revisions to the San Francisco Waterfront Special Area Plan. Also joining us for the summer starting next week will be Dylan Solfrank, an undergrad at Davis. Dylan is earning his undergraduate degree in Environmental Policy but we have convinced him to work with Peggy and our administrative staff to provide external eyes and ears to many of our internal processes that need to be updated.

With regard to budget, the Assembly-Senate budget conference is now underway in Sacramento and we'll keep you abreast of any decisions as soon as we know of them. Closer to home, I am happy to report that BCDC has been able to track our budget far more closely this year than ever before thanks in great part to the Admin team led by Chenee with Peggy's help and we plan to make more improvements in that process during the upcoming fiscal year. We'll schedule a review of this budget year and the upcoming budgeted year during late summer likely in September.

However, on the federal level as has been noted in the national press, "the Big Four" (Pelosi, McCarthy, McConnell, and Schumer) have started to meet with Trump Administration budget officials to determine whether and how to enact a new budget agreement. The two-year deal under which the federal government is now funded ends on September 30. Absent an agreement, mandatory spending cuts (known as "sequestration") will reduce something like \$130 billion from the budget (including around \$ billion from non-defense discretionary spending) – read National Oceanic and Atmospheric Administration coastal zone management grants. The Coastal States Organization is keeping close tabs on the issue and is ginning up continued support for coastal zone programs. That being said, it is reported that some in the Trump Administration would prefer across-the-board sequestration to either shutting down the government or not getting funding to build the wall on the US-Mexico border. It would not be surprising to see a short-term agreement in late September to avoid sequestration perhaps but that simply kicks the can down the road toward the holidays. We shall keep you updated.

Meanwhile, our senior staff is working on several budget proposals that tomorrow we shall send to the Natural Resources Agency in Sacramento to begin the process of creating the next Newsom Administration Budget. We'll brief you on those as soon as possible.

b. **Policy.** For the first time in my history here I want to let you know of a possible emergency permit before it actually happens. We may request permission from the Chair tomorrow to approve the following. On Sunday the Union Pacific Railroad's out-of-service trestle in Newark caught fire and a 100-foot section collapsed into the Newark Slough. The fire

was still burning as of Monday before it was put out we assume due to the creosote-soaked wood. UP's environmental response vendor deployed quickly. The State has discovered no petroleum pollution, only the trestle itself. Our staff is working with the owner of the property, SamTrans, to collect the information required to issue an emergency permit. So the Chair will probably see that tomorrow.

Finally, and please take note – you'll remember that I warned you of a likely BCDC morning meeting this summer. Thank you all very much for responding to our request for your preferences. We are in the process of sketching out the summer agendas gaming all of your responses. And that will then lead us to an additional meeting being scheduled for July 18th, August, or September. We shall consult with the Chair and announce the new schedule early next week.

That concludes my report, Chair Wasserman, and I'm happy to answer any questions you may have.

Chair Wasserman asked: Any questions for the Executive Director? (No questions were voiced) Seeing none we will move on to Item 7, Consideration of Administrative Matters.

7. Consideration of Administrative Matters. Chair Wasserman stated: Brad McCrea as well as Barry Nelson is on vacation and Walter Deppe is here to answer any questions you may have on the Administrative listing that was mailed to us on May 24th. Questions? (No questions were voiced) None - off the hook.

We are now changing the order and will take up Item 12.

12. Briefing on the Middle Harbor Enhancement Project by the U.S. Army Corps of Engineers and the Port of Oakland, in the City of Oakland, Alameda County; BCDC Consistency Determination No. C2000.014.00 and Permit No. 2000.014.00. Chair Wasserman announced: Item 12 is a briefing on the Oakland Middle Harbor Enhancement Project by the U.S. Army Corps of Engineers and the Port of Oakland because this will be important background for our action on Item 8 which we will turn to after this. The briefing will be led by Brenda Goeden Schuyler Olsson's absence due to illness.

Ms. Goeden addressed the Commission: Good afternoon Commissioners and Chair Wasserman. I am presenting today on behalf of Schuyler Olsson as he is out sick. I want to commend him to you because he has done an awful lot of work on Middle Harbor Enhancement programs from the enforcement, remedialaction aspect of the project. I have been primarily following the project and project managing as it continues on. We thought we would take this opportunity to update you on the status of the project. We recognize we gave a briefing in November of last year, but we also recognize that there are some Commissioners who were not present for that briefing. And the other reason we chose to brief you today is because it has relevance to the Bay Plan Amendment going forward for fill for habitat and for the Map Amendment potential that will presented today by Megan Hall.

This site is located, as you see outlined in the blue, in the Port of Oakland complex and was historically used as a naval base. It was used for berthing for naval vessels up until the time they left San Francisco Bay. The berthing areas were up to 42 feet deep.

This project beneficially re-used approximately 5.8 million cubic yards of dredged sediment, which was dredged as part of the Port of Oakland 50-foot deepening project, the federal navigation channel, conducted by the Army Corps of Engineers and its local project sponsor, the Port of Oakland. The deepening allowed deeper draft vessels into the Port on a regular basis and meet the needs of the maritime industry.

It was an interesting project because we had the opportunity to beneficially re-use approximately 17 million cubic yards of dredged sediment, taking dredged sediment to two wetland restoration projects - Hamilton Wetlands which was in the planning and construction phase, and also Montezuma Wetlands, which was operational, both sites were more expensive than ocean disposal and in-Bay disposal was not considered an option for such a large volume of sediment. As partly a cost-saving measure, but also to recreate the shallow-water habitat adjacent to the historic marshes present prior to the Port of Oakland's being built; we took the opportunity to negotiate strongly with the environmental community, the Port and the Army Corps of Engineers to beneficially reuse all of the sediment, and included the Middle Harbor Enhancement project as beneficial use, which placed the largest amount of fill in San Francisco Bay in the history of the BCDC. And as a result, we needed to amend the San Francisco Bay Plan to allow the placement of this quantity of fill to create the shallow-water habitat, creating Dredging Policy 11.

I also want to mention that there is a Technical Advisory Committee which is made up of stakeholders and some experts that are advising the project on how we are moving forward in construction, and how address project design and environmental impact issues as it was being thought through and authorized.

Here is a schematic drawing of what was to be constructed at Middle Harbor. Looking at Middle Harbor, you see the light blue and the dark blue. The dark blue is the deeper-water habitat and the lighter blue was the area that was sculpted to be significantly shallower primarily to provide necessary elevation for planting eelgrass. Eelgrass is a very special habitat in San Francisco Bay. It is on the margins, and we recognized in the Subtidal Habitat Restoration Goals Report, and other efforts that it is an important habitat because of the benefits it provides to a number of native species. The idea here was to create between a minimum of 15 acres of eelgrass habitat and up to 100 acres of habitat.

The other features that were constructed included the rock jetty which is that straight line on the bottom of the slide, that rock jetty was necessary to hold the large amount of dredged sediment in placed while it was consolidating and settling. You see on the screen a small, green blob that says future salt marsh. This is the salt marsh that was being built primarily for educational purposes because the West Oakland community felt it was really important to have an opportunity for the community to come and see what a salt marsh would look like because they don't have much salt marsh on their shoreline.

There was a beach, which is up towards the top of this slide, primarily a public-access beach but also provided some habitat benefits. And then there was a commitment to, once the jetty was taken down, to build some rock islands for bird habitat particularly roosting during high tides.

The current status of the project includes a number of different things. The sediment has been placed, has consolidated over a number of years, as was the final sculpting of the sediment to create the elevations that were necessary for the shallow-water habitat, for the eelgrass and the water flux in and out of that area for the deep-water channels. The final construction of that happened in 2016. What we have now is creation of shallow-water habitat and hard-bottom habitat where the rock jetty has been removed and moved around to create hard subtidal substrate and rock islands. The site is open to full-tidal circulation, so the flushing that is supposed to take place is happening and the temperatures and the elevations seem appropriate for the planting of the eelgrass.

There was the initial construction of the beach, the marsh and two avian islands and the protected area which is an area of small pocket-like areas for use by wildlife, but not necessarily the public. And then there was a “warranty period” with monitoring of site conditions to make sure that they were what they were supposed to be. And also some monitoring to establish whether what was built for the eelgrass was appropriate. That monitoring is complete.

For the eelgrass there was 101 acres of suitable habitat created. And we had some pilot plantings of 19 plots in 2017. Some of them were successful and the idea there is we planted in places where eelgrass should survive and where it shouldn’t to figure out where is the “sweet spot” is. The first phase of planting as the Port of Oakland has recently informed us, is happening right now so that is very exciting. This is a view of what the project looks like currently. You can see some of the more significant areas in this slide.

The project is approximately 14 years behind schedule in completing this work. And there are a number of different reasons for this. The project had some funding shortages, some planning delays, and some consolidation delays based on using different kinds of sediment in the site than was originally planned. We had initially anticipated that sand would be placed at the bottom. It doesn’t take sand as long to consolidate as mud but there was more mud placed than originally anticipated so consolidation took longer.

We have performance criteria for the project in a plan that was part of the whole permitting of this project. It is called the 3M Plan (Construction Period and Long-term Monitoring, Maintenance, and Adaptive Management Program).

Here you see a chart of where we are at today. There are three to five acres of educational marsh we consider it incomplete because the elevation of that area is too low to grow marsh vegetation and the analysis completed to date suggests that we wouldn’t see sedimentation coming in from the Bay rapidly enough for it to vegetate own.

There was at least 55 acres of habitat that was suitable for eelgrass that was completed. We believe that the construction of that is complete and appropriate. The 15 acres of committed-to eelgrass habitat that was planned and is existing is incomplete, but they are

planting now and we are hoping to rapidly reach that goal. The public-access, beach area we consider it partially complete, this is because, while on the land side you can sit on it but you can't really get into the water because it seems to be the topography is such that it is unsafe for people to swim. The Port has posted signs saying, don't come in the water here - that is not exactly what we had anticipated for this beach and the public access. And then the four, bird islands that were committed to are partially complete because they have built some from the rocks, but the construction proved difficult. There are just 630 square feet of these islands where we believe the commitment was closer to 9,000 square feet. We also had a commitment of four to eight acres of hard-bottom habitat as taking down that rock jetty and moving it around on the bottom and that is complete.

The estuarine community is supposed to have higher productivity than when we started. That has not been formally assessed and neither has two of the other requirements which is having habitat benefits for aquatic birds particularly least tern who forage in shallow-water, eelgrass areas often and having more fish. So those are the existing conditions as we understand them, it may be true however that the habitat has improved, however we have not had the 10-year monitoring period to understand whether the conditions exist as proposed.

So what did BCDC do about this? Several years ago Dave Lewis of Save the Bay brought to the Commission's attention that this project was not moving forward as planned. He was part of the original negotiations for this project being authorized and the Bay Plan Amendments along with the Audubon Society and a few others from the environmental community. We worked with the Port of Oakland and the Army Corps of Engineers to try to re-initiate action, develop the Technical Advisory Committee, get people re-engaged and re-involved. But as time wore on we felt it was necessary to send a letter requesting remedial action.

Because this is a federal project, with federal dollars, and constructed by the federal government, we issued a federal, consistency determination. Under the Coastal Zone Management Act, the Commission has a different ability to enforce our authorizations. In the case of a Coastal Zone Management Agency authority we can ask for remedial action, after that we can ask for mediation with NOAA, and then we can sue the Army Corps of Engineers if we need to, but we are not trying to do that here. We are trying to get through the process, get the project finished, and seek the benefits that were committed to.

In November we sent the letter for remedial action; the Army Corps responded in March. We had some conversations with the Corps and the Port in January of 2019 regarding the request. The request asked for four main issues to be resolved. One was that they increase the originally-committed-to, 15 acres of eelgrass to 18.4 acres. The reason we asked for that number is because we did an examination of the eelgrass expansion and contraction in the region and found that approximately three and a half acres was a reasonable, temporal benefit that we would have seen if the eelgrass had been planted fourteen years ago, and the original 15 acres had been achieved. We have also asked them to elevate the substrate in the educational marsh such that it would be at the appropriate elevation for vegetation to grow, and we've also asked for the additional measure of planting the marsh because we believe that

if they had reached the appropriate elevation 14 years ago we believe that the plants would have established in that site.

We have left open options for dealing with the missing, bird habitat – the rock island commitment because there are some different ideas of having floating docks rather than rock islands. We understand that the construction using large rocks is difficult in shallow water and so we are open to some considerations on how that might be accomplished. And the fourth thing is to ensure safe, public access to the water across that beach.

We have had a response from the Corps that provided agreement on many of these items but one of the challenges is that even though we felt that increasing the eelgrass total volume committed to from 15 acres to 18.4 was a modest increase, the Army Corps felt that they couldn't agree to that in their response.

So we've had another TAC meeting after the remedial action request was made. We, along with the TAC, have requested a design charrette to have a holistic look at how we remedy all of these issues rather than tackle them one by one. In May we asked for further project details in written form from the Corps. And the Port has been coordinating with us as well. So we've had a number of telephone conversations and meetings but we have also been documenting and sending letters to make sure the Corps understands our requirements and requests.

So next steps, as I mentioned and the Port will tell you today, we are very happy to hear that the eelgrass is being planted. And they are planting out the 101 acres of suitable habitat that is there with the hopes that all of it will take but the guaranteed amount that they are committed to through their consistency determination is the 15 acres and we are hoping that they will agree with us that 18 acres is also possible. If for some reason the eelgrass plantings don't succeed, they plan on doing a second phase of eelgrass planting once conditions improve.

So we have to agree on that commitment. We have a design charrette coming up in the summer or fall to look at the holistic way of remedying some of these situations. We are expecting after that design charrette that the Corps and the Port would submit project plans for us to review and consider. And depending on what we determine from those plants we may need to amend the consistency determination for further authorization. Lastly once the project is complete there is a 10-year, monitoring program to make sure that the habitats that have been committed to are provided.

So how does this relate, and why am I here today? The Bay Plan Map and the Bay Plan Policy Amendment that Megan has been working with you all on includes Dredging Policy 11b which seeks to ensure the protection of the Bay habitat, and states that the Commission should not authorize dredged material disposal in the Bay and certain waterways for habitat creation, enhancement and restoration except for projects using a minor amount of dredged material until the Oakland Middle Harbor Enhancement Project, if undertaken, is successfully complete. So this policy was specifically put into the Bay Plan to provide some assurances to the environmental community and others who were concerned, including BCDC, about the success of this project to make sure that we get that success, and then when considering other projects

we have learned what we can from this project and have been able to apply it before we do something similar again. And so that the connection to the policy world today and we just wanted to make sure that you were aware of the status of what the staff, the Army Corps of Engineers, and the Port of Oakland has done. We are continuing to work together to make this project successful. But that is where we are today. So that's it and if you have questions for me I am happy to take them.

Chair Wasserman noted: Commissioner McGrath has voluntarily recused himself and he and I argue about that. Commissioner Gioia commented: Commissioner McGrath worked for the Port when this project was put forth. Chair Wasserman added: He has his heart and soul in this project. Commissioner Gioia agreed: Right, I remember this. So this was mitigation for a project at the Port as I recall, or it was connected to a project approval at the Port? It was many years ago. Ms. Goeden commented: This is a very, fine point and you rightfully bring it up. I would say there is some debate about whether it is a mitigation project or not. We have not treated it as a mitigation project. And this is where the fine language and how we process projects as they come in.

The Port of Oakland and the Army Corps of Engineers together proposed deepening the Oakland Federal Channel. And as a result of it they had these 17 million cubic yards of dredged material. The project was impacting, I don't know how many acres of subtidal habitat by deepening the channel. It was an arguably used channel so there is some habitat use, but then they wanted to place the sediment at the deep ocean disposal site. Mitigation could be required for that, but others would argue not because they were potentially building habitats. So the idea of placing fill and getting habitat benefits is that balance we are still dealing with today with the new Bay fill habitat policies and sea level rise, just at a different time and a different story.

When they proposed to do the deepening project, they proposed Middle Harbor Enhancement Project as part of the overall project. As reviewed by the agencies, it is part and parcel of the project. The project included the deepening of the federal navigation channel, the building of Middle Harbor, the placement of the dredged sediment at Hamilton and Montezuma wetlands restoration projects, rather than dispose of the sediment. So it was all together in one request, and it was treated that way. The resource agencies, particularly U.S. Fish and Wildlife Service, put in terms and conditions that said you will have 15 acres of eelgrass as a result of this and some other things. BCDC authorized the project as a whole project. We talked about mitigation, but we did not impose mitigation requirements in the consistency determination concurrence. However, the other important thing to note is that it was authorized in 2000, when BCDC did not have the ability to condition a consistency determination. That ability did not come until 2003. Commissioner Gioia observed: But it was a condition of the project. It was part of the plan. Ms. Goeden added: It was part of their proposal.

Commissioner Gioia continued: The slide with the policy would be helpful to show again. What is going to be used to determine if the project is completed successfully? What is the standard on that and where do we look to in order to measure that? Ms. Goeden replied: So you can look to the 3M Plan, the monitoring, maintenance, and management document has the criteria for success. That would be probably the clearest way to determine that success has happened and that would be based on some of the monitoring. Commissioner Gioia interjected: So the staff at the appropriate time is going to prepare as this project is eventually completed is going to prepare some analysis. I want to understand what the process is on this. Executive Director Goldzband responded: If this language were to continue to exist then at some point when the project is completed, which is a point which my kid may actually see, then there will be a time after that that the monitoring will occur and there will be some kind of discussion and agreement. But remember what I said at the beginning of my statement. Should this language continue to exist. Commissioner Gioia added: I just recall being on the Commission when this was approved. There was a lot of discussion around this project and what it meant and what are the positives and what are the negatives?

Commissioner Scharff chimed in: So this actually even pre-dates me. What would success have looked like that we would have known if this is a good thing to do or not? Because this implies that this is a pilot project and we are going to try it and then we are going to judge whether or not it was successful. Obviously, it has dragged on forever and Larry says its completion is in the far future. What would it have looked like? Ms. Goeden answered: So the project pre-dates me as well. I think basically you would see an increase of fish species that are particular to shallow-water habitat. You would see birds using the shallow-water habitat different than they had before when it was deep-water habitat. You would likely have eelgrass beds flourishing to some extent. What the acreage of that would be is questionable. Commissioner Scharff noted: So we do have eelgrass beds flourishing? We have 100 acres now that is completed. Ms. Goeden replied: We have suitable eelgrass habitat. They are planting the eelgrass now to see whether it will survive.

Commissioner Scharff asked: And the concern was that the dredged materials would have heavy metals or other stuff that would hurt the wildlife and that is why we have to do the pilot program to see? I am still trying to get the nexus in my mind between using dredged material disposal and then seeing if it is successful. What was the concern? Ms. Goeden answered: So the dredged material that was placed there was some contaminated material placed at the bottom that was covered significantly by layers and lots and lots of clean, dredged material. The material was tested. So it wasn't a question of contamination. It was more a question of such a large amount of Bay fill to create a subtidal habitat from a deep-water habitat and whether or not we could do that. It hadn't been done. No one had placed nearly six million cubic yards in open water. And we also didn't know at the time, this was in 1998 and 1999 and probably earlier than that, when planning was taking place and whether we could successfully produce eelgrass beds. And there has been a lot done since then where we know more. Still some questions exist as to how we can best restore eelgrass and get them to persist exists. But the main question was about that amount of fill and going from deep water to shallow water and whether or not you can get the habitat benefits?

Mr. Goldbeck commented: I think you've got that right. A lot of the idea was that not only would you have eelgrass for the benefits of fish, but they would also provide for the least tern colonies nearby for foraging. I think the material placed in Middle Harbor was all suitable for open-water disposal. The non-cover was at Montezuma, but I could be wrong on that. It was a while ago.

Ms. Goeden added: My understanding is there was a small amount that was covered.

Commissioner Scharff continued: So in that case, I guess I just wanted to hear from our Executive Director. When are we going to revisit this language?

Executive Director Goldzband replied: When you have the public hearing in two weeks on the Bay Fill for Habitat Amendment. Ms. Goeden added: Dredging Policy 11 is the second to the last set of policies in the staff report.

Executive Director Goldzband advised: So we urge you all to read the staff report. Read the background report and look at the proposed text.

Chair Wasserman asked: Any other questions or comments? Commissioner McGrath are you sure you don't want to say anything? Commissioner McGrath commented: I will make one, factual comment. As you know I don't consider that any of you would consider me to be a dispassionate observer of this project. Therefore, I am not trying to influence you which is why I am doing what I am doing. On the question of the quality of the material as approved by the project and as negotiated with the Sierra Club there was no material put in Middle Harbor that would require capping. We thought it was suitable. David said, no way, so we said okay. Chair Wasserman chimed in: We will talk about the word dispassionate later. (Laughter) We do have speakers on this item.

Mr. Stu Townsley addressed the Commission: I am Stu Townsley I am the Deputy District Engineer for the San Francisco District of the Corps of Engineers. Chair Wasserman offered a salutation: Welcome. Mr. Stu Townsley replied: Thank you. Chairman Wasserman and Commissioners thank you for the opportunity to comment on this, although I believe we are commenting on Item 8 not Item 12 but we were advised to sign up for Item 12 because of the re-jiggering of the agenda.

We are commenting on the adding an amendment to the Bay Plan regarding the Middle Harbor Enhancement Area. And I am here to submit some written comments and look forward to what I understand to be a July 18th hearing on the topic. But I did want to formally hand off the letter and say, at this point the Corps cannot support the Amendment. It arbitrarily singles out the Middle Harbor Enhancement Area retroactively applying new rules to a project that BCDC has already deemed consistent. Implementation would be do nothing to improve the status of the Middle Harbor Enhancement Area and the precedent set by this amendment would only endanger support for future, federal projects. The Corps strongly urges BCDC to reject this amendment. Thank you. And I am happy to hand this letter off.

Chair Wasserman interjected: Stay there for a moment if you would. If I understand you correctly the comment is really addressed to not Item 8 which is a map amendment but to the amendment of the Plan which would change this text. Mr. Goldbeck clarified: No I think they are speaking to the map policy note that would be added that you will hear about in the next item. Chair Wasserman responded: Okay. Thank you. I appreciate that. Mr. Townsley added: I am glad I could clear that up for you. (Laughter)

Mr. Jan “Yon” Novak was recognized: Hello BCDC, Commissioners and staff. My name is Yon Novak and I am a member of the Port of Oakland’s Environmental Programs and Planning Department and in the Port’s Project Manager for the Middle Harbor Enhancement Area. The Port of Oakland is a local sponsor of this project working in conjunction with the United States Army Corps of Engineers or Army Corps. My role is to ensure that the monitoring and adaptive management programs are fully implemented.

First off I would like to thank Brenda Goeden for giving a very good synopsis of the project. I wanted to update the Commission on one of the primary habitat goals of the Middle Harbor Enhancement Area Project. So I am happy to report that eelgrass is being planted in the M.H.E.A. at this very moment. By the end of this week between 76 and 80 planting plots will be present within the M.H.E.A. Our model projections for eelgrass habitat suitability based on three years of data collection are very encouraging for us to meet our eelgrass habitat goals.

Since joining the Port of Oakland in October 2017 I have organized four meetings of the Technical Advisory Committee of which BCDC is a member and have familiarized myself extensively with the applicable permits for this area. As you may know the project’s overall goals were to create subtidal habitat that provided foraging opportunities for birds and create habitat for a wider diversity and larger populations of prey-based fish. I am pleased to report that these goals have been unequivocally accomplished. This is well documented in our comparative surveys of 1997, pre-project in 2004 and 2005 post-fill, project conditions which show significant increases in the presence of prey-based fish and lease tern foraging in the Middle Harbor Enhancement Area.

We look forward to initiating the monitoring period surveys that now commence after the planting of the eelgrass. For the periods since our last surveys were performed we can utilize citizen’s science as a proxy for Middle Harbor Enhancement Area habitat values. This is data collected by the general public, such as the avid, Bay-Area birding community. From 2010 to the present 850 bird checklists have been created for the Middle Harbor Enhancement Area on the e-bird website which identifies 172 species of birds. Many lists show hundreds or thousands of birds present. For comparison’s sake the 2004 surveys of the deep-water Middle Harbor naval area showed 38 bird species during summer and winter surveys with a few hundred birds present, which were mostly less-desirable gulls and regionally common cormorants.

Most excitingly the federally endangered California Lease Tern and the Brown Pelican which was federally threatened at the time of project proposal are now regular visitors and foragers in the Middle Harbor Enhancement Area just as this restoration project intended. It

should come as no surprise then that the Golden Gate Audubon Society lists Middle Harbor Enhancement Area as the local, birding, hot spot on their website. I have more but I will thank you for your time and hand off this letter for your enjoyment. (Laughter)

Chair Wasserman continued: I don't believe I have any other speakers on this item. Did anybody else submit a card? (No comments were voiced) This is essentially an information item and no action is required on this.

8. Public Hearing and Possible Vote to Initiate Bay Plan Amendment 3-19 Regarding Plan Map 4. Chair Wasserman stated: Item 8 is a public hearing and possible vote to initiate Bay Plan Amendment 3-19 regarding Plan Map 4. Megan Hall will present the staff recommendation.

Ms. Hall addressed the Commission: Good afternoon Chair Wasserman and Commissioners. I am going to be presenting today on staff's recommendation to initiate Bay Plan Amendment 3-19 to add a Bay Plan map policy regarding the Middle Harbor Enhancement Project. This proposed amendment is very closely related to the Fill for Habitat Amendment. It directly complements one aspect of it.

As a brief reminder, the Fill for Habitat Amendment was initiated in July of 2017. And we've been making a lot of progress on it recently. In the past couple of weeks we have mailed out our Staff Report with the preliminarily-recommended policy changes as well as the Background Report and we are bringing it to public hearing in two weeks at the next Commission meeting.

The Fill for Habitat Amendment was aimed at potentially allowing more fill for habitat in the Bay to consider making these habitats more resilient to sea level rise. And so taking a look at any of the language in our Bay Plan that was potentially hindering that goal was started.

These are the Bay Plan sections that are currently under consideration for BPA 1-17. There were six different sections that we considered and did propose some amendment to all of them to some extent.

But today BPA 3-19 the proposed amendment at hand is directly related to one of the dredging policies which Brenda already mentioned – Dredging Policy 11b.

This policy was kind of at the core of the Fill for Habitat Amendment because of the language saying that no more than a minor amount of dredged material can be used for habitat projects in the Bay until the successful completion of these three objectives.

And so that is an issue because dredged sediment is going to be one of our key sources of sediment to restore tidal wetlands, shallow-water habitats that are going to need a lot of sediment in a system that is sediment limited, especially as sea level rises. And so as part of the Fill for Habitat Amendment we wanted to make sure that this would not continue to limit it.

And of these three objectives the staff analysis concluded that none of these three objectives are necessary, pre-requisites for allowing more than a minor amount of dredged sediment. We are adding some other language that would still provide protections and therefore we concluded that these conditions weren't necessary to be met before we could start to allow more dredged sediment in the Bay.

And as Larry mentioned about the third of these conditions but really somewhat about the first two as well; it isn't really clear when all of these conditions are going to be completed. And some of them – it is a very subjective bar especially the first two when those two conditions have actually been met or completed.

And for that reason in the preliminary recommendation for BPA 1-17 staff did recommend the removal of Dredging Policy 11b. However there were several important purposes that Dredging Policy 11b did still serve that we wanted to maintain in the Bay Plan in some capacity.

One of those was to limit deep-water, sediment placement for habitat. And this is primarily because the system is limited for sediment. We don't have as much as we are going to need in the future. And the areas where we know that this is a really, key priority are the Bay margins, the wetlands especially the subsided, diked Baylands that are going to be needing millions of cubic yards of sediment to be brought up to the proper elevation. We are really going to need that sediment there and we know very little about these deep-water habitats and how placement of sediment and habitat creation in these areas would ultimately function .

And so for that reason we are proposing other language to limit this deep-water, sediment placement for habitat.

The other thing that Dredging Policy 11b did was to continue to encourage and direct the completion of the Middle Harbor Enhancement Area through the Bay Plan policies. And if we remove Dredging Policy 11b we would no longer have that kind of statement.

We have been thinking about how to maintain that kind of language in the Bay Plan. Staff has concluded that a Plan Map policy might be the most appropriate solution.

The reasons that we think that are first of all Plan Map policies are fully enforceable. They have the same authority as the policies in the text of the Bay Plan so it wouldn't be weakening the policy to any extent.

And additionally, Plan Map policies are really where these kinds of project or site-specific policies belong. They are site-specific. They number direct areas where the policy applies. So adding a policy about Middle Harbor and its completion would be more appropriate here than in other parts of the Bay Plan.

And so why the amendment? Plan Map policies were not included in the scope of Bay Plan Amendment 1-17, the Fill for Habitat Amendment. But because staff believes that this is the more appropriate location for such a policy we have decided to initiate this amendment

and that is also because we didn't want to delay the process for Bay Plan Amendment 1-17 by changing the scope yet again. That would have put a long-time-coming amendment pushed back even further. And we didn't want to do that.

I did want to note here also what we are voting on today is not the actual language but just whether or not to initiate this amendment. And so keep that in mind. We are thinking about do we want to have the option to put language in there if when we actually get into the merits of the best approach in two weeks from now that is the best decision that you all come to.

Talking about a timeline for the two amendments; today we would potentially initiate BPA 3-19 depending on how you all vote. On June 18th we would mail the Staff Report for BPA 3-19 just two days before the initial, public hearing for BPA 1-17. Then on July 18th the initial, public hearing for BPA 3-19 would occur. And we would then have additional, public hearings for both amendments if needed. Then sometime this fall ideally but depending on the public-hearing schedule we would bring the two Bay Plan amendments, 1-17 and 3-19 to a vote on the same day as they are so closely inter-related. And that is how it would all play out.

And so with that this is the staff recommendation. The staff recommends that the Commission adopt the attached Brief Descriptive Notice to initiate Bay Plan Amendment 3-19 to amend the Plan Map section of the San Francisco Bay Plan to add a Bay Plan policy to Map 4 to address the Middle Harbor Enhancement Project.

And I also did want to note you have heard public comment from the Corps here today but we also did receive a public-comment letter that was explicitly addressing Bay Plan Amendment 1-17 but is related to this amendment as well from Save the Bay. And that should have been shared with you all in your materials.

With that I will take any questions.

Chair Wasserman announced: We will first open the public hearing. I don't have any speakers on this matter although as Megan notes and the record should reflect the speakers on Item 12 intended their remarks to apply to this item as well so the record is complete on the public's behalf.

With no other questions is there a motion to close the public hearing?

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

Commissioner Gioia was recognized: I realize that we are just kicking off the process and we are going to hear a lot of comments as the process goes forward including more information from Save the Bay and their concerns but I wanted to understand the Army Corps' issue here. I wasn't clear about it.

Do we want them to explain it again or can our staff explain it? We do have the letter from David Lewis and I am sure that this will come up during the process as we look at it. Today is not an approval it is kicking off the process with a notice. It is unclear to me and I want it to be clear.

Chair Wasserman interjected: So I am going to ask the Port representative to come up for your perspective on it and then we are going to get a little more information from the Corps.

Commissioner Vasquez asked: Can I ask a question first?

Chair Wasserman replied: Of course.

Commissioner Vasquez continued: Are these two separate actions? Should they not be divided and be two different votes?

Chair Wasserman explained: I think this is just to issue the notice. We are going to vote to issue the notice which starts the process. This is not a vote on the amendments or any text or anything at all; it is simply to issue the notice and get the process started.

Commissioner Scharff chimed in: But it is two different processes. I think that is his point.

Commissioner Vasquez agreed: That is my point.

Ms. Fiala explained: This is just one process. So the vote today is to initiate the map change.

Commissioner Scharff asked: So it is not to add a Plan Bay policy?

Ms. Fiala continued: To initiate Bay Plan Amendment 3-19 to amend the maps. So the notice for Bay Plan Amendment 1-17 was issued back in July of 2017.

Commissioner Vasquez asked: And that is the map?

Ms. Fiala answered: Sorry that is the full amendment.

Mr. Goldbeck chimed in: What you will be considering today is whether you want to start the process to consider adding a map amendment to the Bay Plan Maps. So it is just one action that just starts the process and then you will consider the merits down the road as Megan described.

Mr. Novak commented: I apologize. We didn't find out about this hearing until a week ago. So we didn't have sufficient time to properly prepare and fully synchronize. But our concern is that this amendment change will request additional mitigation to account for project delays in completion. And that is specifically what we are opposed to.

Chair Wasserman added: And you may express that when we consider the Amendment itself. Thank you.

Mr. Townsley please come up to the mic.

Mr. Townsley commented: Yes sir.

Chair Wasserman asked: So is it fair to say your objection is what the Port representative has described? That his objection is the same one you are voicing? And your concern about this proposed amendment for which we are only voting on the notice today.

Mr. Townsley stated: So I am going to start by saying I am somewhat confused about the procedural for Item 8 and Item 12, how they fit together and frankly the notice of it. So this response that we wrote in the letter was a very quick response based on the material we had. I will say that we don't like the fact that it appears to apply retroactive rules to something for which we have already received a consistency determination. And we believe long-term that is a significant issue.

Chair Wasserman replied: Thank you. Don't go away. Commissioner Gioia do you have any other questions you would like to ask?

Commissioner Gioia answered: Not now.

Chair Wasserman continued: Thank you. Thank you Mr. Townsley.

Mr. Townsley replied: You are more than welcome.

Chair Wasserman asked: Any other comments or questions from the Commissioners? (No questions were voiced) So again this vote is solely to issue this notice. If we didn't issue the notice we couldn't consider these matters.

If we issue the notice we can consider them – it doesn't mean we do it, it doesn't dictate how we do it. Is there a motion to issue the notice? Federal representatives can vote on this item.

Ms. Atwell added: Actually the federal representatives can vote on everything today.

MOTION: Commissioner Alvarado moved approval of the staff recommendation, seconded by Commissioner Scharff.

VOTE: The motion carried with a vote of 21-0-0 with Commissioners Addiego, Ahn, Alvarado, Arreguin, Gilmore, Scharff, Gioia, Gorin, Eckerle, Pemberton, Peskin, Ranchod, Randolph, Sears, Vasquez, Wagenknecht, Ziegler, Holzman, Vice Chair Chappell and Chair Wasserman voting, "YES", no "NO", votes and Commissioner McGrath recusing himself.

9. Consideration and Possible Vote on the Enforcement Committee's Recommended Enforcement Decision Involving Proposed Cease and Desist and Civil Penalty Order No. CCD2019.001.00, Salt River Construction Corporation. Chair Wasserman stated: Item 9 is Commission consideration and a possible vote on the Enforcement Committee's recommended enforcement decision involving proposed cease and desist and civil penalty order for Salt River Construction Corporation. Commissioner Gilmore will introduce the item and provide the Enforcement Committee's recommendation.

Commissioner Gilmore addressed the Commission: Thank you Chair Wasserman. As the Commission remembers this matter was remanded to the Enforcement Committee in order to have Salt River appear. This was our second hearing. Salt River did not appear at the first hearing. They appeared at the second hearing and gave testimony. At the end of that testimony the Enforcement Committee deliberated and made the determination to recommend to the full Commission the Executive Director and staff's recommendation.

Ms. Donovan addressed the Commission: I am going to briefly describe the staff recommendation and then Mr. Moseley from Salt River is here to speak on this item as well.

There are three violations at issue here. They pertain to two separate operations that were conducted by Salt River.

The first occurred up in the Richardson's Bay area where Salt River was observed by a Baykeeper staff member who reported this to BCDC. They were essentially dragging a barge using the excavator. If you look at the administrative record documents that we have on the website those show the photographs and the video that was submitted to BCDC by Baykeeper.

The second two violations relate to a dredging operation that they conducted for Foster City dredging out an intake down in Belmont Slough. That dredging operation concluded. They received an extension but the operation did conclude on February 2nd. And the resources agencies were unwilling to extend it any further because the potential for dredging to affect listed species. On March 27th or towards the end of March BCDC received a report that there were two barges that remained in Belmont Slough. Salt River was then contacted and about two weeks later those barges did finally move out of Belmont Slough.

This slide shows the range in permissible fines for the three violations. For the two barge violations the civil penalties are \$250 a day for 53 days. That brings it to \$13,250.00 for each of those violations. And then we did assess the maximum of \$2,000 for one day for the day that the operation was observed by Baykeeper.

That brings the total to \$28,500.00. And so that basically gives you a description of both the violations and the civil penalties that are assessed.

Now I am going to let the respondent provide some comments because it is my understanding he would like to do so.

One other brief item before Mr. Moseley does come up is that at the Enforcement Committee meeting Mr. Moseley spoke primarily with regard to the two violations involving the barges. And I will let him speak on those matters.

Mr. Rick Moseley addressed the Commission: My name is Rick Moseley with Salt River Construction. Good afternoon Commissioners. The only violation that we contest is the barges parked in Belmont Slough and I think that is the majority of the violation. I think the whole violation is \$28,000 but I think those barges parked in Belmont Slough I think that violation is \$26,000 – okay, 26,500. So the only violation that we contest in this 26,500.

You know we are not going to move our barges across the Bay with an excavator. So that is not going to happen again but we feel that this \$26,000 or this other violation, you know, 26,500 for parking our barges in Belmont Slough is unwarranted.

We didn't park our barges in Belmont Slough. I mean we are falsely being fined for storing our barges in Belmont Slough when we were really actually performing work for Foster City. The dredging job happened in January and we completed it in January. There was no dredging done after January but part of our plan to do the job was to store material in these barges and then get the material over the mud flats and get it to Cullinan Ranch.

We had to work the tides to do this to get the material out of the previously dredged – you know, to get the previously dredged material out of these barges, across this mud flat. If it is okay I would like to put on a map (Mr. Moseley holding a paper map onto the podium computer screen) No, no – there is no way to display?

Mr. Moseley continued: Oh no, I thought I could display all of this stuff. I thought there was like a projector.

Mr. Moseley stated: I have all kinds of – sorry, but I have all kinds of exhibits to display and I thought that last time I was here it was just a camera facing the computer screen. I mean I can go on but I only think you are going to be able to see like the full effect of the situation without being able to see what I have in my hand.

Ms. Atwell asked (off mic) How many documents do you have?

Mr. Moseley showed Ms. Atwell his documents: That's it. I mean I think all of the documents are very important. If we could somehow get them on the screen.

Chair Wasserman stated: We don't have the technology to do that but we certainly could pass them around to the Commissioners.

Ms. Donovan stated: One thing I would like to note is that all of these documents were not presented to the Enforcement Committee. These are documents that have not been – now actually I am looking at these documents and I believe that three of them, well let's see (Ms. Donovan examining documents) – several of these do appear to be marked up documents or basically have edits on things that are already in the administrative record. This map here is similar to this one that is up there but is showing areas that are highlighted and is a different map.

Chair Wasserman continued: Before we get to the technical question we have a legal question. Shari please.

Ms. Posner commented: So I just want to confirm what Ms. Donovan said which is that under the Commission's regulations 11332 they can't take additional, evidentiary material –

Chair Wasserman asked: Can or cannot?

Ms. Posner answered: Cannot at this hearing. The only way that can be done is if the Commissioner were to decide to hold a hearing de novo which would happen not today but another time or if they otherwise remand it back to the Enforcement Committee. There can be argument about existing evidence and he certainly can provide or point you to existing evidence if that is what the exhibits were but if it is new evidence it can't come in.

Mr. Moseley interjected: I just want to – I want to say that all of this evidence has been produced. These are just copies of evidence that has been produced – that has been submitted to the Army Corps or the Water Quality –

Chair Wasserman interjected: Sir, excuse me – I have a question for you. Did you submit the evidence you are talking about to the Enforcement Committee when you appeared there?

Mr. Moseley replied: No actually I did not.

Chair Wasserman answered: Thank you. That is the issue legally. Because you did not you cannot legally present it here. You can as you have told us (Mr. Moseley going through documents) – excuse me sir – you can as you have tell us that you have additional material. We can decide whether we want to have a whole new hearing and schedule it or send it back to Enforcement or not.

You've told us that you have additional material. You cannot submit it today. So I would ask you to continue with your presentation but Commissioner McGrath may wish to make a comment.

Commissioner McGrath commented: I certainly agree with that and I was going in the same place. To the degree that you can go back to the previous document and explain to us without introducing new information why you think that it was appropriate to keep the barges in place for a period of time I am willing to listen to that. But you have to use the evidence that was already submitted and try to be clear about why you think you weren't storing the barges. I think that is the single question that we have. And if you could bring up the previous picture which was a navigation chart of the channel and I think was part of the record - was it not?

Ms. Donovan replied: I will bring up the previous, the map that was there before and I am going to quickly mark for Mr. Moseley among this stack of documents the documents that do appear in the administrative record so that he can speak to those documents. And then we will separate out the ones that are not currently part of the evidence that was before the Enforcement Committee.

Commissioner McGrath stated: That is very helpful. And if the staff would point out the location of the barges.

Ms. Donovan accessed the map slide on the computer: Is this the one you are looking for?

Commissioner McGrath responded: Yes. Is that red area the location of the barges?

Ms. Donovan answered: Yes. This is what was submitted to us by an employee of the Corps of Engineers.

Commissioner McGrath clarified: So that was all in the record. There is no question that this is new evidence.

Ms. Donovan replied: Yes and I will monitor it for you.

Commissioner McGrath continued: Try to use this document and make your arguments sir. Thank you.

Mr. Moseley answered: Okay, thank you. It would be great if we could just take some pictures and display them.

Commissioner McGrath reiterated: You can't submit new information. You can tell us with this document what your argument is.

Mr. Moseley stated: It is not new information. It really just to you know help describe what – you know – my, I am talking about.

Chair Wasserman added: Mr. Moseley you can talk about it you just can't submit the documents. So please proceed with your presentation.

Mr. Moseley continued: Okay. Well I think it is going to be harder for you to understand without the documents but I will proceed with my information. I think the documents like a picture really tell the story.

I believe that we were falsely fined for storing barges in Belmont Slough. When really we were still performing work for Foster City. We had done the dredging in January and no in-water work was done after January. Apparently the problem is that they think that our barges were stored or we were doing in-water work in February and March but we were not.

The way we did the job is we loaded these barges and there is a document right here that describes how our process was going to work. We were going to go into this cut that was an inlet to the gates that let water into all those Foster City lagoons, those big, massive lagoons that was clogged up. We were going to go in there and take the mud out and bring them out, bring the mud out and put it into holding barges and it is described in document three. And then when the tide was really high we were going to take small loads of that mud out of the holding barges across a mud flat. And this mud flat at a zero tide was one foot high.

The only way you could get a barge across a mud flat that is one foot high is to have like a really high tide like a seven or four foot tide and it happens to be that in the East Bay in those areas I've dredged down there before – the tides get to seven, four; they get to nine feet.

So there were some days we could take these barges over the mud flat and take them to the other side and put them into some other barges and come back. But some days we couldn't even work. So we actually had to have a 7.4 foot tide to take two or three hundred cubic yards from the dredged area, out into the mud flat, no marsh at all – out into the Bay and put that material in a barge. And once that barge was filled up we took that material up to Cullinan Ranch.

So that is how the process worked. So what we did was, we were not like I think that, you know, the accusation was that we stored our barges after the job was done in Belmont Slough and that is not true. And Belmont Slough is not a small slough. It is almost 400 feet wide. It is right next to the dredged area. It has deep water in the middle and it is not near or close to a marsh. It is 100 or 200 feet away from any marsh. And we stored the material there until we had the right tide to take it out. And Belmont Slough is different – it is deeper than the mud flat that we had to go over that was out in the Bay which is like plus one. I would say Belmont Slough is like plus four, I mean, minus four, minus five, our barges could stay there. But to get across that plus one we would have to have a 7.4 foot or a nine foot tide. And they didn't come all the time.

And we didn't have the work hours to choose and go day or night. We had to work between eight and five. And so it was a tough job. It was 12,800 yards that was originally thought to be on this job but the real volume was 15,200 and we removed 15,200 yards and the way we did it, the means and methods is we were parked in Belmont Slough which if I had my diagram and I could show you we were parked in a big slough that is 400 feet wide with a levee on one side, no marsh at all, some marsh on the right side, houses 600 feet away and when the tide was right we could load.

When the tide was right we could come in and dredge this channel, bring it out, put the material in the storage barges, come in and when the tide was actually high we could actually go across the mud flat and put the material into other barges that were in the Bay and eventually take that to Cullinan Ranch.

Commissioner McGrath commented: Mr. Moseley can I ask you a couple of questions right up here?

Commissioner Gioia chimed in: Can I ask a process question after your question? I want to ask because we are not here to revisit the whole thing.

Commissioner McGrath replied: No I just want to make sure that we understand his argument. So did you have a barge – I can see the location of the cut and I can see the location of the barges and I can see the size of the channel but there are a couple of things that aren't clear. So did you have a small barge inside, that is to the west of the levee, inside in order to do the main dredging? Is that correct? And what was the size of that barge, the capacity of that barge?

Mr. Moseley replied: So the cut, okay, so this cut that led, so the Belmont Slough is this big, 400-foot-wide slough. And then there is this cut that goes into the Foster City –

Commissioner McGrath interjected: I think we can all see that. And so did you have a barge on the inside and a barge on the outside?

Mr. Moseley responded: Okay so this is how I had to work. At a high tide we had to take that barge in and load as much material as we could, come out and load it into the holding barge. And we had to go in and come out and some days we couldn't even do that because the tide was not high enough because like I said in the South Bay the tide gets between 7 feet and nine feet. We could only work on these high tides so we'd come in we could not leave the barge in the cut because it was –

Commissioner McGrath offered: Because it would ground. Okay.

Mr. Moseley replied: No, because the cut is a four to one channel. It is 100 feet wide at the top and 10 feet at the bottom. And it goes 600 feet from the Belmont Slough and goes to these gates that lead into the Foster City lagoon.

Commissioner McGrath stated: Mr. Moseley trust me I know dredging. So you had a barge on the inside you filled it up – where was the mud flat that you had difficulty navigating over? Was it inside the cut or was it in Belmont Slough?

Mr. Moseley answered: Out in the Bay.

Commissioner McGrath continued: And so you had to get across the mud flats at the edge of Belmont Slough to get to your larger barge.

Mr. Moseley added: Out in the Bay – it was plus one. We needed a 7.4 and the only size barge we could get across there was 200 to 300 hundred yards.

Ms. Donovan commented: And Commissioner McGrath if I could speak to this for a second – this is all very useful information but some of this information is new. We have now posted and the transcript of the Enforcement Committee meeting where Mr. Moseley did present some evidence regarding these barges and their location but some of these specific details that are being presented now were not presented to the Enforcement Committee.

Commissioner Gioia chimed in: This is my concern about my fellow director getting into this line of questioning and bringing out new information that is technically not part of this hearing. So I want to understand and it would be useful to have somebody from the Enforcement Committee talk about the history of this violation or the process. My understanding is that there were a couple of hearings at the Enforcement Committee. Apparently you didn't show up at the first one without any notice but so there were hearings. But I was looking at the record before us that talks about history also of violations going back to 2011 for this company.

And I want to remind this Commission there have been issues identified in the Auditor's Report about the responsibility of this Commission to act on enforcement issues.

And so I want to hear I mean there apparently has been a fair amount of history with this company at other locations on enforcement. Some of which the enforcement proceedings fall through and others they did not. So I want to hear from the Enforcement Committee about what happened at the Committee just hearing an oral report. I mean I have the written material but I would like to hear a little perspective.

Chair Wasserman chimed in: Before we do that I want to give Mr. Moseley the opportunity to finish. Sir?

Mr. Moseley stated: I would like to finish. If you don't mind I would like to read a little bit of what I have.

Commissioner Gioia interjected: I have a process question here. We have a record in front of us and I want to make sure that if we are getting new information introduced into the record here what is the legal implication of that? What are the choices that we have here today in terms of the decisions we make with what information before us? Before we hear more because if we start opening up to new material I want to understand the legal implications of that.

Ms. Posner was recognized: So as I stated before we can't accept any new material at this hearing. You have the choices about what the Commission can do are based under the rule 11332 in the Commission's regulations.

You can accept the recommended enforcement decision. If you have concern that there is any issue about new evidence that they think should have come before or might be pertinent you can remand it to the Enforcement Committee or you can reject the recommended, enforcement decision and decide to have a hearing de novo at the next, available, Commission meeting.

Those are the options. We can't take new evidence here and open up the record and start to have a hearing de novo here today.

Chair Wasserman suggested the following: So here is my suggestion. I want to be as fair as we can to Mr. Moseley. We've tried to make clear and I appreciate that this is not an easy process sir but information you may have submitted at other times to the Army Corps, to Foster City, to anybody else doesn't count for us. We are reviewing this matter on the basis of the evidence that was submitted at the enforcement hearing where you did appear.

So I'd like you to finish hopefully fairly briefly. I will then entertain response from our counsel including the comment on what information is new and that we cannot consider.

Go ahead sir.

Mr. Moseley continued: Okay can you hear me.

Chair Wasserman answered: Yes sir.

Mr. Moseley stated: The information is not new. It was obvious and had been out there since the job started. But the problem was is that BCDC did not understand that this cut was 100 feet wide at the top and 10 feet wide at the bottom and the survey that was put in front of them was four years old. And there was one foot of material on the top.

And they allowed this survey to be accepted even though there was one foot of material on the top. The problem is that one foot of material on the top of a trench that gets dug down to 10 feet wide on the bottom equates to four feet of material on the bottom.

So when we turned in our dredging operations plan the Army Corps of Engineers approved it. Water Quality approved it and BCDC said no you have to do 12,800 cubic yards.

The problem is you can't do 12,800 cubic yards. Because when you start digging it is a 4 to 1 slope. You could say, you know what – let's just move, okay, the contractor; let's just move the slopes at 3 to 1 and then you could dig down to the invert of the trench.

Now the invert of the trench at that four foot wide you know section on the bottom that is where the storm gates are. I mean that is where the gates that led into the – let the material into the lagoon are.

If you tried to change it to 3 to 1 all that material would just fall at 4 to 1. We didn't even have to dig this trench. We just dredged the middle and it fell to 4 to 1.

So there is no way to dig this channel to 12,800 cubic yards that BCDC said we had to. And Foster City knew this. They knew it the whole time. We had to dig the entire, you know – on top of the, the trench on the top is 100 feet wide, 600 feet long. That new material because

the survey, BCDC approved a survey that was four years old. Nobody can approve a survey that is four years old. Maybe like six or seven months you know and you get a few accumulations but this survey was four years old and there was one foot of accumulation on the top.

And they said you have to dredge 12,800 –

Chair Wasserman interjected: Sir you have said that. Is there anything else you would like to say?

Mr. Moseley replied: No I haven't said that. That was obvious and I was trying to point it out to everybody. But it was not understood by BCDC. But it is very obvious that there is no way to – okay, a trench it has you know, it fills in a foot on the top and it goes down to 10 feet on the bottom and it is 600 feet long – you cannot just dredge – we turned in our pre-dredge survey and it was 15,200 yards. And they said, no – you can only dredge 12,800 cubic yards.

Impossible. If we dredged you know down 12,800 cubic yards there would be four feet of mud on the bottom and the tide gates at the bottom are three feet high. There would never be, that would be pointless. The mud could never get through. There would be four feet – I mean why dredge it? Why even do the job?

Foster City knew. They all knew. We had to dredge the entire 15,000 cubic yards. They told us just – I've got information here from Foster City you know, you know just change the results or I'll edit them myself. Let's get 800, let's get 12,800 cubic yards approved and we'll go back and change with BCDC by the final survey. That never happened. In the end they shorted us you know they said 12,800 yards but we had to dredge 15,000. If we had to dredge 15,000, 12,800 cubic yards we would be done. We wouldn't – there would not be barges in –

Chair Wasserman interjected: Mr. Moseley –

Mr. Moseley continued: - there wouldn't even be any barges. It is Foster City okay as, is dishonest and corrupt and they were supposed to tell BCDC you know that there was no way that you can dredge 12,800 cubic yards.

And these are the diagrams I have because on the top there is a one-foot layer that is 100 feet by 600 but down at the bottom of the trench where it is 10 feet high that is four feet high and that blocks the tides gates so there is no reason to dredge.

Chair Wasserman informed the speaker: Mr. Moseley your time is up. I will give you one minute to conclude sir.

Mr. Moseley responded: Oh, one minute to conclude? I am telling you that what Foster City did was dishonest and BCDC should have never approved a survey that is four years old and said, okay – you know, even though this survey was done in 2013 for 12,800 cubic yards you know, we'll let you go and dredge 12,800 cubic yards but we won't let you dredge anymore.

They should have never approved it because obviously in four years in a place where there is a marsh and you know pickleweed can grow and everything – you know, it is silted in a foot okay.

And I think the other, I don't know if the other agencies understood it or not but you know the head of public works with Foster City who is an engineer he knew it. They all knew it. They all told us that you know we would have to dredge the whole thing and we would get paid for it and we would take care of it with BCDC and they never took care of it and –

Chair Wasserman interjected: Thank you sir your time is up. Please sit down.

Commissioner Vasquez was recognized: Would you put up what the fines are again?

Chair Wasserman replied: Well before we do that – I'm sorry go ahead do that. I want Ms. Donovan to have a chance to respond before that.

Commissioner Vasquez requested: Explain the fines again.

Ms. Donovan responded: Certainly and I can put up the chart as well. And I – (Mr. Moseley standing in close proximity to Ms. Donovan at the podium)

Chair Wasserman stated: Mr. Moseley would you please sit down. (Mr. Moseley took a seat in the audience.) Thank you sir.

Ms. Donovan continued: The total of the fines is \$28,500. Here is how they break down in a chart. And this also shows you the range – the allowable range. In other words the allowable range was from \$10 to \$2,000 a day. We have charged an amount that is \$250 a day.

Now I do understand that Mr. Moseley would like to present some information – essentially my understanding of Mr. Moseley's position is that he believes that the fines particularly with regard to the barges in Belmont Slough –

Commissioner Vasquez noted: But it really is not about the mooring of those barges. It is not about the material. It is not about –

Mr. Moseley (off mic and from the audience): The fines are the responsibility of Foster City and the environmentalist (inaudible) –

Ms. Donovan replied: And this information is not on the record. I will repeat it. Mr. Moseley is saying that the fines were the responsibility of Foster City and that they were not his responsibility.

I will let Ms. Posner speak to what the options would be if there is any question or any desire to take additional information and perhaps modify those fines.

Ms. Posner could speak to that.

Chair Wasserman replied: Sorry, hold on. But wait – excuse me. Before we get there – Mr. Moseley spent a good deal of time talking about the issue of how much needed to be dredged and why.

Two questions; was that information presented to the Enforcement Committee?

Ms. Donovan responded: The answer to that is that there was originally a violation for over-dredging essentially and after some discussions with Foster City and Salt River that violation was dropped. That information has been presented to the Enforcement Committee.

Chair Wasserman interjected: Mr. Moseley you are done sir, thank you.

Mr. Moseley (off mic and from audience) I'm sorry but we got in the same room with Foster City and discussed –

Chair Wasserman continued: Mr. Moseley thank you. Please extend a certain amount of courtesy to this body. Thank you sir. Go ahead Ms. Donovan.

Ms. Donovan continued: so essentially there were originally questions about over-dredging but that violation has been dropped. So we are not asserting anything against Salt River.

Chair Wasserman stated: That answers my second question which was whether any of that has any relevance to the allegations that are before us and the findings that are before us.

Ms. Donovan explained: The two violations that are before you are for the barges remaining in their location.

Chair Wasserman replied: Thank you. Commissioner Vasquez do you want to ask more about the fines?

Commissioner Vasquez responded: No. But I think I have heard all of this. This is the fourth time.

I can tell you that he customized the barge to get up there to load the material up and then moved it out to the bigger barges and put the material on there but those were tiny little efforts to get the barges filled. Now I think his argument is with Foster City. It took longer to do the job than probably was contracted for.

Mr. Moseley (off mic and in the audience) No it did not. There were no liquidated damages and nobody else bid the job –

Chair Wasserman asked: Do we have any other questions here?

Commissioner Ahn spoke: I do agree with Commissioner Gioia's earlier concerns and I would like to hear from the Enforcement Committee if that is possible. As I remember we also remanded this issue to the Enforcement Committee as well.

Commissioner Gilmore commented: Let me start at the beginning. The Enforcement Committee held a hearing and the first hearing Salt River did not appear.

We came to this body and this matter was remanded back to the Enforcement Committee for a second meeting. At that second meeting Salt River did appear and essentially told us then what we are hearing today.

The matter of the over-dredging was brought up. It is in the record. The penalty for that was dropped but the Enforcement Committee was aware of it.

Mr. Moseley (off mic and from the audience) The over-dredging was over 15 percent of the job and the job lasted (inaudible) longer –

Commissioner Gilmore continued: The issue before us really is – (Mr. Moseley continued yelling off mic) where the barges were –

Commissioner Peskin: I am going to call the police. We've had enough –

Mr. Moseley (off mic and in the audience) There was no over-dredging. There were (inaudible) issues that the job would be done –

Chair Wasserman interjected: Sir you just heard from a supervisor of this city that his next step will be to call the police in here. Please, please do not make us do that.

Commissioner Gilmore continued: The matter in front of the Enforcement Committee was essentially where the barges were parked and for how long.

And there was testimony that said that an extension had been granted but Salt River was beyond the extension and that the resource commissions would not grant another extension because they were worried about biological harm. So they were up against that.

There was at the Enforcement Committee hearing Salt River did present some information or talked about the fact that of this issue with Foster City. But there was no evidence presented other than the verbal testimony. There were no emails to back it up. There were no letters or anything like that. And the Enforcement Committee also took into account the fact that similar violations had occurred in the past. I think it was 2011. Am I right?

Ms. Donovan replied: Yes.

Commissioner Gilmore continued: So based on all of that the Enforcement Committee decided to recommend to this Commission the Executive Director's enforcement decision.

And that is why we are here today.

Chair Wasserman replied: Thank you very much.

Mr. Moseley (off mic and from audience) (inaudible) and after all of this (inaudible) not only (inaudible) –

Chair Wasserman stated: Excuse me Mr. Moseley this is the last chance. If you speak again I will have these gentlemen who are here escort you out. I do not want to do that sir. Please – sit – down!

Mr. Moseley (off mic and from audience) My (inaudible) present here and that is what I was told.

Chair Wasserman asked: Are there any other comments or questions from the Commission?

Commissioner McGrath commented: As someone who recommended that this be remanded to give Salt River an opportunity I am satisfied that there was an opportunity for due process. The testimony today was irrelevant. It is standard that you prepare a dredge operations plan and you operate according to it or you modify it with the rules.

I understand the difficulties of a double-handling dredging operation. It is not an easy thing to do. But tides are predictable. I operate and sail on a daily basis using tide charts. I know what the tides are at the location that I am because I don't want to run into the ground. And I see no reason to take any further action. I move that we accept the –

Mr. Moseley (off mic and in audience) Is that (inaudible)-

Commissioner McGrath continued: - recommendation of the Enforcement Committee.

Mr. Moseley (off mic and in audience continued remarks that were inaudible)

Chair Wasserman asked: Is there a second to the motion? Commissioner Scharff seconds. Call the roll please. (Ms. Atwell called Commissioners in attendance for their individual vote on this matter)

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

VOTE: The motion carried with a vote of 20-1-0 with Commissioners: Ahn, Alvarado, Arreguin, Gilmore, Scharff, Gioia, Gorin, Eckerle, Pemberton, McGrath, Peskin, Ranchod, Randolph, Sears, Vasquez, Wagenknecht, Ziegler, Holzman, Vice Chair Chappell and Chair Wasserman voting, "YES", one "NO" from Commissioner Addiego and no abstentions.

10. Commission Consideration of Legislation. Chair Wasserman stated: The next matter is Item 10 and I am recusing myself on that item because my firm does represent the A's. (Chair Wasserman exited the room)

Acting Chair Sears continued: We are now on Item 10 which is Commission consideration of legislation now active in Sacramento. Chief Deputy Director Steve Goldbeck will provide the briefing.

Chief Deputy Director Goldbeck presented the following: Thank you Acting Chair Sears. You have a staff report entitled, Staff Report on Pending Legislation dated May 31st before you.

The report lists state legislation that the staff believes is of interest to the Commission and recommends Commission action.

I will take the most time with the first bill listed which is Assembly Bill 1191 by Assembly Member Rob Bonta regarding the Oakland Athletics proposed, mixed-use development including a new ballpark for the Oakland Athletics at the Howard Terminal in the Port of Oakland.

Howard Terminal is designated as a marine terminal in the Seaport Plan but is currently used for ancillary Port uses.

As you know at the A's request the Commission is considering whether the Port priority-use designation may be deleted from the Howard Terminal or whether the site is still needed for Port use.

You will hear a briefing on the status of that proposed amendment right after this one.

And also 14 acres of the 55-acre, Howard Terminal site were filled pursuant to a BCDC permit and therefore remain in your Bay jurisdiction although it is filled land.

Now the bill currently provides for a State Lands Commission trust exchange and also reaffirms BCDC's planning and permit authority for the project.

The A's are pursuing amendments addressing first the State Lands Commission trust exchange and approval of the project which I won't be addressing today. And secondly BCDC's authority over the proposed change in use as they are concerned that application of BCDC's fill test such as alternative, upland location might preclude the project.

BCDC and the State Lands Commission staff including Commissioner Pemberton have been discussing proposed amendments with the A's, the Port of Oakland and the City of Oakland.

And I am going to walk through where those amendments are. The A's were originally proposing that the project be declared to be necessary for the health, safety or welfare of the entire Bay Area. BCDC staff opposed that approach as not being applicable to the project.

Secondly the original plans included housing and non-trust commercial on the Bay-filled lands. Only water-oriented uses can be approved in your Bay jurisdiction and the A's have agreed that water-oriented uses will continue to be needed to construct anything on the Bay-filled lands.

Third the amendments provide greater specificity regarding how the ballpark and other public assembly would need to be designed in order to qualify as Bay, public assembly and recreation.

For example, a public park around the top of the ballpark with scenic views of the Bay.

Fourth in terms of fill policies the amendments would provide that no alternative, upland location and minimum fill necessary, and an additional fill test that filling not have harmful effects or that filling establish a permanent shoreline, would actually not be applied to the already-filled lands.

In addition several Bay Plan sections that apply to fill also would be exempted including Fill for Bay-oriented, Commercial Recreation and Bay-oriented, Public Assembly on Privately-Owned or Publicly-owned Property.

And second filling for public trust uses on publicly-owned property granted in trust to a public agency.

And regarding this aspect I would note that the filled lands are going to remain filled whether the project is constructed or not so that the staff agrees at least in this case for this project it does not seem appropriate to be applying those fill tests.

The amendments would also provide that the Commission consider and act on the proposed sea port designation removal within 100 days from the certification of the environmental impact report for the project.

This timing is important because the staff will use information from the EIR to prepare the environmental assessment for the proposed, Sea Port Plan Amendment for you to consider.

Lastly staff and the Athletics are currently discussing amendments requiring that the project include benefits substantially greater than could be gained through a Commission permit due to the Athletics' decision to use the legislative process.

As the project's design is further defined staff believes that these should be further reflected in the legislation. And the Athletics have agreed to further discuss such amendments.

So staff has worked productively in these discussions to ensure the proposed amendments are limited and preserve the Commission's planning and permitting authority. Other than the provisions that I have discussed the proposed amendments would allow the Commission to approve or deny both the proposed deletion of Port, priority-use designation and also approve or deny a proposed permit for the project.

The legislation would also find that the bill addresses a unique situation and provide that the bill would not set a precedent for any other project.

The status is that the bill has passed the State Assembly and is now set for a hearing later this month in the Senate Natural Resources and Water Sub-committee.

Staff is recommending that the Commission take a neutral position on AB 1191 at this time.

And I would note that you have one letter regarding this bill from the Pacific Merchant Shipping Association that we handed out to you today in your packets.

The next bill is Assembly Bill 825, San Mateo Flood –

Commissioner Gioia interjected: Are we doing them individually or questions individually or at the end?

Acting Chair Sears stated: So I am fine with having questions now for Steve on this bill. I think that makes more sense to separate it.

Commissioner McGrath was recognized: Well I would defer to Commissioner Gioia. I want to see what he has to say first. (Laughter)

Commissioner Gioia continued: I wanted to understand – there is a difference between taking “no position” and being “neutral.” So I want to understand whether we should be taking “no position.”

The PMSA letter raises some interesting points that if the bill gets amended in ways that we don't support we are on record being neutral about the bill which means we neither oppose or support it as “no position” means we withheld it because we are still considering this as the bill goes through.

All of us serve on boards in our local governments where this kind of stuff happens all the time. And I know it is not uncommon for us to say, well we are going to take no position until we understand the direction.

You are saying that the discussions up until now have been productive but we have been in this situation before where if the discussions don't go well that then the bill gets amended in ways that we may not support and we are on record as being neutral on it.

So I want to understand because it seems to me "no position" may be the better position than "neutral" because of the uncertainty of what will happen to this bill because it is obviously going to get dealt with in the Conference Committee because it has already passed the Assembly. If it is amended in the Senate it is going to take sort of a conference committee to resolve those issues.

So why is it that we are saying "neutral" instead of just "no position?" It seems to me that may be a better position.

Mr. Goldbeck replied: Well the staff is recommending that you take a neutral position because we have worked with the A's through the various issues that the Commission staff identified and have gotten to a place where we are comfortable with those proposed amendments.

I guess the difference between that and not taking a position is that it recognizes that the Commission has considered the current set of amendments and is neutral on them.

But you could certainly take a position if you like of not taking a position on the bill.

Commissioner Gioia pointed out: But your discussions are still ongoing and the bill may get amended despite our discussions.

Mr. Goldbeck replied: That is correct.

Commissioner Gioia continued: So do you agree that there is uncertainty about what the final form of this bill will be?

Acting Chair Sears stated: So maybe we could ask really pointed questions right now and then we can hear from the public who want to speak. And then we can come back and have more conversation.

Commissioner Gioia answered: Okay. So just then the last question; then we are still unclear about what the final language in this bill will be?

Mr. Goldbeck responded: Yes we have basically mocked-up amendments that have been submitted to legislative counsel. We have not at BCDC seen those yet. When we see them we will provide them to you and it needs to be considered by the Policy Committee and then it will go on to Appropriations and then to the floor.

So there are several places to further amend the bill as well. That is always the case with any bill and if it got changed in a way that the staff thought was inappropriate we would definitely bring it back to you.

Commissioner Peskin was recognized: Thank you Acting Chair Sears. Where I come from we either say we are watching a bill or we say we are supporting a bill or opposing a bill or opposing a bill unless amended.

But taking an action to not take an action sends a really weird signal when amendments are floating around and they are not in print. I am happy to say these amendments sound good and we are watching. I am happy to say I would oppose the bill unless these amendments are made.

But saying that we are taking a vote to be neutral is just –

Acting Chair Sears interjected: Could we have just questions instead of conversation about our position until we've heard some public testimony?

Commissioner Peskin agreed: Yes Commissioner Sears.

Commissioner McGrath was recognized: And I understand there is discussion of amendments but we don't see them yet that would retain BCDC's jurisdiction in a permitting sense and over a Sea Port Plan amendment.

And I understood this to be a spot bill from the press coverage. What I am troubled by here and my question has to do with residential housing and this is a little bit elaborate.

Acting Chair Sears noted: I don't know you might be veering off.

Commissioner McGrath answered: No, no it's –

Acting Chair Sears continued stating her observation: It's very limited questioning right now.

Commissioner McGrath clarified his position: It is a question of public trust attaches to any property that the Port of Oakland buys with public trust, funds but it is not inherent in the land. That is very different than land that was filled for Port purposes where the public trust exists unless it is transferred out.

And the location of housing has implications in terms of are you using public-trust land in a significant way for housing which is a huge issue. And I would not be willing to support a bill that –

Acting Chair Sears cautioned: - I am going to actually shut off what is not questioning and let poor Mr. –

Commissioner McGrath emphasized: - it's the physical location is the question.

Acting Chair Sears continued: - Goldbeck finish and no I get it. But we are also going to have an opportunity for conversation once Steve has had an opportunity to finish his briefing and we've had an opportunity to hear from the public.

So Steve take it away.

Mr. Goldbeck continued: I would like to clarify that the state of the amendments that the A's have agreed to would not allow residential or non-trust uses on the Bay-filled lands.

Commissioner McGrath added for confirmation: Including through a transfer.

Mr. Goldbeck answered: Correct. On the Bay-filled lands there would be no residential use.

Now I am going to talk about one other bill which was Assembly Bill 825, San Mateo County Flood Control and Sea Level Rise Resiliency District that was introduced by Assembly Member Kevin Mullin and the bill has been approved by the Assembly and awaits Senate action.

So Assembly Bill 825 revamps the San Mateo County Flood Control District by first adding protecting against the impacts of rising sea level to its powers, and secondly establishing a new governing board of directors.

This would establish, to our understanding, the first flood control agency in the Bay Area with an explicit mandate to address rising sea level.

Staff recommends that the Commission support AB 825. And there are a number of other bills in the staff report. These are all bills that the staff recommends that the Commission continue to follow and not take a position.

Acting Chair Sears stated: Are there any questions on the bills that we are actually not considering taking a position on in any respect?

Okay, seeing none – so we have not scheduled a public hearing on this matter but if you would like to speak you are welcomed to do so at this time.

I have a number of speaker cards. If you have not filled out a speaker card and you want to speak this would be a good time to fill out a card.

Mr. Robert Estrada addressed the Commission: I am the Regional Director of the Inland Boatman's Union of the Pacific. We represent tugboat workers, ferry workers and tour boat workers and shore side staff and the marine industry in the Bay.

Our perspective to what is going on here with Howard Street Terminal is that this is an existential threat to the Port. We see it as the beginning, the pulling of a thread that in various scenarios could easily start unraveling the Port and its \$500 million per year in salaries, its quarter billion dollars a year in state and local taxes; it's a big issue for us. We have been looking at it and it is a really, big concern for us.

Nobody more so than this one would actually recognize the fact more than you that maritime, industrial lands are a rarified thing.

And we speak of maritime, industrial lands and we would hope that you would think so too; we consider them in the way that people should consider fertile soil in the Central Valley or the way we would consider rain forests in Brazil.

Once it is ripped up, once it is paved over, once it is pulled up, once it is turned into a shopping mall or a sporting event or condominiums it is not coming back.

And the idea of taking this out of trust where it has been entrusted, in the public trust; taking it out of trust and handing it off to a non-maritime use in this way I think this should not be taken lightly.

And I would absolutely ask that you certainly withhold your support for AB 1191. I would ask that upon further consideration and when the final product comes up that you consider speaking out against it.

This is a big deal for the maritime industry but it is not just the maritime industry, we have had support from environmental groups, from neighborhood groups and others that we have all come together and we have seen common cause on this one front – the corporations, labor on down.

So I would hope that you would really give this some consideration as to what it is and that is; we have something in the public trust that is meant for a specific purpose, maritime, industrial usage. To let that out of our hands so lightly just because there are wealthy interests asking us to do so I really think we ought to give that some due consideration. So thank you very much.

Ms. Evi Hoang spoke: I am really excited to be here. I am a customs broker. I represent the Brokers and Porter's Association of Northern California.

I am here to speak on behalf of maritime use. We brokers and porters we represent users of the Port. And our Port of Oakland is a 50/50 import and export. It is an economic engine for our region that should not be taken lightly.

For what has been proposed there is a two-fold concern just even having a stadium in the Port of Oakland in the peripheral area it concerns traffic and all of that. And then there is the housing issue.

What has been proposed for housing for 3,000 units doesn't seem to be in line with what the maritime area is for.

Of course the attraction is Jack London Square and we can think of why they want to have that spot but that spot really is not appropriate.

What I have heard today is I am really excited to learn that this body has a lot to do with the eco-systems and I take that to heart.

For eco-systems if you change one thing it is going to affect another. You allow this stadium which is a water park stadium, sounds lovely, really a great maybe a draw for fans but what are you going to do – what is going to happen this year? Five years from now? Ten years from now?

The A's already had a great site that they took in the 1960s in East Oakland. Eminent domain took over a lot of people's houses and everything else. If you don't think that this is going to happen to West Oakland and what is going to happen on the shore; please think again.

And to take a position I am here today out of my work day to take a stand that the stewards of this public land pay attention to what are the effects of something that is maybe shortchanging what you will have here for maritime use and other areas. Thank you.

Mr. William Dow gave public comment: My name is William F. Dow. I am a member of I.O.W. Local 6, pensioner and a member of the District Council.

You guys got me confused frankly with all this stuff you were talking about. I want to oppose the Bonta Resolution because it gives the A's a fast track to build what they want.

And we are personally against it as members of the I.O.W.U. we are against any fast tracks or anything like that. They got have the full Commission full understanding of what it developing is going to mean.

You know they are talking about housing and everything else – that is not compatible with a working port. As far as I understand what your body is – you are supposed to protect part of the maritime. Well do that by denying the A's that. They have a perfectly good sports complex in East Oakland with lots of development space that is empty right now. They can go there and build what they want to, a brand, new stadium right now. They don't have to get all of this stuff and frankly I don't think that it is going to be much more expensive than they are putting out right now with all the things flying around in the sky and the things over the railroad and everything else like they are talking about.

I am not a public speaker. I am just a working stiff. That is pretty much what I have to say. Thank you very much.

Mr. Mike Jacobs addressed the Commission: I am with the Pacific Merchant Shipping Association and we represent ocean carriers and marine, terminal operators of the Port of Oakland on the West Coast.

I think Bill did a great job, and we are associating ourselves with the comments on the substance of the project with I.B.U. and I.W.U. and with the customs brokers and freight forwarders.

You have our letter and I appreciate the conversation about it. We would ask that you not take a position on the bill until there is any language that has been circulated back from legislative counsel at least and the counsel forum that the public can comment on and review and then provide you with comments on that language.

That hasn't occurred. It is incumbent on us since we are here to thank the staff, Mr. Goldbeck and the BCDC staff and also Commissioner Pemberton for standing up for BCDC and State Lands Commission processes. From what we understand the negotiation of the amendments even though it is opaque from the staff report that done a good job of maintaining basic consideration of the jurisdiction of the Commission even though we understand that was a question earlier this year.

We came forward in public comment earlier several months ago to have that conversation with you.

I think the appropriate action is to wait until there is language, receive the staff report at that point in time, make consideration – we would be happy to come back and tell you full throttle to oppose at that point in time based on whatever that language is or tell you if we think it is appropriate for you to take some other action but that is not possible at this time.

So we would appreciate it if you took no action on the bill. Thank you.

Mr. Dave Kavel was recognized: Dave Kavel President of the Oakland A's. I just want to stress a couple of key points. One that we are working hand-in-hand with the BCDC staff and also with State Lands to make sure that this is a bill that is done collaboratively and that whatever amendments are added or whatever additional parts of the bill that come forward over the next several sessions are done in a collaborative way that is a win for all parties.

There is no attempt here to do some kind of end-around or something like that. This is a bill that we want to work together on to actually achieve mutual success that does not take away the powers and authority of this body.

So that is a really important guiding principle in terms of what we are doing.

Secondly it is important to stress that this is a critical step to allow the A's since they rooted in Oakland to build our new, privately-financed ballpark at the waterfront. It is an important economic driver for the East Bay and for Oakland providing almost \$7 billion in economic impact, 6,000 jobs and including another 2,000 construction jobs.

So this is a really important project. It is one that the A's we've been in Oakland for 51 years and we want to take that next step together.

Finally what I would say is that I don't think that the maritime interest's positions are ones that we are discarding. We have a Port of Oakland and the A's agreement that was actually passed by unanimous vote that addresses many of the maritime concerns.

And so we want to make sure that there is not a false choice between a thriving Port and a beautiful, waterfront ballpark for the A's and that the two can co-exist in a mutually beneficial way for the benefit of the East Bay and our community. So I want to thank you and I am here to answer any questions if you have some.

Acting Chair Sears continued: I am going to bring us back up here for questions and all that good conversation that I wouldn't quite allow to occur earlier.

Commissioner Peskin chimed in: In the interest of time I would be happy to make a motion to support Assembly Bill 825.

Acting Chair Sears stated: Okay, we can break this up. I'm fine with that.

Commissioner Peskin agreed: I would do just that.

Acting Chair Sears acknowledged: Okay, no I understand. We are just going to do them one at a time for clarity's sake. All right and you got the second and we need a roll call unless there is any further discussion which I don't see.

MOTION: Commissioner Peskin moved approval of the staff recommendation regarding AB825, seconded by Commissioner Arreguin.

VOTE: The motion carried with a vote of 15-0-2 with Commissioners: Ahn, Alvarado, Arreguin, Gilmore, Scharff, Gioia, Gorin, Pemberton, McGrath, Peskin, Ranchod, Randolph, Holzman, Vice Chair Chappell and Acting Chair Sears voting, "YES", no "NO", votes and Commissioners Eckerle and Ziegler abstaining.

Commissioner Scharff commented on AB1191: So it seems that there are really sort of two choices here. One is to do nothing and the concerns seem to be that the bill could change.

The other one is to take a neutral position and I think I heard a little bit of concern with taking a neutral position because typically when you sit on these bodies they come opposed, support or no position. I am not sure that we normally take neutral positions.

But I think what you are trying to do here is say you've reviewed the amendments, you've worked in good faith with the A's and they came up with amendments that we have asked for and therefore we should recognize that the amendments going into it are appropriate and we in fact support those amendments. I think that is what you are really saying but we don't necessarily support the bill.

And normally you would say we support the bill with those amendments or so you are actually stepping back a little bit from that.

I guess I don't have the concern that – I don't have the concern that the bill will change and we'll be supporting something that we didn't want to support. That is true with any single bill that comes before us and is always there.

And then what happens when that happens? And it has happened before as staff comes back and says now we think you need to take an opposed position because they've made these bill changes et cetera, et cetera.

So I think that is a false issue frankly. So I think we should do what staff asks unless someone has a really good reason of why we shouldn't. We are not saying anything other than we like those amendments to it and we are not opposing the bill based on those amendments if we get those amendments unless something changes.

I wanted to ask staff if that was a fair summary of why you are.

Mr. Goldbeck replied: I think it is.

Commissioner Scharff responded: All right then I would move the staff recommendation.

Commissioner McGrath commented: I am going to abstain on this. I am a member of the Sea Port Planning Advisory Committee. We have our first meeting at the end of the month and I think geography matters.

So I don't want to take a position and I don't see a need to take a position at this time without more information.

I mean that is a personal choice based upon that planning process which is kept intact. But I've heard no compelling reason to vote on that at this meeting rather than deferring for meeting or two. So that is why I am going to abstain.

Commissioner Gioia was recognized: To try to move this along I am willing to make a motion that we take a watch position but express that the discussions have been positive and we would encourage the discussions to continue in the positive way that they have had and that we could revisit the position of the bill as those discussions proceed.

So that would be the amplification or additional direction in addition to taking the watch position.

Acting Chair Sears asked: Is the maker of our initial motion supportive of that revised motion?

Commissioner Scharff replied: I would be supportive of that. I think it does what I want which is to recognize the good-faith efforts people have made and to telegraph that.

Commissioner Gioia added: right but still taking a watch position meaning –

Commissioner Scharff interjected: Fair enough.

Commissioner Gioia continued: - we are withholding a final position until we see what the language is because I think that is important.

Commissioner Scharff agreed: Okay.

Acting Chair Sears asked: So would you like to second that revised motion?

Commissioner Scharff stated: I will second that revised motion.

Commissioner Arreguin commented: I am the Vice President of ABAG and we had an eight hour meeting literally right here. We took positions on 12 of the most high-profile, housing bills and one of the actions that we took around some of the more controversial bills was to seek amendments because we weren't ready to say aye or nay.

And so that was what I was going to suggest. If we as a body and the staff are comfortable with these particular amendments then our position should be seek amendments.

I would like to make a friendly amendment to Commissioner Gioia that we add to the motion that we are also seeking these amendments from the bill authors.

Commissioner Gioia asked: You mean the amendments that staff has outlined?

Commissioner Arreguin agreed: Yes.

Commissioner Gioia added: So that would actually be part of the direction here that what you have presented in the staff report are amendments that we are seeking from the bill author.

Acting Chair Sears continued: So practically let's talk that through a little bit.

Commissioner Gioia stated: We didn't go through all of them and there are varying views but right.

Acting Chair Sears continued: Right so from my perspective it is a little bit complicated here because the amendments that have been discussed with the Athletics and I really do appreciate the collaborative context of those conversations but the amendments have not yet been submitted.

And so I guess I'm a little concerned about are we going to send in a five page document that says we will watch if amended with these amendments? We are not really submitting amendments. I mean in the posture of the bill I like conceptually what you are saying but I think the posture that we are in practically makes it a little bit unwieldy.

So I'd appreciate other people's comments on that. I think we could certainly say something briefly that says watch if amended in a way that we anticipate and a thank you for your collaboration and we are hopeful that the amendments are of a nature that we can support.

Commissioner Gioia stated: I just want to make sure that our position matters as the legislation moves forward. I just want to make sure that the amendments that we have been working out with the bill author's staff end up in the bill. So that was the reason why I recommended that we seek these particular staff recommended amendments to the bill but that is inherent in the motion that has been put forth and then that is sufficient.

Acting Chair Sears asked: Commissioner Gioia would you like to restate your motion?

Commissioner Gioia offered the following: The motion is to take a "watch position" and express support for the direction of the discussions and to encourage continued cooperation in the discussions with the various parties and the bill author that preserve the interests that we believe are important to this Commission.

I tried to balance that and be general without going into the specifics.

Acting Chair Sears stated: I thought you did a nice job. Commissioner Scharff what do you think as the second?

Commissioner Scharff replied: I support the way he just said it.

The Court Reporter: Madame Chair I am a little bit confused on something that I better get clarified here. I have originally a motion made by Commissioner Peskin seconded by Commissioner Arreguin regarding AB825. And it seems to me now if I am hearing correctly we are now addressing AB1121.

Acting Chair Sears corrected: AB1191.

The Court Reporter: AB1191 - so is your procedure to take individual motions and seconds for each?

Acting Chair Sears explained: That is what we are doing. It may not be our usual procedure but it was a little cleaner in the conversation today.

So we already did a motion and a second and a vote on the first bill. And now we are going to do a motion and a second and a vote on AB1191.

The Court Reporter: Which is what we are doing now.

Acting Chair Sears answered: Correct.

Ms. Atwell stated: And it was Gioia and Scharff.

The Court Reporter: And I am assuming that the motion that is now for 1191 includes all the amendments that may or may not come.

Acting Chair Sears stated: This is why I had Commissioner Gioia restate his motion which he just did.

The Court Reporter: Could I ask Commissioner Gioia to specifically make a motion mentioned AB1191 on the record?

Commissioner Gioia explained: That motion that I just made is specifically for AB1191 – correct.

The Court Reporter: So you move the –

Commissioner Gioia continued: The “watch position” on AB1191 with the sentiment that I expressed.

The Court Reporter: Seconded by Commissioner Scharff.

Acting Chair Sears agreed: Correct. Thank you.

The Court Reporter: Thank you.

Acting Chair Sears stated: Thank you for clarifying that I appreciate it. I think we are really ready to take a roll call vote. All right let’s do that. (Ms. Atwell took a roll call vote)

MOTION: Commissioner Gioia moved approval of the revised staff recommendation, seconded by Commissioner Scharff.

VOTE: The motion carried with a vote of 13-0-4 with Commissioners Ahn, Alvarado, Arreguin, Gilmore, Scharff, Gioia, Gorin, Peskin, Ranchod, Randolph, Holzman, Vice Chair Chappell and Acting Chair Sears voting, “YES”, no “NO”, votes and Commissioners Eckerle, Pemberton, McGrath and Ziegler abstaining.

Commissioner Ziegler included this commentary with his vote: I will abstain and also with a confession in that I would have voted yes on the previous one on 839 and think that would have been appropriate since we do a lot of work along those lines. And that was due to my misunderstanding about how we were handling this.

And it is irrelevant but I am just sharing that.

Acting Chair Sears corrected the record: And it was AB825. (Laughter) Thanks everyone for weathering that. (Chair Wasserman returned to the dais)

11. Briefing on San Francisco Bay Plan Amendments 1-19 and 2-19 to Update the San Francisco Bay Area Seaport Plan. Chair Wasserman announced: That brings us to Item 11, a briefing on the San Francisco Bay Plan amendments 1-19 and 2-19 to update the San Francisco Bay Area Seaport Plan. Linda Scourtis will provide the briefing.

Ms. Scourtis presented the following: On January 17th of this year the Commission directed staff to begin the process of updating the San Francisco Bay Area Seaport Plan to reflect current information and practices in the maritime industry.

Chair Wasserman stopped the proceedings: Wait one moment, I apologize. Let's take a quick motion to adjourn and then we will reconvene in committee to hear this.

13. Adjournment. Upon motion by Commissioner Alvarado, seconded by Commissioner Peskin, the Commission meeting was adjourned at 3:55 p.m.

Chair Wasserman announced: The motion passes and we are in committee – proceed.

Ms. Scourtis continued her presentation: This update would include developing an updated forecast for the cargos handled by the region's ports.

At the same time the Commission voted to initiate an investigation into the potential removal of Howard Terminal at the Port of Oakland from port priority use designation.

Commissioners requested a staff briefing after the amendment processes were underway and I would like to share a few of the milestones that have occurred since the middle of January.

The Executive Director signed a contract with the Oakland Athletics that provides for reimbursement of staff costs to process their amendment request. The agreement also includes a provision for a separate contract to cover the Commission's consultants and staff costs related to preparation of an environmental assessment for the Seaport Plan update.

The cargo forecast and capacity studies are in the draft, final stage and are due to be submitted by June 17th. The process included review of the existing plan forecast and multiple trends and operational studies as well as a number of meetings with ports—Bay Area ports and outside the region—to develop projections for our region.

To discuss the updated cargo projections, a meeting of the Seaport Planning Advisory Committee is scheduled for Thursday, June 27th. A meeting notice is forthcoming.

And very importantly, as Larry informed you in his report, a new planner to assist with the amendments will join staff June 17th.

I can also provide you a brief list of upcoming tasks. They will include, if necessary, modifying the cargo studies to reflect the Seaport Committee's input, working with the ART team and the ports to develop the plan's rising sea level rise discussion, and writing an EJ and social equity elements.

Once the Commission policies are adopted staff will continue background research and conduct analyses. Staff also will convene a second and possibly a third Seaport Committee meeting in the fall to review staff findings.

The Commission just discussed the timeline that is included in the Oakland A's ballpark legislation. Staff just wanted to make a note that if the City of Oakland's EIR being done for the ballpark project is delayed, that could affect our public hearing and voting process.

I can answer any questions you might have.

Chair Wasserman announced: We do have one public speaker, Mike Jacobs. That's right, you pass. Any questions? (No questions were voiced)

Executive Director Goldzband added: I just wanted to remind you that when the Commission approved the two Bay Plan Amendment notices we made sure to tell you that we would provide an update every few months. So this is that update.

We should receive data this summer. You will then see scheduled an update on this as soon as we can to give you an update as to how the process is working. So I just want to make sure the Commission knows that we are not forgetting you, we just want to make sure that you know that there is an update coming.

Since Chair Wasserman had stepped out of the room, Commissioner Sears announced: I think we are done. And we've already adjourned so I think we are good. Thank you everyone.