

San Francisco Bay Conservation and Development Commission

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December 31, 2019

TO: All Commissioners and Alternates

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

SUBJECT: Draft Minutes of December 5, 2019 Commission Meeting

1. **Call to Order.** The meeting was called to order by Acting Chair Halsted at the Bay Area Metro Center, 375 Beale Street, Board Room, First Floor, San Francisco, California at 1:04 p.m.

2. **Roll Call.** Present were: Acting Chair Halsted, Commissioners Addiego, Ahn, Butt, Chan (represented by Alternate Gilmore), Cortese (represented by Alternate Scharff), Finn, McGrath, Peskin (arrived at 1:30 p.m.), Ranchod, Randolph (arrived at 1:07 p.m.), Sears, Showalter, Spering (represented by Alternate Vasquez), Techel, Wagenknecht, Ziegler (arrived at 1:07 p.m.) and Governor's Appointee (represented by Alternate Holzman). Senator Skinner (represented by Alternate McCoy) and Assembly Member Ting (represented by Alternate Sweet) were also present.

Acting Chair Halsted announced that a quorum was present.

Not present were Commissioners: Association of Bay Area Governments (U.S. Army Corps of Engineers (Beach), Contra Costa County (Gioia), Sonoma County (Gorin), Secretary for Resources (Vacant), State Lands Commission (Lucchesi), San Mateo County (Pine), Department of Business Transportation & Housing (Tavares), Governor (Wasserman).

3. **Public Comment Period.** Acting Chair Halsted called for public comment on subjects that were not on the agenda. No public comment was given.

Acting Chair Halsted moved to Approval of the Minutes.

4. **Approval of Minutes of the November 21, 2019 Meeting.** Acting Chair Halsted asked for a motion and a second to adopt the minutes of November 21, 2019.

MOTION: Commissioner Ahn moved approval of the Minutes, seconded by Commissioner Vasquez.

VOTE: The motion carried by a raise-of-hands vote with no abstentions or objections.

5. **Report of the Chair.** Acting Chair Halsted reported on the following:

If anyone is here for the Terminal One Project in Richmond it has been put over to a future meeting.

a. **Next BCDC Meeting.** Our next BCDC meeting will be held in January and our next December meeting will be cancelled. We will hold two meetings on January 16th. At 10:30 A.M. we will discuss the performance of our renowned Executive Director. That meeting will end no later than noon. At 1:00 the Commission likely will:

- (1) Consider a proposed project at India Basin in San Francisco.
- (2) Hold a public hearing on the proposed Bay Plan Map Amendment in Contra Costa County.
- (3) Hold a briefing on the ART Bay Area study.

b. **Ex-Parte Communications.** In case you have inadvertently forgotten to provide our staff with a report on any written or oral ex-parte communications I invite Commissioners who have engaged in any such communications to report on them at this point. (No Commissioners reported ex-parte communications)

Commissioner Holzman reported on the Financing the Future meeting held earlier in the morning:

We had three items on the agenda. The first was a presentation from the California Infrastructure and Economic Development Bank. They talked about programs that they do and how some of them might be applicable to us for some of the models that we have been talking about.

We had a good discussion the difference between financing for disasters that have happened versus pre-disaster work.

Second was a great presentation from work being done on the Adapting to Rising Tides Program; a preview of the White Paper that they are putting together on other financing tools and how we approach things and a preview to that would be that we are going to have a presentation by them in January.

And then last a number of robust discussions around the workshop that is coming in February and how we can make the most of it.

Acting Chair Halsted reported: I will mention that the Seaport Planning Advisory Committee met this morning as well. And Commissioner McGrath and I were there. It was not conclusive but it was very informative. We heard a lot of perspectives on different ideas. We will meet again in January.

Executive Director Goldzband will now present the Executive Director's report.

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

Yesterday morning while waiting for our teenager to get out of the shower – an occurrence I believe many of you have experienced – I saw in the most recent edition of Esquire magazine a picture of the relatively new Harley Davidson electric motorcycle. It accelerates from zero to 60 miles per hour in a little less than three seconds. It can travel up to 150 miles between charges and is beautiful. It is a marvelous coincidence, then, that today – December 5th - is the 126th anniversary of the debut of the world's first electric car. It was built in 1893 at the Dixon Carriage Works in Toronto, Canada and it could travel 15 miles between charges. So,

after we go from zero to 60 immediately after this Executive Director's Report, and after you leave the Commission meeting later this afternoon; please know that all those Teslas, Toyotas, BMWs and the like on the road aren't the first of their ilk and that we can thank MTC and Caltrans because they travel on roads that are much nicer than the ones that the first electric car ever traveled on.

a. **Budget and Staffing.** Two weeks ago you gave us the approval to hire a few new staff members. Two are with us today – Sacramento native Shane Gutto, (stood and was recognized) Shane is our new, office technician working for the Planning and Sediment units so Brenda has already put him much to work. And Margie Malan, our new legal secretary is here. (Stood and was recognized) She is now working with Marc and the gang in the Legal Counsel's Office and they are thrilled.

b. **Policy.** I'm going to keep this report very short but I do want to tell you that Jessica Fain our Planning Director was in Washington, D.C. yesterday and the day before. Yesterday she gave what has been described by an independent observer as "a great presentation" at a congressional staff briefing on West Coast resilience.

On Tuesday Jessica made the rounds on the Hill and met with five, separate, congressional offices to give them a preview of the ART Bay Area presentation our planning staff will give to you on January 16th and which Nick and Emma previewed in very short order for the Financing the Future meeting this morning.

Jessica did let me know that her Tuesday meetings required some 15,000 steps which is a bit more than she takes here at our offices.

BCDC held a staff retreat in October. I am fortunate to be working with a great small team of BCDC staffers to vet the recommendations made by staff about how we can work smarter and better. We're almost done with finalizing to-do list, and I'll share it with you at the next meeting.

In addition you will receive in early January an update on how well BCDC is meeting its strategic planning goals – as we talk about working smarter and better – and I'll ask for your thoughts on that issue as well.

That concludes my report, Acting Chair Halsted, and I'm happy to answer any questions.

Acting Chair Halsted asked: Are there any questions? (No questions were voiced)

7. **Consideration of Administrative Matters.** Acting Chair Halsted stated there were no listings on administrative matters and moved to Agenda Item 8.

Acting Chair Halsted reiterated: I will announce again that we are postponing the public hearing and vote on Terminal 1. It will be held over to a later meeting at the request of the applicant.

8. **Public Hearing and Possible Vote on the Terminal One Development Project in the City Richmond, Contra Costa County; BCDC Permit Application No. 2018.006.00.** (Item postponed for a future meeting.)

9. Closed Session on Pending Litigation. Acting Chair Halsted announced: Item 9 is a closed session to consider two pending litigation matters: one regarding the Bay Alliance 1849 and the other regarding the U.S. Army Corps of Engineers. Commissioners, except for any federal representatives, BCDC senior staff and legal staff, Brenda Goeden of BCDC staff and the Attorney General's staff will now move to the Claremont Room through the side door to our right. We shall return to this room after the closed session.

(The Commissioners convened to the Claremont Room for a closed hearing at 1:15 p.m. and returned at 1:57 p.m.)

Acting Chair Halsted stated: We are back in session. We have completed our closed session regarding pending litigation and did not take a reportable action.

10. Public Hearing and Possible Vote on the US Army Corps of Engineers, San Francisco District's Operations and Maintenance Dredging Program for 2020 through 2024; BCDC Consistency Determination No. C2019.004.00. Acting Chair Halsted announced: Item 10 is a public hearing and possible vote on the US Army Corps of Engineers' proposed five-year Maintenance Dredging Program for the Bay. Brenda Goeden will introduce the project.

Sediment Program Manager Goeden addressed the Commission: We have before you today a request for concurrence from the US Army Corps of Engineers for its Operations and Maintenance Dredging Program for calendar years 2020 through 2024. It is Consistency Determination No. C2019.004.00. Presenting their program today is Mr. Jay Kinberger, the Chief of the Navigation and Coastal Infrastructure Branch, supported by his staff.

The staff summary and recommendation includes maintenance dredging of 13 federal navigation channels within San Francisco Bay with in-Bay and ocean disposal unless a contract bid provides a beneficial reuse site that is less expensive than the other alternatives.

This figure shows the federal navigation channels, disposal sites and beneficial reuse sites. The channels are in red, the disposal sites are denoted by SF 9, 10, 11, et cetera and the beneficial reuse sites that are currently active are in purple and the ones that are future are in brown. This next figure shows the in-bay disposal sites more clearly, with the red dots being the sites, including Suisun site to the east, Carquinez site right off of Mare Island Strait, the San Pablo disposal site off of China Camp, and the Alcatraz disposal site immediately off of Alcatraz island. The red dot offshore, approximately two miles, is the San Francisco Bar site. All of the in-Bay sites are dispersive and considered disposal not beneficial reuse. The San Francisco Bar site is sometimes used for beneficial reuse with the placement of sand because it is believed that placing sand there feeds the littoral cell which helps keep sand on the coastal beaches. This last figure show the San Francisco Deep Ocean Disposal site, approximately 55 miles out to sea, past the Farallones Marine Sanctuary.

The issues raised with this consistency determination are whether or not the program as proposed is consistent with the Coastal Zone Management Program which includes the San Francisco Bay Plan, the Suisun Marsh Protection Plan and as a subset of the San Francisco Bay Plan – the Long-Term Management Strategy for the Placement of Dredged Material in the Bay Area (LTMS) Management Plan. The main issues include whether or not the Corps is minimizing in-Bay disposal consistent with LTMS Program and the Bay Plan. The in-Bay disposal limit is set

at 1.25 million cubic yards per year with a contingency of an additional 250,000 cubic yards when there is an unforeseen event that caused additional need for in-Bay disposal. That number is shared by all dredging projects not just the Army Corps of Engineers. The overall dredging program in San Francisco Bay including the ports, the refineries and the small dredgers is approximately 2.5 to 3.0 million cubic yards a year. Also at issue is whether or not the Corps is maximizing beneficial reuse, and as a program generally, the LTMS and the Bay Plan consider 40 percent of the overall program to be the very basis of maximizing beneficial reuse. Of course, you could do more beneficial reuse if you have the ability and it is useable.

The last issue at stake here is the protection of native, enlisted species. And that ties to the types of dredges that the Corps uses. As the Staff Summary and Recommendation reflect there are two main types of dredging that happens in the Bay. Mechanical dredging is generally done with a clamshell dredge. And then there is hydraulic dredging that you see pictured here. This shows the Corps' dredge the Essayons. The challenge that the agencies have found, is that with a hydraulic dredge, we entrain much more fish – as documented in their Entrainment Monitoring Program. The main, two fish of concern are the longfin smelt which is a state-listed and threatened and federally-listed candidate species and Delta smelt which is a state and federally-listed, endangered and threatened species. The hydraulic dredge was able to entrain salmon as well, as was recently reported. So salmon has now been added to the list about a year ago. With that I am going to turn over the presentation to Mr. Kinberger who will give you more details about the project.

Lt. Col. John Cunningham commented: I am the District Commander in San Francisco. I wanted to introduce Jay Kinberger as our Navigation and Program Manager and I appreciate you taking the time today to listen and I will turn it over to Jay.

Jay Kinberger addressed the Commission: We appreciate the opportunity to be here and submit our consistency determination to you. I want to talk about our dredging mission. The San Francisco's District's dredging mission is to maintain a safe, efficient and effective navigation, transportation system in the federally-authorized projects for the San Francisco Bay. Our Baywide, dredging strategy has traditionally placed material in-Bay, upland and at the DODS deep-ocean site. The channels shown here in bold are the deep-draft, navigation channels in the San Francisco Bay. They form the center of gravity for the dredging mission and these channels as well as our shallow-draft channels are included in our consistency determination. The Maritime Highway is really important for access and commerce in the Bay. These projects have been authorized by Congress to serve navigation interests including deep-draft vessels and goods movement. Together they serve as the backbone of the deep-draft, maritime, transportation network or the Maritime Highway in the San Francisco Bay. This network serves to facilitate goods movement, Coast Guard access, commercial fishing vessels operations and recreational uses. Maintaining safe navigation on this Maritime Highway is critical to the economic and environmental health of the region.

To keep navigation safe and reliable we must manage these shoals that impede or obstruct safe navigation. Without that annual maintenance shoals and the channels present a risk to shipping in the form of collisions or groundings that could result in a damaging accident. Preventing potential accidents is a crucial outcome of the Channel-Maintenance Program. The San Francisco District has been maintaining navigation channels in San Francisco Bay for over 100 years with the expectation of continuing to serve until otherwise directed by Congress.

This slide shows an estimate for [dredged] quantities. These are the projects contained in the CD in our proposed five-year quantities. These are the maximum quantities expected. We have listed Pinole Shoal and Richmond Outer Harbor as bi-annual here. This is to accommodate the requirements of the Regional Water Quality Board's certification. So the maximum, five-year volumes for Richmond Outer reflects three dredging episodes and for Pinole it reflects two dredging episodes. This next slide is a snapshot of our 2020 Dredging Program. It lists the full suite of projects as well as other projects outside of the Bay. On the top box it shows our annual projects and on the bottom area it shows our work plan-dependent projects. This shows our estimated cubic yards for this year, the dredge type and the placement sites.

Our main business, environmental coordination, is paramount and very important to us. This shows the framework for our environmental coordination. We have our CZMA action before you today. We have also been active partners in the LTMS framework within the context of the federal standard which I will touch on next. The federal standard is defined as the least-costly, dredged-material disposal or placement alternative that is consistent with sound, engineering practices and meets all federal, environmental requirements. This forms the foundation of how we operate in the Bay.

Commissioner McGrath had a question: Can I ask you a question about the federal standard? Do you know when it was adopted and if it was adopted with a formal rulemaking? Mr. Kinberger replied: That is a good question. I would have to get back to you with the specifics of that. Commissioner McGrath continued: I did research on this at one time and I believe it was adopted not through a formal rulemaking process and before the Coastal Zone Management Act was enacted. As I would see things, that means it has less than regulatory standard. Mr. Kinberger stated: I feel pretty comfortable in saying that our current policy is to abide by the federal standard. Commissioner McGrath responded: Oh, I understand what your policy is. I'm just asking whether or not it was actually adopted as a regulation and if it was adopted and later rationalized with the Coastal Zone Management Act which is a partial waiver of federal supremacy for consultation with the states. Mr. Kinberger stated: That is a pretty detailed question. I'm sorry I don't have those answers for you right now. I can take them for the record and we can get back to you on that.

This is a segue from the federal standard and it relates to specifically Pinole Shoal and Richmond Outer. What we are doing is we are doing alternative dredging between Richmond Outer and Pinole Shoal. Our dredge use there is to accommodate the Water Board's concern over potential longfin smelt entrainment. Beneficial reuse is important to us. We have been beneficially reusing material as consistent with the federal standard. We partnered with the Coastal Conservancy to place material upland through the use of contributed funds. In this

instance the Coastal Conservancy has taken a real leadership role in managing sediment in the Bay and has signed a memorandum of agreement that has allowed the Corps to take material from Redwood City and use for wetland restoration this year with the expectation that we could also place upland in 2021. We would welcome more of these agreements. We have placed about 4.6 million cubic yards of beneficial use within the last five years including this year.

With that, the USACE requests concurrence with its submitted, consistency determination. I am happy to answer any questions that I can. (The public hearing was opened)

Nicole Sasaki of San Francisco Baykeeper commented: I am here on behalf of the San Francisco Baykeeper. Baykeeper supports the Staff Recommendation that the Commission conditionally concur with the consistency determination for the Corps' proposed maintenance dredging in San Francisco Bay for years 2020 through 2024. The special conditions in Section 2 of the Staff Recommendation were properly identified by staff and are critical to ensuring that the Corps' dredging is consistent to the maximum extent practicable with the enforceable policies of the Commission's federally-approved, Coastal Zone Management Program under the Coastal Zone Management Act. First, the Commission must require the Corps to decrease in-Bay disposal and increase beneficial reuse of dredged materials. As the largest dredger in the Bay the success of the LTMS and local efforts for adaptation to sea level rise depend on the Corps' commitment to beneficial reuse.

Second, the Commission must require the Corps to reduce the use of hydraulic dredges and narrow the work windows for hydraulic dredging in order to protect fish species on the brink of extinction. The Corps' own entrainment surveys indicate that these conditions are necessary and entrainment reports from the past few years continue to confirm the necessity of these measures. The Corps has pushed back against these same conditions the Commission has imposed on the Corps' maintenance, dredging projects since 2015. Despite the Corps' protestation the conditions identified in the Staff Recommendation are feasible for the Corps to implement. Baykeeper encourages the Commission to continue to use its authority to ensure compliance with the CZMA even in the face of the Corps' resistance. In closing, Baykeeper agrees with the Staff Recommendation that the consistency determination for the Corps' maintenance, dredging operations in years 2020 through 2024 must be conditioned in order to comply with the CZMA. We ask the Commissioners to vote to conditionally concur with the consistency determination and apply all of the conditions in the Staff Recommendation. Thank you.

Acting Chair Halsted asked: Is there anyone else wishing to address the Commission? (No further speakers came forward) May I have a motion to close the public hearing?

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

Commissioner McGrath was recognized: I am deeply troubled by the Corps' position that the federal standard is dispositive. There are times you ask questions that you know the answers to and there are times you ask questions that you don't know the answers to. Having worked with the Corps and gone through many, many disputes over cost sharing while at the Port of Oakland I looked up the federal standard and my memory of it is sufficient to be

convinced that the federal standard existed in the Corps' informal regulations before the Coastal Zone Management Act was passed and was not changed in any way afterwards. And I don't believe that you can rely on a regulation and say that it is dispositive. This isn't a question, this is a comment. So I am deeply troubled by that and I'm not persuaded that it is dispositive. So that is my comment.

My question is for Brenda. It has to do with the impact on state-listed species. I am having a little bit of trouble following the train of reasoning through the condition which is imposed, which involves purchasing credits and the Corps' position that they don't have to abide with state-listed as opposed to federal-listed restrictions. My question is, with the conditions suggested by the staff, is that fully consistent with the California Department of Fish and Wildlife's recommendation to us which we are supposed to take as our interpretation of our habitat policies? Ms. Goeden responded: In 2012 or 2013 while we were working with the Water Board and the Army Corps of Engineers on the CEQA document for the ten years of maintenance dredging, California Fish and Wildlife was involved in the conversation; not at the table all of the time but they were fully aware of the conversations. The Water Board, BCDC and the Army Corps discussed at great length the entrainment issue with longfin smelt and Delta smelt. We separately consulted with Cal Fish and Wildlife, which resulted in a letter from Cal Fish and Wildlife recommending minimization measures to the Water Board, which BCDC has incorporated into the consistency determination. The calculation for the mitigation credits was developed for the water projects. In the Delta there are water projects that remove water and send it south. The formula for that calculation was taken from that project because it was the best and only available way of calculating credits and applied to this circumstance.

What happens is the Corps has calculated and it is documented in the CEQA document an estimate of how many millions of gallons of water it is pumping through its hydraulic dredge, or maybe it's hundreds of thousands, somewhere in that range, and that number is used to calculate the mitigation using the same ratios the water contractors use. They do the calculation in advance using an estimate, and after the year of dredging is complete they go back and look at to see whether their estimate was high or low. If it was low the same mitigation is required. If it is high they add more.

Commissioner McGrath interjected: So Brenda, you are a little bit down in the weeds. Ms. Goeden replied: I am always in the weeds. (Laughter) Commissioner McGrath continued: And you lost me a little bit. If I can summarize what I think that you said is that we are relying on a 2014 recommendation from the California Department of Fish and Wildlife where a combination of minimization and then because it can't be fully minimized – mitigation. So, the recommendation is consistent with their recommendation and they haven't updated it. Ms. Goeden agreed. Commissioner McGrath answered: Okay, well I do get lost sometimes, but thank you, that answers my question.

Commissioner Scharff was recognized: I have a question for the Corps. I understand that your position is that you don't have to do this. Mr. Kinberger sought clarification: I'm sorry – don't have to do "this?" Commissioner Scharff explained: You don't have to do the conditions that we are imposing on this; that you don't feel you have to do it. The Corps seems to, through their environmental documents, agree that it is the right thing to do. The question I

have is – I didn't see the Corps go ask for money to get this done. And I understand the reason the Corps says they are not going to do it is because there is just not money available therefore it is not practical to do it. Given that it is the right thing to do, and I don't think the Corps disputes that it is the right thing to do our conditions – the question I really have is, why didn't you go ask for the money and why don't you want to do the right thing?

Mr. Kinberger replied: I am not sure that I fully understand the question. But I think that the answer is that it is really not consistent with the federal standard and that is the primary driver of our basic behavior. Commissioner Scharff asked: But isn't the issue on the federal standard that it has to be practical and you are saying that it is not practical because you don't have the money to do it? I mean isn't that the real driver there? Mr. Kinberger responded: So, I'm sorry – can you remind of what the conditions were again? Ms. Goeden explained: So, the conditions of contention are primarily maximizing beneficial reuse and getting at least 40 percent going to beneficial reuse, reducing in-Bay disposal to 20 percent for your program over five years, and the reduction in hydraulic dredging, although you are complying with that by deferring. Mr. Kinberger replied: Yes so that is exactly the point. It is not consistent with the federal standard and that is our current position. Commissioner Scharff asked: When you say it is not consistent with the federal standard – what do you mean by that? Mr. Kinberger answered: If we were to move back towards the federal standard slide you are looking at the least-costly, dredged-material disposal replacement alternative that is consistent with sound engineering practices and meets all federal environmental requirements.

When we look at the idea of beneficial reuse, our baseline is the federal standard, which is in-Bay disposal. Commissioner Scharff continued his questioning: Because it is the least costly or why? Mr. Kinberger explained: It is because it is the least costly, sound engineering and complies with federal environmental requirements. Commissioner Scharff continued: But don't those same federal environmental requirements require us not to bring species to the brink of extinction? Mr. Kinberger replied: That is an ESA question and we are, in fact, consistent with ESA. Commissioner Scharff responded: Okay.

Mr. Kinberger continued: So as a follow-up I wanted to address Commissioner McGrath's question about has it been formal rulemaking? And the answer is – yes. It is codified in 33 CFR, 336-338. Commissioner McGrath requested: Can you give me the number again and also the date? Mr. Kinberger stated: It is 33 CFR, 336-338.

Acting Chair Halsted continued: Brenda would you present the Staff Recommendation please. Ms. Goeden presented the Recommendation: I am bringing the slides back up because there is one change to the consistency determination. I would like to direct you to Special Condition II – G.1. which is on page 7 of the Staff Recommendation. In conversations with the Army Corps I had previously included a condition to provide a pre-dredge survey 60 days prior to the start of dredging. And that was a result of not getting pre-dredge surveys so we could validate the numbers in the past year. So this is a new condition, but after discussions with the Army Corps of Engineers and considering their contracting and need to analyze their data from the hydrographic surveys they suggested that 90 days was actually more feasible for them.

And so, we have adjusted the timeframe to 90 days prior to the start of dredging to provide a pre-dredge survey. They have also agreed, as a matter of practice, to give us their final survey which will be the most accurate for us to understand the volumes and where they are placing materials, 15 days prior to the start of dredging.

And so with the Commission's permission I would like to suggest this amendment to the Staff Recommendation, the change I would like to recommend that the Commission concur with the Army Corps of Engineers in a conditional concurrence which requires:

- a. Restrict use of hydraulic dredge to one federal navigation channel per year to protect listed species;
- b. Reduction of in-Bay disposal to 20 percent of the program over five years;
- c. Increase beneficial reuse of sediment in their program to 40 percent;
- d. Provide information and request for final approval on an episodic basis.

MOTION: Commissioner Techel moved approval of the Staff Recommendation, seconded by Commissioner Randolph.

Acting Chair Halsted continued: I am asking the applicant's representative whether he has reviewed the Staff Recommendation and agrees to it. Lt. Colonel John Cunningham with the Army Corps of Engineers responded: We support the Staff Recommendation to approve the project with the caveats that we will not incorporate Special Conditions II-B and II-J into our program and we will alternate dredging at Richmond Outer and Pinole Shoal.

Acting Chair Halsted asked: Is there any Commissioner discussion on this matter?

Commissioner McGrath chimed in: I appreciate the response from the Corps. Nice thing about having an iPad is you can look up the section and I would remind the Corps that the federal standard corrected and it anti-dated the CZMA but it was adopted in 1988. It goes on to say about the federal standard that it will support alternatives selected through the 404 B1 Guidelines for ocean disposal guidelines. And, of course, those presume that materials should not be discharged back into the ocean or a site such as the Bay if there are practical alternatives. Without trying for more money I'm not persuaded that there are no practical alternative. As far as the use of the Bay as a disposal location my memory of the crisis that started the LTMS process and stopped the first Port of Oakland deepening project was the accumulation of material at the Alcatraz disposal site. It is pretty definitive after the LTMS that BCDC is well within their authority restricting disposal at Alcatraz to one million cubic yards or less because that is the point at which it will disperse rather than continue to accumulate and result in substantial Bay fill with the adverse impacts that are associated. I wanted to make sure that those were on the record. I'm going to support the Staff Recommendation with the conditions. I see nothing that has been submitted to date to convince me that the alternative analysis called for statutorily in the MPRSA and the Clean Water Act had been fully complied with and therefore I think the conditions recommended by the staff are necessary.

Acting Chair Halsted asked: Is there any further discussion?

Lt. Colonel Cunningham was recognized: We have an additional submission we would like to submit to the Board. (A document was handed to Ms. Brenda Goeden) Thank you.

It's just our comments related to the – staff recommendation.

Acting Chair Halsted asked: It is the comments you have presented already?

Lt Colonel Cunningham (off mic): Yes, just for the record.

Acting Chair Halsted continued: All right, thank you. Then I would ask Peggy to call the roll. Federal representatives cannot vote on this matter.

VOTE: The motion carried with a vote of 18-0-0 with Commissioners Addiego, Ahn, Showalter, Butt, Gilmore, Scharff, Finn, McGrath, Peskin, Ranchod, Randolph, Sears, Vasquez, Techel, Wagenknecht, Ziegler, Holzman and Acting Chair Halsted voting, "YES", no "NO", votes and no abstentions.

11. Public Hearing and Vote on the Port of San Francisco's Proposal to Construct a Ferry Terminal and Water Taxi Landing at Mission Bay, City and County of San Francisco; BCDC Permit Application No. 2017.008.00. Acting Chair Halsted stated: Item 11 is a public hearing and vote on the Port of San Francisco's proposed ferry terminal and water taxi landing at Mission Bay. Sam Stewart will introduce the project.

Coastal Program Analyst Stewart addressed the Commission:

On November 22nd you were mailed a summary for the proposed Mission Bay Ferry Landing and Water Taxi Landing Project. The project would construct a new ferry terminal and water taxi landing facility in the southern waterfront of San Francisco.

The renderings on this first slide illustrate the design of the ferry landing.

As you will note on the left hand map the project is located in the Mission Bay neighborhood on the south eastern side of San Francisco.

On the right hand side you will see that the proposed ferry landing sits near to the newly constructed Chase Center, to the south of Bay Front Park and to the east of 16th Street

The proposed water taxi landing would be constructed to the south of the ferry landing adjacent to Agua Vista Park.

The project would involve:

Construction of a single-float, two-berth ferry landing and a single-float, two-berth, water, taxi landing.

New dredging works in an 8.4-acre area with an additional authorization for one episode of maintenance dredging.

Placement of a remediation cap within the ferry landing dredge footprint in an area which was found to have elevated levels of contaminants.

The project would also involve new and improved public access landward of the landings and a comparable amount of fill removal as compensatory mitigation for Bay fill.

For context, here is an image of existing site conditions at the ferry landing site. The ferry landing would be constructed near to the center of this image.

Note that a new ferry plaza would be created for passenger arrival and departure and the pilings to the left would be removed as part of the mitigation package.

This next slide shows Agua Vista Park to the south of the ferry landing running from the left (north) to the right (south).

The water taxi landing would be constructed at the far end of the park to the right of this picture.

The grassy area along the shoreline is all Agua Vista Park.

This picture also faces in a southerly direction but shows the fishing pier in Agua Vista Park which is currently in a poor condition.

Note that Agua Vista Park and the fishing pier would both be improved as part of this project.

The Staff Summary lists issues raised by the project in relation to consistency with the McAteer-Petris Act, the San Francisco Bay Plan and the San Francisco Waterfront Special Area Plan. Of particular note were the following issues:

Whether the proposed public access is the maximum feasible public access consistent with the project;

Whether the proposed Bay fill is consistent with the Commission's laws and policies on allowable fill, including policies on subtidal habitats and mitigation;

Whether the dredging proposed is consistent with Bay plan policies on dredging;

And, finally, whether the project is consistent with policies on sea level rise.

I will briefly highlight some of these before the Port presents the specific details of the project.

Public access included with the project would create a new 5,800-square-foot plaza at the ferry landing and this is the area shown in orange. And it would improve 23,323-square-feet of existing public access including Agua Vista Park (shown in yellow), the adjacent Bay Trail (shown in purple) and the Park's fishing pier (shown in pink).

All of the above are within the Commission's 100-foot shoreline band.

It is worth mentioning that the public-access areas being improved are already required public-access areas under various BCDC permits.

Note that the San Francisco Waterfront Special Area Plan, Map 5, denotes Agua Vista Park as a "Public Recreation and Access" area to be used for marinas, public recreation, open space and maritime uses.

The ferry landing and water taxi landings would result in a total of 10,633-square-feet of fill.

As illustrated on this slide, to allow safe navigation, the project would involve new dredging in an 8.4-acre area. This includes 7.9-acres for the ferry terminal dredged to minus 15-foot to Mean Lower Low Water plus a 2-foot over-dredge allowance and 0.5-acres for the water taxi which will be dredged to minus 8-foot Mean Lower Low Water plus 1-foot over-dredge allowance.

The authorization would also incorporate one episode of maintenance dredging in the same area to be undertaken within ten years of permit issuance.

Within the ferry landing dredge footprint is an area which was found to contain high levels of polycyclic aromatic hydrocarbons.

This area will be capped with sand and a grout-filled, marine mattress. This is the gray area shown on the slide. It is surrounded by a perimeter of articulating block mattresses which will be placed to reduce potential scour impacts at the edge of the mattress.

The remediation cap would involve dredging a 1.67-acre contaminated area to a maximum of minus 20-feet Mean Lower Low Water plus one-foot over-dredge allowance which would then be capped with sand and a 2.25-acre marine mattress. This 2.25 area includes the perimeter of articulating blocks. This would be followed by another layer of sand.

Staff worked closely with the Port to ensure that scour around the mattress was properly considered and to ensure that the cap footprint was the smallest area of fill feasible to protect water quality. The Port also agreed to include a deeper, 15-centimeter layer of sand over the marine mattress and articulating block perimeter to potentially aid future colonization of the area by benthic communities.

In total the remediation cap would place 98,010-square-feet of Bay fill.

Total fill for the project would involve 108,643 square feet of fill.

Mitigation for the Bay fill, as conditioned, would involve removing 122,879 square feet of fill from areas within the dredge footprint and areas adjacent to the project site.

For sea level rise and flooding this slide illustrates a typical cross-section of the ferry landing with elevations included to demonstrate anticipated sea level rise.

The ferry landings expected project life is until 2070.

The ferry landing's pier and adjacent ferry plaza is designed to be resilient to 1.9-feet of sea level rise projection at 2050 for Mean Higher High Water levels and 3.5-feet of sea level rise projection at 2070 at Mean Higher High Water levels.

However, the ferry terminal and ferry plaza could experience temporary flooding from wave run-up during a 100-year storm event which has a one percent chance of re-occurring every year beginning at 2050.

The water taxi landings expected project life is until 2050.

The water taxi pier and adjacent Agua Vista Park are designed to be resilient to 1.9 feet of sea level rise projection at 2050 at Mean Higher High Water levels.

However, the water taxi landing and adjacent Agua Vista Park could experience temporary flooding from wave run-up during a 100-year storm event which has a one percent chance of re-occurring every year beginning at 2050.

In conclusion, both landings are designed to be resilient day-to-day for their respective project lives.

This slide concludes my brief introduction. I will now introduce Kathryn Purcell from the Port of San Francisco who will provide further project information.

Kathryn Purcell, Senior Environmental Planner with the Port of San Francisco addressed the Commission: I'm excited to be here today to present the Mission Bay Ferry Landing and Water Taxi Landing Project. I am joined today by Dan Hodapp from the Port Planning Department.

Also joining me today are Ming Yeung, Senior Environmental Planner with the Port, Jonathan Roman, Design Engineer with the Port and a few key members of our engineering and consultant team who have worked with us.

I first met with BCDC staff in June 2017 when the Port project team presented its first, interagency, information meeting and provided an overview of our project description and our project plans.

The Port subsequently held three additional, interagency meetings as we progressed through various design issues and requirements for the project.

We are all very excited to be here and bring this important project to you for your approval and we want to thank BCDC staff who have worked with us over the past few years to get to this point.

As presented in the outline we will briefly review some background and site planning. And we will review the project design, some site circulation, public access and architectural features.

And then we will review with you the permitting and the regulatory authorizations that we have worked through over the past two years and our critical-path, construction schedule.

As shown on this aerial photograph ferry service transit lines currently traverse across the Bay to and from San Francisco's Central and Northern waterfronts from numerous north and east Bay ferry landings.

There is currently no ferry service to the Southern Waterfront.

The proposed project would bring much-needed ferry service and an alternative transit option to the under-served and growing Southern Waterfront of San Francisco.

The proposed Ferry Landing and Water Taxi Landing will be located at the terminus of 16th Street and Terry Francois Blvd. That will be flanked by an improved Agua Vista Park to the south, a new Bayfront Park to the north that is currently undergoing construction, the UCSF Medical Center and Campus and the Chase Center just a short walk across Terry Francois Blvd.

The City considers the Project to be a critical piece of regional transportation infrastructure bringing water transportation services to one of the fastest growing neighborhoods in San Francisco.

The proposed Ferry and Water Taxi services will provide transit to the new Mission Rock and Pier 70 mixed-use, development projects, transit to the growing UCSF Medical Center and Campus, transit to events at the newly-opened Chase Center arena, regional transit to other destinations in the Mission Bay and Central Waterfront areas and an alternate link from the Port's Downtown Ferry Terminal.

The Project is also strategically located to connect with important transit links including the 16th Street Bus Lines and BART, the 3rd Street T-Rail and the Caltrans Station.

The Project is also designed to be compatible with the Bay Trail, Bayfront Park and Agua Vista Park and to connect with existing bike routes, bike lanes and paths.

In 2016 Port staff working with a consulting engineering team completed a Feasibility Study including the evaluation of four alternative sites to bring ferry services on the Southern Waterfront. As noted in my prior slides the benefits of the site selected not only include proximity to employment and uses, connectivity to transit routes, compatibility with Bay Trail, Bayfront Park and Agua Vista Park, but as shown on this photograph, the site selected allowed for the design of ferry vessel operations along the Central Basin while meeting navigational needs of the existing dry dock operations at Pier 70.

The selected site has also resulted in less fill as this site is sufficiently protected from wind and waves and does not require the construction of a new breakwater.

The site is also located in an area where historic vessels once operated further minimizing new work dredging to allow for navigation for the vessels.

As shown on this overview plan the Ferry Landing would be located at the intersection of Terry Francois Blvd and 16th St with the Bayfront Park to the north Agua Vista Park to the south.

The proposed ferry and water taxi facilities will each be a single float, two-berth landing for vessels to transit in and deposit passengers and load and depart with passengers on both sides of the landings.

The float is connected to an ADA-compliant gangway and then to a fixed-pier to the land.

Public access included with the Project will create a new plaza at the Ferry Landing designed to integrate into the new Bayfront Park to the north.

The Project would also improve over 23,000 square feet of the existing Agua Vista Park down to the Mission Rock Restaurant and the existing fishing pier – a park that is definitely in need of improvements.

While the site is partially located in the former Pier 64 area, 50 years of dormant marine operations has resulted in sediment deposition along the shoreline.

To allow for safe navigation of vessels to and from the landings the Project requires dredging of total of 8.4 acres. As shown on this site dredge plan 7.9 acres encompasses the entire Ferry Landing dredge area and 0.5-acres encompass the Water Taxi Landing.

The final Ferry Landing dredge boundaries have been designed to minimize the amount of area requiring new work dredging.

Sediment would be dredged using mechanical methods and disposed of at authorized beneficial reuse sites or San Francisco Deep Ocean Disposal Sites or SF-DODS. We will not be disposing of any sediment in-Bay.

We do not anticipate maintenance dredging to be required for an estimated seven to ten years and thereafter once every seven to ten years.

As shown on this Dredge Plan the gray shaded area is an area where additional dredging down to minus 20 feet will be performed to remove contaminated sediments with PAHs.

This offset dredging will allow us to place a clean cap over the post-dredged sediments to prevent aquatic receptor exposure to elevated concentrations of PAHs.

All contaminated sediment will be handled and disposed of at upland landfills.

The cap we have proposed will consist of three layers to sequester chemicals of concern and prevent erosion from vessels, wind and waves.

As shown on the cross section the cap is three-feet thick. The bottom layer is a two-foot, thick layer of sand to provide chemical isolation. The second layer will be a one-foot-thick, grout-filled, marine mattress needed to protect the sand cap from erosion. The third and topmost layer will be an approximately six-inch layer of sand that will serve as a biological active layer to enhance recolonization of benthic organisms.

To prevent undercutting of the mattress at the edges of the cap the project design also includes articulating, block mats installed around the perimeter of the cap and up the side slopes to form a reinforced barrier that resists erosive forces.

The Project incorporates mitigation measures and best management practices including conditions on pile-driving, dredging and capping during environmental work windows, water quality monitoring during contaminant dredging and capping and post-construction cap monitoring and reporting.

To compensate for fill impacts of the Project the Port would remove marine debris from within the Ferry Landing dredge area.

As shown on these two photographs the Port would also remove approximately 2.21 acres of marine debris from the former Pier 64 offshore area north of the Ferry Landing dredge boundaries.

As part of fill mitigation for the Project the Port removed Building 64 at Wharf 8 near Pier 70 and the underlying pier decking and piles.

Here is a photograph showing the building and debris that was removed and disposed at appropriate upland sites.

And finally, the Project mitigation also includes the removal and disposal of four decommissioned and abandoned fuel lines approximately 700 feet in length from the shoreline out to the Bay that remain on the Bay bottom within the Ferry Landing project area.

The Ferry Landing has been designed with sea level rise in mind with an expected project life until 2070.

We used the Ocean Protection Council (OPC) 2018 California Sea Level Rise Guidance. And the Ferry Landing pier deck has been set an elevation of plus 13.52 feet and would be resilient to flooding through 2070 under the estimated high-emissions scenario.

The Water Taxi Landing has also been designed with sea level rise in mind. The water taxi landings expected project life is 2050.

Again, using the Ocean Protection Council's Sea Level Rise Guidance document the Water Taxi Landing platform at 11.35 foot elevation would also be resilient to flooding for its projected life under the high-emissions scenario.

The Port is studying and will be exploring longer-term efforts to provide protection against extreme flooding and seismic events along this part of the waterfront as part of its Seawall Resiliency Program.

With that I am going to turn the presentation over to Dan Hodapp.

Mr. Hodapp presented the following: I will take a couple of minutes to go through some of the pictures and architecture and some of the Park design.

About 5800 feet of new public access is planned. We have just under 17,000 square feet of Agua Vista Park will be renovated and the purple line is for the Bay Trail that is for pedestrians. The bike path, a two-way facility and Terry Francois would be right next to that.

You saw a slide earlier that showed where transit moves through Mission Bay and how this facility took into account transit. We are not emphasizing the vehicle traffic so much as so much traffic associated with the kind of uses being brought in here; it is really designed as a transit and how you get to and from that.

Getting up to the pier deck and loading and unloading from Mission Bay Ferry Landing, the passenger queuing, it handles two vessels. The vessels are expected to be smaller vessels in the near-term - 100-passenger vessels. However for larger events it can handle the larger vessels as well.

The green line is how you leave the boat if you are an incoming passenger.

The architecture takes its cue from the Event Center. The architecture of the Chase Center uses a layered effect. The roof panels here do a layered effect that arch up towards either ends in an attempt to welcome people.

The roof is constructed with thin, translucent panels to let light into it. It is fairly generous in its width. The whole float offers fantastic views of Pier 70.

Part of this project is to improve Aqua Vista Park. It rebuilds the pathways. It rebuilds all the landscape area. It adds improvements to freshen the fishing pier as well.

Aqua Vista Park is about 475 feet in length and is about 50 feet wide with the Bay Trail.

The landscape berm provides some privacy and a more intimate experience for the waterfront path which has multiple seating opportunities and an area with free picnic tables as well.

The total length of that landscape berm or Bay Trail is about 475 feet through this area.

We are here for consideration by BCDC for a permit. We had to jump through a lot of hoops which is typical of a lot of projects. It is getting towards the end of the list.

We hope to finalize the last of these permits depending on the Commission's consideration today we would move to the Army Corps permit which we hope to obtain in January.

The Port has already bid the project and received those bids and we hope to take that for Port Commission approval in March. That puts us starting construction in June which gives us two work windows within the Bay and operating ferries by December of 2021.

This is not a huge project but it is very important for the Bay. Many aspects of this project will improve access to the Bay and the shoreline.

We particularly want to thank Sam Stewart and Erik Buehmann for their help in putting all these issues together into one permit that we can present to you.

Thank you very much and we are open to answer questions.

Acting Chair Halsted announced: We are now going to open the public hearing. Is there anyone from the public who would like to address us? (No speakers came forward) Is there a motion to close the public hearing?

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

Commissioner Sweet commented: I am Michael Sweet and I represent Phil Ting and I appreciate the opportunity to come before you. There is a letter in your packet from Assembly Member Ting expressing his support for this project.

I can tell you from personal experience that there are a lot of people down there and it's not just people going to the Event Center. It is people who will be coming to work in Mission Bay. And Assembly Member Ting is enthusiastically supporting this. It will be a great facility and a great opportunity for transit and for recreation. We endorse this project and encourage the support of this Commission.

Acting Chair Halsted continued: I would say that this is a project that really helps us accomplish our mission of providing greater access to the Bay. I am really excited about it.

Does the Blue Greenway match the Bay Trail in this project?

Mr. Hodapp replied: Yes I believe it does. It is the same trail as it goes through there. It goes along the Bay.

Acting Chair Halsted continued: The congestion in this area is very great. So any way we have of getting to this area without using the roads will be a great enhancement. I suspect there will be great demand for this.

Commissioner Ranchod commented: I agree with all the benefits of the project. On the special condition regarding public access which is Special Condition B1 it says, "if the permittee wishes to use the public-access area for other than public-access purposes it must obtain written approval from the Commission" – I'm just wondering if there is an expectation that there will be non-public uses for that area and in what frequency?

I am asking this because we have had this question come up with other public-access aspects of projects.

Acting Chair Halsted stated: It is an important question, thank you.

Mr. Stewart explained: It is just a standard condition which goes into the permits. We weren't aware of any specific intentions.

Acting Chair Halsted reiterated: There is no intention to rent it out for private events regularly.

Mr. Hodapp was recognized: Commissioners we do not have intent to use the new, public-access area for anything other than public access. There are a lot of event possibilities within the adjacent park and that would be per the permit for that facility.

Commissioner Scharff asked: I saw the slide that said Alameda/Vallejo. Where are the ferries planning on going and coming from?

Mr. Hodapp fielded the question: Regarding the other destinations on the ferries; some of them would connect to downtown. Some of the commuter service; for instance, in the morning they would flow per WETA. Some of them flow into the Downtown Ferry Terminal and then bump over on a smaller vessel to here. Some of them will go directly here from East Bay destinations as well such as Oakland, Alameda and Vallejo. And then in the afternoon more of them are direct.

During special events there may be some Golden Gate vessels that serve as well from Marin. We have nothing from Redwood City yet but we are looking forward to that. (Laughter)

Commissioner Showalter had a question: What is generally the schedule going to be for this? Is this going to be a ferry every half hour or how frequently?

Mr. Hodapp explained: Regarding schedules for ferries I have a general view of it having worked with WETA for some time. At the onset it will focus on the commute hours. They have about ten vessels scheduled for the morning and eleven for the afternoon.

Also it would bump up for events such as games which they would bring in larger vessels to serve that. There would be 100-passenger vessels for the commute and they can bring in vessels up to 450 passengers for those services for special events.

Mr. Stewart presented the Staff Recommendation: On November 27th you were mailed the staff recommendation for this project.

Staff recommends conditions related to the following:

A condition requiring a comparable volume of fill removal to fill placement.

A condition requiring that the remediation cap undergoes annual monitoring and necessary maintenance until its stability is proven.

Conditions requiring the new ferry plaza and improvements to the Bay Trail to be made available to the public for unrestricted public access prior to use of the ferry landing.

And conditions for the improvements to Agua Vista Park and its pier to be made available within three years of permit issuance.

And natural resources and water quality protection conditions are included to avoid and minimize adverse impacts to the Bay and its resources.

With these and other conditions outlined in the Staff Recommendation the staff believes that the project is consistent with the Commission's law, Bay Plan policies and approved Coastal Management Program.

With that, we recommend that you adopt the Staff Recommendation before you.

MOTION: Commissioner Peskin moved approval of the Staff Recommendation, seconded by Commissioner Ranchod.

Acting Chair Halsted asked: Does the applicant's representative agree with the Staff Recommendation?

Mr. Hodapp replied: The Port has reviewed the application and the conditions and finds those acceptable and agrees with them.

VOTE: The motion carried with a vote of 17-0-0 with Commissioners Addiego, Ahn, Showalter, Butt, Gilmore, Scharff, Finn, McGrath, Peskin, Ranchod, Randolph, Sears, Vasquez, Techel, Wagenknecht, Holzman and Acting Chair Halsted voting, “YES”, no “NO”, votes and no abstentions.

12. Briefing on Enforcement. Acting Chair Halsted continued: Item 12 is a briefing on the Commission’s Enforcement Program. Commissioner Scharff, as Chair of the Enforcement Committee and BCDC’s new Enforcement Policy Manager, Priscilla Njuguna, will provide the briefing.

Executive Director Goldzband was recognized: You will remember that after the Enforcement Committee began its deliberations after receiving the Audit in late spring of 2019 that Chair Wasserman requested that staff begin bi-monthly reports from the Enforcement Committee on its progress.

I will fall on my sword and take full responsibility for not having scheduled a report until the commission meeting, but that delay was purposeful because I wanted the Enforcement Committee to get as much traction as possible prior to the first report to the commission, and because Karen Donovan, the new legal Enforcement attorney was busy working with the Enforcement Committee getting information back to the Auditor on the staff’s progress.

So now is an appropriate time to have the first report and commit to scheduling these for the first meeting of every even-numbered month. So you will see this type of presentation again in February, April and the succeeding months.

Commissioner Scharff presented the following: I would like to thank staff and commend them for their efforts. The Commissioners should realize that since the Enforcement Committee members meet twice a month the burden on staff has been huge. We ask all the kinds of questions Commissioners would ask, set expectations that give directions to do things, then a week later staff are supposed to come back with information without a lot of turn-around time.

And so far staff are doing a great job and getting it all done. That is something that I have been really impressed with.

Staff’s approach had been really impressive given how staff has been thinking through issues. They are basically taking the enforcement process and, through hard work and rethinking, rebuilt it from the ground up. That is really to be commended.

On a bi-monthly basis we have been receiving briefing on key aspects of the enforcement process as well as proposed policies, guidance and eventual regulatory changes to address issues raised in the Audit and to develop processes that will be successful and efficient.

Efficiency is something we really need to think through because, presently and for the last few years, there have been more cases opened than those that have been closed. And that is not sustainable. Right now we estimate something like 360 open cases.

Ms. Njuguna interjected: And there are 253 backlog cases.

Commissioner Scharff responded: Oh so we have closed a bunch of them then. (Laughter) See they have been closing a bunch – efficiency.

So that is something that has been really important; how we get to it so we don't really have a backlog of cases where they extend numerous years. The backlog was one of the things the Audit discussed.

Staff has also made a concerted effort to close old cases. I think that is a good process.

In your packet you have this document (Commissioner Scharff then held up a list of Enforcement Committee meeting summary with topics addressed at each meeting for all to see) which shows the actual topics that we have been discussing and you can see the actions on this page of what we have been doing.

We have been going through the process to discuss matters, provide transparency to the public who attend the hearing, and then give guidance to staff, who then come back to the Committee; we even have multiple meetings on issues and Committee members decide how staff should proceed.

And the goal is to make a lot of decisions in 2020. A lot of this for the past six months has been building up to getting these decisions made which the Committee will then recommend to the full Commission. We actually don't make the decisions; the Commission does. But we will recommend what we think the Commission should do.

The other part of this successful enforcement process is that we define "success" as one that deters the violator – there can't be an incentive to violate. And it is actually much more complicated than it sounds but there are a lot of complications in that.

It is fair which we will talk about. It is consistent and transparent. And that is really what we are looking at is how we can achieve those things.

So we have been talking about what deterrence entails. And we think it includes a number of factors, most significantly removing any incentives to avoid complying with the law.

We think a little bit about when we saw the case with Scott's Seafood where you have a large number of events that you charge for and yet the fines and the costs were not keeping up with the events, and that you were making money on it basically. It was a positive, financial incentive to continue to violate the law there.

That is an easy thing to point out to people and we really need to make sure that we don't have those kinds of issues.

The other thing is that deterrence provides incentives to violators, once an action has begun, to promptly resolve the violations.

And the key element of an effective enforcement program is that it deters people from violating, while simultaneously deterring similarly-situated parties from committing the same violation.

And we never want violators to gain a competitive advantage over their peers by violating BCDC rules.

So we have talked a lot about how we are going to make sure that this happens. In fairness – what does that mean? Fairness means that no competitive, economic advantages came through non-compliance and this also encompasses timely resolution of cases and equitable treatment of entities for the alleged violations.

And timely resolution of cases is something that we really need to work on. As we build into it we are going to come back with regulation changes and other thoughts about how to get that done because we have limited resources and that is the real challenge – how do we do all of this with the limited resources that BCDC has?

Consistent treatment is something that we need as well. What does consistent treatment mean? So consistent treatment of violations that are similar in nature and have similar impacts to the Bay or public access is an important element in an effective enforcement program.

However, we don't believe that consistency equates to the penalties and injunctive measures in similar actions always being the same. They may differ but we need to explain the differences and be transparent about the reasoning.

And there are studies showing that an important element of promoting compliance is the belief that all violators are treated consistently. So we think that is something that is really important.

And then we have transparency. We think that transparency is important and that transparency means actions should be clear and based in policies, regulations, statutes and everything should be done in public and the basis of BCDC's actions must be clearly communicated to ensure violators are made aware of the consequences of their actions.

Enforcement Policy Manager Njuguna continued: Thank you Commissioner Scharff. Good afternoon Commissioners. I will be following Commissioner Scharff and then I will hand it back to him.

In terms of matters under development in terms of policies we are talking about internal administration and case management not the policies you see in the San Francisco Bay Plan.

And so these are a systematic way of building up the structure under which case management will evolve. And in order to do that I'll discuss the penalty policy in brief which will be brought to the Commission for your approval after we have discussed it with the Enforcement Committee and received their input and integrated it.

And then we will discuss the guidance that we will have potentially about violation delineation as well as supplemental environmental projects. And then we will also have regulations one of which you have already approved as you will see shortly and procedures which are step-by-step instructions that will be used internally.

And because procedures are developed out of policies and guidance that way the procedures will flow from what we have in policies and we will discuss the procedures with the Enforcement Committee but it wouldn't come to the Commission for approval.

As far as the policies that we are looking at as Commissioner Scharff mentioned we are building transparency and clarity of purpose. And the penalty policy in mind is scheduled to be reviewed by the Enforcement Committee in January and potentially presented to the Commission for review in February.

In terms of guidance in meeting our goals we are looking to create a common understanding of the enforcement process. In trying to build our process of resolving disputes in a consistent way one of the things that drove us is letting the violators know exactly what is going to happen and when it is going to happen so there is as little element of surprise as possible.

And in order to do that we are considering a violation delineation guidance to be available February of 2020 as well as Supplemental Environmental Projects which we discussed with the Enforcement Committee. And we should potentially have that available in March of 2020.

In terms of regulation the Commission has already initiated the rulemaking to increase fees and the amended fees have been adopted as of this October. And the Commission has the authority to periodically review and amend the fees.

And the next thing that you can expect is a regulatory change for the definition of significant harm and you have approved the proposed, amended definition. And the rulemaking process is scheduled to potentially begin in 2020.

In terms of internal, written procedures one of the things that we are working on are case review procedures. And that is to build consistency in process so that in the event we unfortunately have another audit every case will look similar enough that the auditor will have a clear understanding of what our process is and will have a level of confidence that each similarly-situated person is being treated similarly.

So we are just improving the documentation process in terms of case review to build on what is already in place and so those procedures estimated to be available February of 2020.

In terms of case management, milestone procedures, one of the criticisms that came up during the Audit was that there weren't specific timelines related to case management. The types of cases vary substantially which creates certain limitations in creating a rigid timeline which would fit every case.

And in order to address that we are looking more at process-related timelines in terms of how intake is done, assignment, investigations, resolution and closure of cases rather than tying case timelines to individual cases or trying to box in all cases into a rigid timeline which wouldn't be effective.

I would like you to remember that we are thinking of making small changes over time so that they are more effective rather than making drastic changes and having to keep making changes all the time.

As Commissioner Scharff mentioned we have had a lot of work done. And so the more we can integrate small changes over time the more effective they will be and the less work it is for the existing staff to make it happen.

In terms of the administrative findings procedure that is already defined in 11386. It might be us just making it clearer that this is how we are doing our administrative findings that will tie into the penalty policy that will come before you.

Other tools that we have in mind; we are looking forward to, this month, implementing a template, violator, contact letter. That way every high-priority case that comes in gets a letter that specifies what the expectations are and then that way it builds into a timeline of what now triggers intake so that other things will then trigger assignment, investigation, resolution and closure.

We expect to have that letter refined based on what we are able to evaluate beginning this month in mid-2020.

In terms of case prioritization we've discussed with the Enforcement Committee about our impact scoring system. And we have integrated into that process by which we also have an effort score that we build into it.

Other prioritization options that we are considering include the context such as knowing and intentional conduct by a violator. And also considering grouping by violators.

So for example if a public agency has 15 cases with us potentially finding a single resource to be able to try and resolve all of our pending cases with that one person reaching out to multiple people rather than us trying to chase down 15 people.

And then in terms of pairing by violator one of the considerations was just thinking about cases where we've had reports in the past and then we get another report and now instead of having one case because it is the same issue or an exacerbation of an existing issue we now have three cases that are really the same case.

But we will keep re-evaluating in 2020 for additional changes as needed. These are just options that we are considering and nothing is set in stone and we are still working towards evolving the process.

In terms of case resolution we have a backlog of 253 cases. But these numbers were as of the end of November it was about 284.

You will be getting an annual report that tells you for the end of the year what our numbers will be. But part of what we are really struggling towards is controlling the growth of the backlog and we've shared with the Enforcement Committee a five-year plan by which we will make that possible.

And as Executive Director Goldzband also mentioned we will be making bi-monthly, Enforcement Committee presentations just to keep you updated on what is working, what isn't and the progress that we have been able to make as we go along.

In terms of next steps we are just going to try and track the effectiveness of the improvements. The main strategy is to make small improvements over time that way they have lasting effect rather than making any drastic changes constantly refining the case review procedures so that they actually reflect what we are doing in real time rather than have them get antiquated in a short amount of time and then also keeping an eye for future improvements just so that our program is keeping up with the latest way of clearing cases in our field.

Pending any questions I will be followed by Commissioner Scharff.

Commissioner Scharff continued: So this slide shows the topics that we have done and the numbers are based on the Audit recommendations and we are addressing the Audit which is something we have to do.

The Enforcement Committee has reviewed a number of complex cases. I will give you an update on all three of them.

I will start with the Middle Harbor Shoreline Park case. There are two distinct but related issues at Middle Harbor Shoreline Park. The first issue is the Port of Oakland had been holding ticketed, private events at the Park without authorization from BCDC. And second the Park needed maintenance and lacked some of the public-access amenities that were required by the permit.

Following the issuance of a cease and desist order by the Executive Director the Port of Oakland submitted two special events requests for the remainder of 2019 and BCDC approved one.

I am hoping that in 2020 they continue to submit their permit requests so we will see if they continue to do that. But I am hopeful that they will.

BCDC staff also completed a thorough inspection of the Shoreline Park site in August resulting in the identification of a number of issues at the Park.

And a plan for resolution of these compliance matters was developed collaboratively with the Port staff that specified short, medium and long-term matters for resolution.

And this is our preferred approach. It is that our staff meets with someone like the Port and they develop a plan together to get it resolved.

By late November the Port of Oakland had completed most of the short-term maintenance and repair requirements including repairing signs, notice boards, the boardwalk and re-striping handicapped parking spaces, replacing some fencing and removing unauthorized fencing that was obstructing public access.

However, several medium and long-term matters remain to be addressed including sink holes along the shoreline and associated Park closures, development of a Park management plan and development of a long-missing bike and pedestrian route to the Park.

BCDC staff will meet with Port staff again this month continuing to develop a formal agreement and timeline to address the remaining matters over the coming months.

And one of the things we have been talking about at the Enforcement Committee is when permits come to us oftentimes things don't seem to be maintained. A project comes to us with a permit and then it simply is not maintained. And it is usually a budgetary issue. And we are thinking that staff should consider putting into the permits maintenance requirements that require some funding.

So it is not just, "you will maintain it" but "you will show that there is funding to maintain it over time and you will identify those funds" and this is so they can maintain their permit.

I think that would also make things a little easier over the long term. So I am hoping the Commission will be supportive of things like that.

Union Point Park in Oakland; so Union Point Park came to us and we made it as a committee very clear to the City of Oakland that they were not in compliance with their permit.

BCDC staff then worked with the City of Oakland collaboratively to create a plan to restore Union Park to its original condition.

And as part of that BCDC staff had the City of Oakland come up with their own plan that they put forward to us as the Enforcement Committee to bless it.

An element of that was figuring out how to compassionately address the local housing concerns and need for shelter that led to the unauthorized use of their Park, as a result of which clearing the Park will be in phases.

So basically what happened is there was a large, homeless encampment at Union Point Park. The Park was basically stripped of anything that was valuable. The place was completely destroyed with burned-out cars, burned-out RVs, litter everywhere; and so we said to the city of Oakland – you need to come up with a plan on how to fix this.

And so their plan is that they will move a number of the homeless to a certain area of the Park where they will be for three or four months and up to six months where they would then find shelter for those people.

So it is a compassionate plan that removes the encampments from the Park but at the same time provides a plan to move the people into housing and out of the Park so the problem isn't just moved somewhere else.

So they came to us with the plan and we said, looks like a good plan to us and we agreed with their plan and now they have to implement their plan. That is basically where we are on this.

We also then raised issues with them about maintaining the Park. So it is going to cost the City of Oakland millions of dollars to repair this Park. And we talked to them that it is one thing to have a plan and get it back to the way it was but how are you going to ensure that this doesn't happen again?

And so they are supposed to be thinking about that and try to come up with a plan so that this doesn't just happen again.

So the City and the Park staff were there and it was actually a great meeting. The City of Oakland was there. The Port staff was there and we had a number of speakers from the public. We had about 15 or 20 speakers and it was a large contingent of people giving their input. And it was all really useful and very helpful.

On December 2nd then we issued the violation reports and they were mailed to the City of Oakland and the Port of Oakland specifying the expected action required to bring the case to resolution which is to follow their plan that they suggested to us.

The public comments received were instrumental enabling a clear understanding of the challenges that the City and the Port have faced as well as the community support in reaching a workable solution.

Richardson's Bay is another thorny issue that has been going on for decades. It does seem like there are things happening there and movement which seems to be positive. I think we are cautiously optimistic that things are moving in the right direction there.

BCDC made it clear to the parties involved that we expect some resolution of this situation. We are continuing to work with the local agencies to ensure that the situation will be brought under control and they develop a long-term plan for bringing the Bay into compliance with BCDC's laws and plans.

On December 3rd letters were mailed to the local agencies specifying BCDC's expectations of each of the agencies to enable effective resolution of the case. And we are going to continue to work with the RBRA and the city of Sausalito which is no longer a part of the RBRA in trying to come up with a resolution.

And I think the primary resolution to start with is you can't continue to have more boats coming into the waters and you need to start bringing it down. It can't be growing.

I think people basically understand that. And I think it is moving in the right direction but these are difficult issues and these issues have been around for 40 years. So it is a long-term issue that we are working on.

If there are other questions that people have and if the other members of the Enforcement Committee wish to comment perhaps now is a good time for that.

Commissioner Gilmore commented: What has been really helpful is when we are sitting in these Enforcement Committee meetings we also have staff from the permitting side because it is sort of an iterative process. What can we do on the permitting side so that we don't end up in Enforcement?

A lot of that probably has to do with technology which we are going to hear about later but in one of the cases that Commissioner Scharff mentioned in terms of potentially requiring a permit condition about – show us how you are going to maintain these parks – is one idea that came out of having the permitting staff be there and be part of the process. And I am sure as we continue to discuss these things there are going to be some of those types of ideas; what can we do up front as well as how can we improve our tracking that is going to help keep applicants out of the enforcement side of things, because as Commissioner Scharff mentioned we want to make sure that we don't get more cases into Enforcement as we try to clear up the backlog.

And so we are looking at both sides of the coin in terms of how to make that happen.

Commissioner Vasquez chimed in: I do want to thank everyone that has worked on this and staff especially. I think they have done a tremendous job of providing the information for us twice a month for the last few months.

It has been enlightening for me. I think the thing that we are all looking at is having compliance before we go after you for compliance. I think the prevention side of it using some legal instruments to make sure we get everything that is supposed to be done under that permit before the final permit gets issued and it is important because closing some of those loopholes is going to be instrumental in allowing us to move forward.

And the transparency part of it is important so people know up front what can happen to you if you don't comply or if you are called into the Enforcement Committee to address issues.

I would just as soon not see any more cases coming and reduce the amount we have and be very clear to permittees as to the kinds of actions that the Enforcement Committee can take.

Commissioner Ranchod was recognized: I would echo the comments of Commissioner Scharff that there has been a tremendous amount of work focused on these issues and the work of the Committee over the past many months. And that is significant work to prepare well thought out and fully-considered proposals that will be brought to the full Commission.

And those will be coming to you for consideration before the full Commission. One of the big challenges here has been limited resources over many years that resulted in a backlog that everybody has the full intention of addressing with the values that Commissioner Scharff articulated earlier in consistency and fairness and also resource effective and also making sure that going forward we are learning from our experience over the past few years and the feedback in the Audit and the additional considerations that we are working through as Committee members to try to make sure we do this as best as we can with the continued limited resources we have going forward.

There has been a lot of work occurring and I appreciate Commissioner Scharff's leadership of the Committee through this process of really intense focus to ensure that we are bringing the best proposals forward.

Acting Chair Halsted added: I thank the Committee and staff for really excellent work. And I look forward to the bi-monthly reports.

Commissioner Scharff suggested: I actually think we should do them on a monthly basis.

Acting Chair Halsted continued: I wonder if we should be looking at those communications with other parts of the permitting process.

Executive Director Goldzband chimed in: First of all with regard to resources the Department of Finance is now working with our Enforcement staff and Brad to learn as much as they can in a short period of time about our enforcement process and the challenges that we face as part of their workforce and budget analysis review which is really, really exciting.

I want to thank Karen Finn on my left for helping to have that happen.

The second thing is that as Priscilla went through what the Committee is doing and as Chair Scharff talked about it; one of the really interesting issues that they are talking about is really very basic stuff.

When you have a violation do you have one violation or do you have eight violations? Do you have one violation per day or do you add them up? Do you aggregate them? Do you not aggregate them? How does a penalty policy actually work with regard to delineation of our policy? How do you define what a substantial harm is versus what isn't substantial?

These are really difficult issues. The Committee is wrestling with these. And from a staff perspective we are really, really thankful that they are because they are doing a really good job at it.

And the final thing I would say is that we know that we have a backlog. We know that our backlog is from what we know something like one-tenth of the Coastal Commission's backlog. But we want to get that down and as much as we can learn from other agencies we will put it to use.

And as much as they can learn from us we are more than happy to share.

So we will continue as staffers as we work to move these incremental improvements forward also be looking around and be talking with other parts of enforcement in other agencies to continue to learn as much about how they do things as well.

Commissioner Techel commented: It has been interesting to serve on the Enforcement Committee with my fellow Commissioners.

13. Briefing on San Francisco Bay Plan Amendments 1-19 and 2-19 to Update the San Francisco Bay Area Seaport Plan. Acting Chair Halsted stated: Item 13 is a briefing on the San Francisco Bay Plan Amendments 1-19 and 2-19 to update the San Francisco Bay Area Seaport Plan. Katharine Pan will provide the staff briefing.

Planner Pan addressed the Commission: I am Katharine Pan and I am a Planner on staff at BCDC helping to work on the update to the Seaport Plan.

The Seaport Plan is the element of the Bay Plan that helps to coordinate the development and planning of marine terminals for the ports in the Bay Area.

So there are five main ports in the Bay Area. We are looking at the Port of Benicia, the Port of Richmond, the Port of San Francisco, the Port of Oakland and the Port of Redwood City.

This process began back at the January 17th Commission meeting where we initiated two Bay Plan Amendments. The first one was BPA 1-19. That one is a general update of the Seaport Plan where we are looking at updating some of the language in policies to make sure that they reflect modern, contemporary practices at marine terminals, and also taking a look at the capacity and throughout estimates that we have for each of the terminals at the Bay ports. Those are the things that the policies are based on and those forecasts are starting to sunset this year.

The other things that we are going to look at is making sure that the policies are consistent with new Bay Plan policies having to do with climate change and environmental justice.

So the things that we have been working on recently – we have been working with consultants with the Tioga Group and Hackett Associates to develop a new cargo forecast. The first draft of that was presented on June 27th at the first Seaport Plan Advisory Committee meeting. The SPAC (Seaport Planning Advisory Committee) decided to take some more time to review the information. And that report is a very dense report.

They took a look at that and shared a few comments with the consultant, who took some time over the past few months to update the report and revise it. They presented a new version of that this morning at the second SPAC meeting.

Also at that meeting this morning we heard from Mercator International which is another consulting group that was commissioned by the Oakland A's.

The Oakland A's are an applicant on Bay Plan Amendment 2-19 which is looking at the potential removal of the Port Priority Use Designation from the Howard Terminal site at the Port of Oakland. That report was looking into whether or not Howard Terminal would be required to meet the potential cargo forecasts for the future.

We are going to be looking at some of the capacity estimates that were made and vetting those more carefully and getting in touch with some of the marine-port terminal operators to get a sense of whether or not those estimates are realistic.

And at the same time we have put out a Request for Proposals to find a consultant to work on an environmental assessment for BPA 2-19.

In the coming months our next steps are going to be preparing requested information for the January SPAC meeting, communicating with the ports to learn a little bit more about how rising sea levels might be impacting operations in the future, developing an approach to ensure that we are addressing environmental-justice issues wherever we can in this process and developing land-use policy alternatives for the Plan that we can work through with the SPAC members.

We will also be moving forward on the environmental assessments for both Bay Plan Amendments.

Looking even further ahead, we originally had a public hearing scheduled for today; on November 22nd we released a revision to that. We will be looking at a June 18th public hearing instead.

So I think that is it for now. Thanks for your attention.

Acting Chair Halsted asked: Commissioner McGrath would you like to add anything to that report?

Commissioner McGrath commented: I would love to. First of all, surprising no one, obviously I have had a long relationship with trying to increase capacity without fill.

When I was at the Port of Oakland I did work with Travis on re-acquisition of the Fleet Industrial Supply Center at Oakland and the Oakland Army Base and laying out the Port in a way that actually reduced the designated fill in the Port of Oakland by 40 acres. We figured out a way to do that and that way both Travis and I got to be screamed at by Robert Bob who was the city manager at the time.

So certainly the idea that technology can improve and better efficiency can improve things is something that we are entertaining and want to see credible arguments for. Right now there is a big debate as to how much that can be done.

I want to highlight two issues for the Commission as we deal with this as a policy matter. If under one scenario the Port of Oakland could squeeze the necessary container cargo through in 2050 without Howard Terminal under at least one set of assumptions – is 2050 the magic number?

And you come back in 2060 and the 40 acres that was once taken out of the area for the Seaport Plan comes back. So that is one policy question. What is the effective date?

The other one is feasibility. If there are things that can be done in theory to improve throughput capacity yet they would add so much cost that it would shift cargo or wouldn't be sound investments for the Port or the tenants in the Port – are they really part of the solution? And how do you grapple with those?

And I am not saying that there are easy answers but we asked some tough questions of the staff and I want to really thank the staff for all the hard work they've put in and all the hard work we have asked them to do more.

Acting Chair Halsted continued: And I agree there will be more ahead. So thank you all.

We didn't schedule a public hearing on this matter but if anyone wants to comment on it you are welcomed to do so. (No one offered comments)

I would entertain a motion and a second to adjourn the meeting.

14. Adjournment. Upon motion by Commissioner Scharff, seconded by Commissioner Gilmore, the Commission meeting was adjourned at 3:53 p.m.