

San Francisco Bay Conservation and Development Commission

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July 10, 2020

TO: All Commissioners and Alternates

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

SUBJECT: Draft Minutes of June 18, 2020 Virtual Commission Meeting

1. **Call to Order.** The virtual meeting was called to order by Chair Wasserman at 1:02 p.m. He stated: Commissioners, please unmute yourself to respond and then mute yourself again after responding. Peggy Atwell please call the roll.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted, Commissioners Addiego, Ahn, Alioto-Pier, Beach, Butt, Chan (represented by Alternate Gilmore), Cortese (represented by Alternate Scharff), Eckerle, Gioia, Gorin (joined after Roll Call), Gunther, Lucchesi (represented by Alternate Pemberton), Peskin, Pine, Ranchod (represented by Alternate Nelson), Randolph, Sears, Showalter, Spering (represented by Alternate Vasquez), Techel (joined after Roll Call) and Wagenknecht.

Chair Wasserman announced that a quorum was present.

Not present were Commissioners: Department of Finance (Finn), Department of Business Transportation & Housing (Tavares), U.S. Environmental Protection Agency (Ziegler)

3. **Public Comment Period.** Chair Wasserman announced: Once again we will defer Agenda Item 9 on Legislative Matters to our next meeting as there is nothing requiring action today.

Chair Wasserman gave the following instructions: Now, I want to quickly share some instructions on how we can best participate in this meeting so that it runs as smoothly as possible. First, everyone, please make sure you have your microphones or phones muted to avoid background noise. For Commissioners, if you have a webcam please make sure that it is on so everyone can see you. For members of the public, if you would like to comment either during our open public comment period or during a specific Agenda Item you will need to do so in one of two ways. First, if you are attending on the Zoom platform, please raise your virtual hand in Zoom. If you are new to Zoom and you joined our meeting using the Zoom application, click the Participants icon at the bottom or top of your screen and look in the box where your name is listed under Attendees and find the small hand to the left. If you click on that hand it will raise your virtual hand. Second, if you are joining via phone, you must press *9 on your keypad to raise your hand to make a comment. We will call on individuals in the order in which they have raised their hands. After you are called on you will have a limit of three minutes. Once I hear the number of speakers I may reduce the time allotted to speak on an item. Please keep



your comments respectful and focused. We will mute anyone who fails to follow these guidelines or, at worst, dismiss them from the meeting. Every now and then you may hear me refer to the meeting "host" which is our BCDC staff who are acting to ensure that the technology moves the meeting forward smoothly and consistently.

BCDC has also established an email address to compile public comments for our meetings. Its address is publiccomment@bcdca.gov. I believe that we have received 33 emailed letters from parties on Item 8 that have been shared with all the Commissioners prior to the meeting. If we receive any emails during the meeting they will be shared with the Commissioners and be made available on our website bcdca.gov along with the public comment emails we already have received.

That brings us to Item 3 – Public Comments. If anyone wishes to address the Commission on any matter which is not on the Agenda today you will have three minutes to do so.

John Coleman of Bay Planning Coalition addressed the Commission: Thank you very much Chair Wasserman, Commissioners and staff. I wanted to give a “shout out” to two people, Jessica Fain, your Planning Director and also, Dave Pine, a Commissioner.

We had our Spring Summit on June 5th and Jessica spoke on planning for the Bay Area’s future and Dave was involved with inter-agency collaboration and project delivery reform.

We had well over 200 people attend a virtual meeting where three months ago it was going to be in-person but a shout out to Jessica and Dave for the phenomenal job they did and I really appreciate their efforts they put into this to make our Spring Summit such a success. And thank you very much for the platform provided to express my opinion. Thank you.

Ms. Atwell informed Chair Wasserman: I don’t see other hands up so that is all we have.

Chair Wasserman moved to Approval of the Minutes.

4. **Approval of Minutes of the June 4, 2020 Meeting.** Chair Wasserman asked for a motion and a second to adopt the minutes of June 4, 2020.

MOTION: Commissioner Wagenknecht moved approval of the Minutes, seconded by Commissioner Nelson.

The motion carried by a voice vote with no abstentions or opposition.

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

a. **New Commissioner:** I would like to welcome our newest Commissioner, the Regional Water Quality Control Board’s new BCDC Commissioner Dr. Andy Gunther. As I noted at our last meeting Dr. Gunther has taken over the Commissioner’s chair from Water Board Chair Jim McGrath who is now the Board’s Alternate Commissioner. Many of you know Andy and I won’t recite the long list of his accomplishments but I will mention that he was the first scientist hired by the San Francisco Estuary Institute, the first manager of the Regional Monitoring Program and the Executive Editor of the Baylands Ecosystem Habitat Goals Update. And he is the ninth recipient of the Jean Auer Award presented in 2017 by the San Francisco Estuary Partnership for his “significant contribution toward improving environmental quality in the Bay-Delta Estuary.”

Commissioner Gunther, would you like to make any comments?

Commissioner Gunther addressed the Commission: Thanks Zack. I think we all know that significant, environmental change is now inevitable and it is going to accelerate.

I am really grateful to you, Chairman Wasserman and the Commissioners and the Agency staff for catalyzing the regional conversation about the topic that we know we need to have.

I just wanted to make sure that this conversation benefits from science to support our decision-making. For 30 years the Water Board has worked collaboratively with stakeholders to build a body of scientific knowledge that contributes to our deliberations every month.

I know BCDC has done this as well particularly in relation to sand mining and dredging and now for sea level rise. I think it is vital that this work continues because such regional, joint, fact-finding will pay dividends in the coming decades as we work to make our communities more resilient, safe and just and I am looking forward to being part of it. Thanks.

b. **Chair's Comments.** Chair Wasserman stated: I will keep my comments relatively brief. I have consulted with a number of scientists and confirmed that sea level rise is paying no attention to the COVID Pandemic. The glaciers are melting. The temperatures of the seas throughout the world are rising. And sea level continues to rise.

And we continue our efforts to figure out how best to adapt to it because as much as we support mitigation efforts regarding greenhouse gas emissions, as we all know, we have passed the tipping point.

The sea levels are going to rise and they are going to rise significantly.

We have started our series of working groups for the Bay Adapt Program which are focusing on regional activities, local activities and project implementation and Jessica Fain will talk about them in a little more detail later.

We are having important and very serious discussions about this and are making sure to include our equity partners looking at issues of social equity and environmental justice.

c. **Next BCDC Meeting.** We will give all of you a break on July 2nd in honor of our Nation's birthday, so our next meeting will be on July 16th. That meeting will be long and will be held virtually and the Agenda likely will include:

(1) Consideration of, and a possible vote on, the Ocean Protection Council's policy principles regarding how California's state government will help lead rising sea level adaptation efforts regionally and locally.

(2) Consideration of and a possible vote on a project proposed at the former site of the Potrero Power Plant in San Francisco.

(3) Consideration of and a possible vote on the enforcement matter regarding Union Point Park in Oakland.

(4) Consideration of and a possible vote to adopt a resolution regarding guidance to implement our climate change policies on which we will be briefed today.

(5) A public hearing on a Draft Assessment and Strategy for BCDC's Coastal Program under the federal Coastal Zone Management Act.

(6) A briefing on possible amendments to the Exploratorium permit and the San Francisco Waterfront Special Area Plan.

(7) And, if we need to do so, we potentially will consider various pieces of proposed legislation and vote on them.

That is a very long agenda. Not all items may actually make it to the Agenda but I ask you to clear your calendar for a long meeting on the 16th.

d. **Ex-Parte Communications.** This is the time to make any reports of ex-parte communications you may have received but not yet reported in writing. I invite Commissioners who have received such communications to report on them at this time by raising your hand remembering that even though you report on them verbally you still need to put them in writing on the website. Do we have any hands raised, Peggy?

Ms. Atwell replied: No hands raised, Chair Wasserman.

Chair Wasserman continued: That brings us to the Executive Director's Report. Larry, take it away.

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

We are now in the fourth month without baseball, a monumental mistake mainly on the part of the owners but also compounded by the players. So, to cheer us up a bit, I will note that June 18th is a banner day for popular music. We celebrate two birthdays today of tremendous songwriters from different periods – Paul McCartney is 78 years old today, and Sammy Cahn, who passed away at the age of 80 in 1993 was also born today. Of course, McCartney paired with the late John Lennon to write so many songs with which I (and many of you) grew up with. A generation or two earlier, Sammy Cahn wrote songs that are still very much remembered; Frank Sinatra once said, "Sammy Cahn's words fit my mouth the best of all the writers" and who could possibly disagree with Frank Sinatra. Many of us during these days of COVID isolation, self-reflection, and a dearth of entertaining live television, have turned to familiar and comfortable practices. For me, that almost always includes listening to music and it has included both McCartney and Cahn. My question to each of you today: how have you entertained High Hopes during this turbulent period?

a. **Budget and Staffing.** I would like to give just a bit of an update. The State Legislature approved what I will charitably call a "sort-of" budget on Monday, the last day it was allowed to do so without forfeiting its salaries. It is a "sort-of" budget because it is not truly balanced; the Legislature declined to enact the cuts or revenue increases required to actually balance revenues and expenditures based upon the estimates of either the Department of Finance or the Legislative Analyst. So the Legislature simply threw Three Coins in the Fountain and is counting on A Little Help from [our] Friends to devise the State's first balanced budget by June 30th – please note that I said, "first budget."

Unfortunately, until that budget is approved, BCDC will remain in its holding pattern on replacing staff because I am unsure whether our two major sources of revenue – General Fund and Greenhouse Gas Reduction Fund, known as cap and trade, will be cut. That delay has

been in effect since March when the state budget began to crater. This has put us in a very difficult spot – we have six or seven vacancies that we need to fill in the regulatory and planning sections. So I am choosing to wait until Governor Newsom and the State Legislature Come Together and agree on the first State budget. Then, in August or September the Administration and Legislature will have to agree on a second, updated budget that may change BCDC’s spending plan, and then likely, a third state budget in autumn after the federal fiscal year starts. So we will have to Live and Let Die a few times before we get finality. In any event, we know that next year will be very tight and the year after that likely will be even more difficult and we’ll keep you informed about how we will be proceeding – and I may ask you for Help!

One thing that will make our lives at BCDC more difficult is that we are losing two exceptional permit analysts this month – Walt Deppe, who is moving down to Ventura to join the Coastal Commission and Morgan Chow who will move to the Sacramento after she and her husband welcome a new addition to their family and Morgan joins the Delta Stewardship Council. We wish them well, but Ain’t That a Kick in the Head? These two departures will put an even greater strain on our regulatory team which lost two staff to the state’s Contact Tracing Program but Brad McCrea and I know that We Can Work It Out.

At the same time, we are fortunate to have gained a new staff member. Karen Tanner is BCDC’s new Sea Grant Fellow and I’m pretty sure you can see her somewhere on your screen. Given our short staff we are very happy to Let Her In. Indeed, given the uncertainty of the budget and the fact that we’ll remain somewhat short-staffed, senior staff will work with our managers to determine the best way to allocate staff among the various regulatory and planning projects that we need to accomplish. We will triage where necessary, of course, and I will let you know the outcome of those discussions.

b. **Policy.** First, I am very happy to announce that Jessica Fain and her planning team successfully initiated the first working group meetings for the Bay Adapt process his week. You can Call Me Irresponsible, but I would prefer to ask Jessica to spend a couple minutes giving you a quick debrief instead of Yours Truly – Jessica.

Planning Director Jessica Fain reported the following: Thank you Larry. This week the Bay Adapt Team has been busy kicking off the next phase in the Bay Adapt process which are working groups. We have formed three Bay Adapt Working Groups.

The first is the Regional Consistency Working Group and is co-chaired by Caitlan Sweeney at the San Francisco Estuary Partnership and John Coleman from the Bay Planning Coalition.

The second working group is the Local Planning Group which is co-chaired by Brian Faberge from the West Oakland Environmental Indicators Project and Jack Leibster from Marin County.

And the third working group on Project Implementation is co-chaired by Jeremy Lowe from the San Francisco Estuary Institute and Erika Powell from CHARG, a group of Bay-Area, flood-control managers.

The working groups are an integral part of helping develop the Bay Adapt Joint Platform and we have put them to work with kick-off meetings for each group. Each group has approximately 20 to 30 working-group members from all walks.

For example, in the Project Implementation Group there are flood-control engineers, an urban, environmental educator and a construction-materials supplier all talking about what it takes to overcome barriers and expedite delivery of high-quality, adaptation projects.

Over the course of six meetings the working groups will brainstorm and flesh out actions for inclusion in the Joint Platform through an iterative, back-and-forth with the leadership advisory groups.

We have just gotten started but we are looking forward to lively discussions and outcomes. Back to you Larry.

Executive Director Goldzband continued: I want to thank John Coleman and the Bay Planning Coalition for a really, good Spring Summit. And something happened there which I do want to tell you about.

As in the case of many conferences we have learned that we need to ask questions during the conference that people can text answers to and gain an awful lot of information.

The first question that was asked at the BBC Conference was something like – what is the greatest impediment or feature that slows down multi-benefit, habitat, restoration projects in the Bay?

And the winner, and it's a dubious distinction of almost 50 percent, was financing which doesn't really surprise anybody here.

But I will tell you that the answer B – permitting – was at about 25 percent. I would venture that this is lower than what some of us would have expected five or six years ago.

So I want to thank our regulatory team and BRRIT for really doing some great work and for all of you for supporting the permit team. I want to thank Erik and Ethane for managing it well and we will do our best so that the next time that question is asked it is even below the 25 percent.

Third, I want to let you know about a voluntary meeting at BCDC that we held on Monday. We devoted a period of about an hour to letting our staff members know about how the death of George Floyd and the resulting protests affected them. While not each staff member spoke, I do hope that it was a fruitful beginning to an all-staff dialogue on how we can work individually and together to positively effect change and reduce systemic racism inside and outside of BCDC and state government.

A few days before the session each of us on staff received a confidential questionnaire from our internal Racial Equity Team designed to gauge how our individual staff members view the level and success of racial equity practices at BCDC. You will remember that Katherine Pan spoke to you about the Racial Equity Team at BCDC. This conversation will continue in a few weeks at an internal, all-staff, visioning session and at future Commission meetings as part of our team's plan to develop an overarching internally and externally-focused, racial-equity program at BCDC.

I also want to draw your attention to BCDC's Twitter and Facebook accounts. On them you will find a very smart statement by our staff's Racial Equity Team that is linked to Chair Wasserman's statement on the death of George Floyd. I encourage you to read them both.

Finally, at the end of the staff meeting I committed to leading an effort to increase the diversity of BCDC's staff by instituting a formal, recruiting program of some sort. While we are bound by the California Constitution's prohibition on affirmative action, I believe that we can materially expand our outreach and attract a more diverse applicant pool for BCDC's open positions – and we must do so. I had the pleasure of talking with Dr. Mark Gold of the Ocean Protection Council about this issue yesterday morning and we agreed to work together on this project.

I told our staff on Monday that I plan to leave BCDC with a more diverse staff than when I started. I need to start that initiative now while I am not yet in the September of My Years. Again, I will let you know of our progress.

That completes my report Chair Wasserman, and I am happy to answer any questions.

Chair Wasserman asked: Do any Commissioners have any questions for the Executive Director?

Ms. Atwell responded: No hands up, Chair.

Chair Wasserman continued: I would simply note that there will be a measure on the November ballot to repeal Proposition 209.

Commissioner Ahn was recognized: I am excited about the initiative described by Larry; the Diversity Initiative among staff could be really valued amongst younger folk interested in climate regulation and environmental relations.

Executive Director Goldzband added: I called Mark to tell him about the meeting that happened and we ended up talking about Mark's experience with outreach down at U.C.L.A.

And we agreed that this is something that we will work on and we hope to provide a little bit of a vanguard to Natural Resources and we will start meeting on this more than likely next week or the week after as schedules clear a little bit and I will keep you informed of the progress.

7. Consideration of Administrative Matters. Chair Wasserman stated there were no listings on Administrative Matters.

8. Commission Consideration of and Possible Vote on a Proposed Agreement Terminating Third Amended Third Supplementary Agreement, Harbor Bay Isle Shoreline Park, Alameda. Chair Wasserman announced: Item 8 is consideration and a possible vote on an agreement to terminate the Third Amended Third Supplementary Agreement for Harbor Bay Isle Shoreline Park, Harbor Bay Business Park—Phase III, in Alameda, California. Chief Counsel Marc Zeppetello will make the presentation.

Chief Counsel Zeppetello presented the following: On June 5th you were mailed a staff report and recommendation on a proposed agreement to terminate an agreement which Chair Wasserman just gave the name of in full and I am going to refer to for brevity's sake as the "existing agreement". It is an agreement regarding Harbor Bay Business Park, Harbor Bay Isle Shoreline Park in Alameda.

At the outset I would like to make it clear to the Commission that there is no project before you today. There is no local approval for a project, a hotel project or any project on a parcel, and there is no BCDC permit application for a project.

The basic purpose of the proposed agreement to terminate the existing agreement is to allow the City of Alameda to determine the appropriate land use for the last remaining parcel along the shoreline of the Harbor Bay Business Park and to ensure that if a permit application is submitted to the Commission in the future, after the site owner obtains all necessary local approvals, the Commission will consider that application under the McAteer-Petris Act and the applicable policies of the Bay Plan and not under the terms of the existing agreement.

To explain how we got here today with a proposed agreement to terminate an existing agreement, I will start by going back to 1975. Here is an area map that shows Alameda, Oakland and Bay Farm Island, a portion of Alameda. The existing agreement is one of several agreements and amendments that were entered into between BCDC and Harbor Bay Isle Associates, or HBIA, beginning in 1975.

When BCDC was created Harbor Bay Isle Associates had diked the perimeter of Bay Farm Island and was in the process of filling the area. The agreements resolved a dispute between BCDC and HBIA regarding BCDC's jurisdiction and permitting authority. BCDC never waived its jurisdiction but did agree to disagree with Harbor Bay Isle Associates, and BCDC agreed that development and public access along the shoreline of Bay Farm Island would be provided in accordance with the agreements and the standards in the agreements and not in accordance with the McAteer-Petris Act or the Bay Plan.

This slide shows the Harbor Bay Isle and Bay Farm Island development. There is actually a total of four supplementary agreements in addition to the initial agreement from 1975. The first and second supplementary agreements dealt with the tracts in the north or west, Tracts 3773 and 3810. The third supplementary agreement concerned the business park and will be the subject of further discussion here; and then the fourth supplementary agreement in 1990 dealt with Tract 5905, the Village 5 area, which is shown in dark overlay here.

Here is an aerial view showing Harbor Bay Business Park.

And here is a slide that focuses on the Third Supplementary Agreement or the existing agreement that was first adopted in 1984 and then has been amended three times. I will note that Phases 1 and 2 down here in the south or east side are not covered by this agreement or any agreement

The agreement that we are talking about today dealt with Phase 3 of the Business Park, which is most of it, and particularly along the shoreline.

BCDC's focus in all these agreements was on the shoreline park and public-access improvements along the shore and that is partially reflected in the name of the agreements, which include the phrase Harbor Bay Shoreline Park.

Certain parcels within the development or in the agreement have land-use designations but my understanding is that those designations reflect the Development Agreement between the City of Alameda and HBIA and/or subdivision tract maps that were filed by HBIA. But to my knowledge there is no documentation in the record that BCDC ever expressed a preference or a concern or was involved in dictating acceptable land uses or appropriate land uses for the upland development; the concern was the shoreline park.

The first two amendments dealt with primarily scheduling and phasing although the second amendment broke down the shoreline park into six defined areas, one of which was a shoreline restaurant site, which is the site shown on this figure. The second amendment designated that site as a shoreline restaurant site. In 2013 HBIA approached BCDC and requested an amendment to the agreement to change the designation of that one parcel from a restaurant site to a shoreline restaurant/office site.

The reasoning behind that was that HBIA was having problems marketing the site for a restaurant use and so it was thought that by broadening the allowable use to include office the site might be more marketable. So that amendment, the Third Amendment and the last amendment, was approved by the Commission in 2013.

The following year Alameda amended its zoning ordinance for that parcel and changed the zoning from Open Space to Commercial Manufacturing with a Planned Development overlay with a number of conditions. One of the conditions was that the use of the parcel would be consistent with the existing agreement between BCDC and HBIA and that the use would be either office or a restaurant or a mixed-use project involving both of those uses.

Also, in 2014 the parcel was purchased by Ram Hotels and thereafter Ram Hotels applied to the City of Alameda for a permit and Alameda approved a hotel project in September of 2015. That approval also included public-access improvements on an adjacent parcel along the shoreline which at that time was owned by HBIA, as required by the zoning ordinance that the hotel project include public-access improvements on the adjacent parcel.

After that local approval Ram Hotels approached BCDC for two reasons. One was that the existing, underlying agreement required further review by the Commission's Design Review Board of updated project plans; and the second reason was to request an amendment to the existing agreement to allow the hotel use.

BCDC staff engaged in conversations and discussions with Ram Hotels and HBIA. Because the hotel use was different than allowed under the agreement, staff proposed, and Ram Hotels agreed to apply for a permit to BCDC. And it was agreed that if the Commission were to grant the permit then an amendment to the agreement would be executed after that.

This slide shows an excerpt of the Staff Recommendation that was considered by the Commission in February 2017; the special condition was that if the Commission approved the permit there would be an amendment that the Executive Director would enter into to include as an approved use the hotel project and that the permittee would be bound by the agreement to the extent it established standards for the site.

As many of you may recall the Commission denied the project at that hearing in February of 2017. And although there was occasional discussion with staff after that Ram Hotels never resubmitted its application and its approval from the City of Alameda expired.

Earlier this year Ram Hotels approached BCDC staff again and indicated that they intended to reapply to the City and to BCDC for project approval, and before starting that process Ram Hotels requested that BCDC amend the existing agreement to allow the hotel use. They explained the conflict that they had with the city zoning ordinance, that the city zoning ordinance now required that the use be consistent with the agreement. The agreement did not authorize a hotel. The property owner did not want to get caught between conflicting demands of the City and BCDC in terms of acceptable land use and suggested the appropriate course of action would be to amend the agreement to allow the hotel.

Staff was open to that and recognized the problem that the property owner was in, in terms of conflicting requirements, and we engaged in initial discussions. But as we got further into it, staff proposed and came to the conclusion that it would be better to terminate the agreement rather than amend it and we proposed that to both Ram Hotels and HBIA who both thought it was a good idea.

There are a number of reasons that staff concluded it would be better to terminate the agreement rather than amend it:

First, each of these amendments is a complete restatement of the prior, pre-existing document. As we reviewed the existing agreement almost everything was completed and had been built out and it seemed unnecessary to go through a complete restatement of a 16-page, single-space document only to change two or three sentences.

More importantly, the amendment seemed to be unnecessary to staff because the shoreline along the business park is completely developed or entitled except for the last remaining parcel and Ram Hotels had agreed to apply to BCDC for a permit.

Third, the termination would allow the City of Alameda to determine the appropriate land use. In contrast, if we pursued an amendment to allow a hotel then BCDC would be asked to make a decision as to the appropriate land use. We felt that the land use should be determined by the City, not by BCDC.

Also, if the agreement were terminated and Ram Hotels applied for a permit, the Commission would make a decision under the McAteer-Petris Act and under the Bay Plan, including whether the project satisfied the criterion of maximum, feasible public access consistent with the project. In other words, with termination of this agreement BCDC would have its full range of statutory authority in considering the permit application and not be limited to the development standards in the existing agreement.

And finally, terminating this agreement it would provide an opportunity to confirm and clarify, in agreement with HBIA and Ram Hotels, that any future development or redevelopment anywhere along the shoreline of the business park would need a permit from BCDC and that any future permit would be considered under the McAteer-Petris Act and the Bay Plan.

This last point I would just like to expand upon a little bit because this is an issue that your staff has had discussions on, and it may be an issue that would ultimately come to the Commission if the agreement is not terminated. And that is, what will happen in the future if one of the existing buildings along the shoreline is redeveloped or they want to propose some change in use along the shoreline? Will they need a permit or will they not need a permit? Staff's position is that a permit would be needed because this series of agreements with HBIA was for initial build-out and the initial build-out was grandfathered under the agreements, but the agreements were never intended to provide an exemption from BCDC permitting forever. However, while that is staff's position, the property owners might disagree and in the future, there might be a dispute about that and possibly litigation regarding whether the exemption from permitting continues to apply or not. So, terminating this agreement with a clear statement that future redevelopment will require a permit is a reason to terminate this agreement that transcends the issue of this one remaining parcel.

To summarize the key terms of the termination agreement, in brief, they are that:

The existing agreement will be terminated.

Second, the City of Alameda will determine the appropriate land use for the remaining site.

Third, the site owner will apply to BCDC for a permit after it obtains all local approvals. BCDC's jurisdiction will be determined pursuant to the McAteer-Petris Act and the Commission will consider any permit application pursuant to the McAteer-Petris Act, including the maximum feasible public access consistent with the project standard.

The agreement also provides that if the City does not approve a hotel or if Ram Hotels abandons its project, any future proposed use or any future successor owner would also be required to apply for a permit for any alternative development plan.

And finally, the agreement contains a provision that makes it clear that the jurisdictional dispute that was the motivation for the existing agreement in the first place has become moot and that all future development or redevelopment of any areas formerly subject to the existing agreement are subject to BCDC's permitting jurisdiction going forward.

In conclusion, I would just like to comment on or address a couple of issues related to the volume of public comment letters that the Commission has received on this matter. The commenters appear to confuse the termination agreement before you today with the previous application or possibly a future application for a hotel project on a particular site. But as I noted at the beginning of this presentation, there is no application before you today. And if the agreement is terminated there will only be an application that comes to the Commission when and if the City of Alameda approves a project for this parcel.

Secondly, a number of commenters make a point that in the last year or two HBIA has conveyed the parcel adjacent to the parcel owned by Ram Hotels to the City of Alameda. As I mentioned earlier, in the application that you considered in 2017, Ram Hotels did not own that adjacent parcel at that time but nevertheless they proposed to install public access improvements on that parcel as required by the zoning ordinance.

Whether any future project will include public access improvements on that parcel which is now owned by the City is an issue for the City and Ram Hotels to work out in the local approval process. But the fact that that property has been conveyed to the City is really irrelevant to the staff's recommendation that the Commission approve termination of the existing agreement.

So, with that I will be happy to answer any questions either now or later but otherwise I believe that there is a representative of HBIA and also a representative of Ram Hotels who would like to briefly comment on this matter. Thank you.

Chair Wasserman asked: Daniel Reidy, would you like to comment on behalf of HBIA?

Mr. Daniel Reidy introduced himself: I am Daniel Reidy, long-term regulatory attorney for Harbor Bay Isle Associates. In background, I helped negotiate and draft the original Third Supplementary Agreement in 1984, worked with BCDC attorneys and staff on the three subsequent amendments, and I appeared before the Commission on the approval of all of those documents.

We have reviewed the written staff report and agree with its content. I listened to Marc's oral report and can only second it. I agree with Marc Zeppetello's analysis of the background and the significance. Harbor Bay Isle Associates has reviewed the proposed terminating agreement, we agree with its content. If approved by the Commission and agreed to by Ram Hotels, HBIA is prepared to sign it.

As a final point, on behalf of Harbor Bay Isle Associates, I recommend the Commission approve and authorize the Executive Director to sign the proposed terminating agreement. Thank you.

Chairman Wasserman asked: David Mullin, would you like to speak on behalf of Ram Hotels?

David Mullin addressed the Commission: I also would like to thank Mr. Zeppetello for his comments with which I would greatly agree on behalf of Ram Hotels and Mr. Reidy's comments also.

I would like to say that we have been involved in this since 2014 and Ms. Patel who owns Ram Hotels is a little bit like Charlie Chaplin caught up in the machinery, if there are enough baby-boomers here to remember what that means. So, we are six years into this.

We think the whole purpose of this HBI agreement was to grant jurisdiction to BCDC over this strip of land adjacent to the Bay that HBI was developing. All this HBI land is now developed except for Parcels 1 and 4 or entitled as Marc pointed out. If this Termination Agreement is approved by BCDC we as the current owners of Parcel 4 committed to submit our plans for development of Parcel 4 and the public access improvements on Parcel 1 for approval by BCDC. This Parcel 4 is in the Harbor Bay Business Park, it has been planned and zoned for commercial development for decades. It was going to be a ferry station, a restaurant, a ten-story, office building and we have planned a hotel there.

Most importantly, the use of Parcel 4, which is only partially in the BCDC's Bay zone, is a question for the City of Alameda, not the BCDC. That is even more so here where the City already owns Parcel 1 which is sandwiched in between Parcel 4 and the Bay.

The objections that have been made in the emails, which I have looked at, they really should be addressed to the City. We think there are good answers to them, but they should be addressed to the City at that level of the permitting process.

The entire area is developed with many commercial properties and this is a fill piece. We are not putting in a hotel in the middle of a wilderness area. The next property down is a Marriott Residence Inn that overlooks the Bay. As pointed out in the staff report, in 2019 the Commission concurred with staff's recommendation not to require a permit for the Marriott and all the same objections that are made to this hotel were made to that hotel.

The key issue for BCDC is public access and we are assuring that if we are given a permit to build, we will improve the public access and do exactly what we have been proposing to do with respect to public access right along. So, the key issue here for BCDC, we think, we are committed to your concern for the public being able to enjoy the Bay. No residences have a view that would be blocked by our hotel. There is a line of trees across the street between us and the houses on the other side, so the people have basically a privacy fence that is 50 feet in the air of these big, bushy trees, so no one is actually complaining that they have lost their view.

As Mr. Zeppetello noted, we are avoiding litigation which I think would be quite costly here over jurisdictional issues and over whether the agreement would otherwise bind us. So, we hope that the Commission today could see their way clear to approving the termination of the agreement and I am available to answer questions if there are any. Thank you.

Chair Wasserman stated: If anyone from the public would like to speak please raise your virtual hand on Zoom or press *9 on your phone.

Ms. Atwell noted: Right now, we have three hands raised.

Ms. Patricia Lamborn commented as follows: My name is Pat Lamborn, I am a 30-year resident of Alameda. I am asking that you not terminate the Third Amended Third Supplementary Agreement. It defines the use and development of two parcels, Parcel 1, that's the one owned by Mina Patel, it's a 1.17-acre parcel and the other Parcel is called Parcel 4, now owned by the City of Alameda.

I think Mr. Mullin, the Ram Hotel's attorney, really just made my argument for me when he completely mixed up which parcel was which. He thought Patel owned Parcel 4. So, you can see why we need you to stay involved, BCDC, and we need this Third Amended Supplementary Agreement to have oversight of this area.

What you are looking at right here is Parcel 4. Our City took title to it. The yellow boundary lines, the caution tape, shows you the boundary line of shoreline park. It is now officially a city park. Now the residents of Alameda, that view looks at what would be our city park. Next to it is the Patel, privately-owned parcel.

Why did we fight so hard to have our City take title, which means that now our City is going to pay for the improvement of that park with the tax assessments on the business owners, right, which we collect on a regular basis? We did it because Mina Patel has consistently violated everything about public access and she has placed a five-story, 100-room hotel directly on the property line of the park.

She has also merged the square footage. Her design architects merged Parcel 1 and Parcel 4, basically stealing public square footage to meet the bar for a 100-room hotel. No other way she can make it fit.

And also, just like Mr. Mullin was very confused about who owned which parcel, one of her architects wrote with a 2018 design for a hotel to our City and claimed Ms. Patel owned both parcels. They really seem confused on that topic.

We took title. What does that mean? If we can hang out a little bit on one of the photos that has the yellow caution tape. Our City's planning docs say that, okay, from shoreline park; you are looking at it right now, to build a restaurant on the other side of that public park you have got to go back 25 feet. To build an office 50 feet tall you have got to go back 50 feet. Well, the Patel parcel - Parcel 1 remember - is now surrounded on three sides by tiny shoreline parks. So, once you go back the legal zoning, which can we count on Ms. Patel's architects or herself to honor, you have shrunk the size of Parcel 1 for anything but its legal use, office/restaurant. That is what is in your amended agreement and that is exactly what has been affirmed in our city zoning. Our city council voted unanimously to take title to shoreline park, and they voted unanimously to defend our zoning ordinance which is consistent with the Third Amended Third Supplementary Agreement.

I took this picture yesterday. Take a look at the people just walking along there, the photo of the people standing by the Bay.

There is no rationale to terminate this agreement unless you are sending a signal that you are moving and paving the way to add a hotel on Mina Patel's parcel where it doesn't fit. So, we are going to ask you, why are you even considering terminating the agreement? There is really no rationale at all. The signal you sent to our residents, which is why they have, you know, poured in emails, et cetera, is that you were trying to up-zone the Parcel 1, remember it is Parcel 1, to a hotel and push our city to do the same. We have been around and around on this hamster wheel, folks, since 2014 and 2015. So, please do not terminate the Third Amended Supplementary Agreement. Maintain your oversight. Thank you very much.

David Lewis of Save the Bay addressed the Commission: Thanks Commissioners, and thanks, Marc for a thorough report. You can see why anybody would prefer to have the underlying permitting and Bay Plan conditions cover this site rather than a cumbersome pretzel of agreements from a time when there was a dispute over BCDC's authority.

I sent some questions into staff that Marc should address more explicitly, because if you are going to remove the agreement and have the underlying McAteer-Petris Act apply I think it is wise for the Staff Report and, if possible, the agreement to state explicitly what Bay Plan designations and map designations, if any, apply to this parcel. The Staff Report makes no mention of that. Marc only briefly alluded to the Bay Plan.

There are four things in particular that I would encourage the Commission to ask staff to address: The Bay Plan and maps that are currently posted on BCDC's website appear to indicate that there is no priority use for this area, only the general designation for all of Bay Farm Island as suitable for airport-oriented industry and there are some slightly more detailed notes. So, you should ask staff to clarify what is the current Bay Plan use and map designation for the hotel project or potential hotel project site.

Secondly, is that site currently primarily subject to Bay Plan policies for other uses of the shoreline since there is not a Bay Plan specific designation for that area? There is a description in the Bay Plan of what policies apply for other uses of the shoreline, so you need clarification about whether that is what is going to come into effect with the removal of this agreement.

Third, in developing this proposed agreement terminating the Third Amended TSA - has the staff evaluated whether this hotel development or the potential hotel development is a — the staff should clarify the other uses of the shoreline wording. The important thing is that it affects the Bay as an asset and in no way affects the Bay adversely. Is that potential, hotel development consistent with that?

And fourth, what impact, if any, would terminating this agreement have on BCDC's authority to amend and modify the Bay Plan policies and maps for any portion of Bay Farm Island including this site? And the reason that future ability to amend the Bay Plan and to change the designations is important is precisely because of what Chair Wasserman said at the beginning. With sea level rise any shoreline site is potentially going to need to have different Bay Plan treatment and Bay Plan designation as sea level rises. So, if you are going to terminate this agreement you need to make sure that you clarify and have all parties agree what the underlying Bay Plan designation is and that BCDC has the ability to change that in the future. Thank you very much.

Mr. Leo Vega of Carpenters Local 713 commented as follows: I am speaking on behalf of approximately 39,000 carpenter men and women across Northern California including Alameda and Alameda County residents.

Ram Hotels has partnered with the carpenters to make sure responsible contractors will be on this project. Carpenters will earn a fair wage with medical and retirement benefits that allow workers and their families a chance to live in the communities they work in. This also means that those wages are invested back in the local economy. As they spend their earnings and their tax dollars, they will help fund local schools and government.

This comes with a commitment to an apprenticeship program that guarantees we will continue to have a trained, skilled and experienced workforce that is able to complete high-quality projects in a safe and timely manner. This provides opportunities not just for a job on this project but a career path for many men and women who have or will go through our apprenticeship program. We also participate in the Helmets to Hardhats program for our veterans returning from service.

The carpenters are in full support of the project and urge you to terminate the agreement and allow the Ram Hotels project to move forward. Thank you for your time.

Mr. Kayode Powell commented: I am a carpenter with Local 713. I would like to lend my support to the Ram Hotel project, and I would ask that this body would also support and allow this project to move forward.

As was cited before, there are several pre-apprenticeship and apprenticeship programs that this project will support that will invest back into the community with both carpenters that are living here locally in Alameda as well as funds that are spent by our families, and those apprenticeship programs that are going to be implicative of raising our sons and daughters to

allow them to come into the labor force with a living wage. That they will be spending that money in these communities as well right here in Alameda and across the Bay that will help with both the tax base as well as infusing money into our local economy.

So, I fully support. Most of the things have already been said but again, it helps with developing training programs, we have programs for veterans that are coming back from the war and we bring skilled labor into this project that will, again, support our living wage and allow our families, again, to stay in our local community here in Alameda and across the Bay and have a decent level of living.

Thank you so much for hearing me out. I fully support this program and ask you to do the same.

Mr. Tom Krysiak commented: I was one of the few people that also sent letters to the Commission petitioning against changing of the agreement.

We oppose the construction of the hotel as we have three other prior times, primarily because it is ill-conceived. It is too large of a building for a 1.1-acre parcel. There is not enough parking. They probably will spill over to the parking across the street in the industrial park which a lot of my colleagues oppose.

I use that path practically every day, enjoy the panoramic vistas. There is something wrong here if this does go back to the City of Alameda once again. It is going to deplete our resources for other things to reinvestigate this and it is probably best to just leave it lie and not build a hotel. Thank you very much.

Ms. Atwell stated: Chair, no more hands.

Chair Wasserman continued: Questions or comments from Commissioners – please raise your hand.

Commissioner Gilmore commented: One of the public commenters brought up the fact that she thinks there is a discrepancy between what we are calling Parcel 4 and Parcel 1. So, can somebody untangle that for me, please? Is there a discrepancy? I don't know. Because I am looking at Exhibit B and there is a map there and it has Parcels 1-4. Parcel 4 on that is the Ram Hotel's project site and Parcel 1 is a Marriott Hotel site. So, are we talking the same thing or are we talking apples and oranges here?

Regulatory Director Brad McCrea fielded Commissioner Gilmore's questions: Pertaining to the matter today, Marc was referring to two parcels. That's the private development parcel for the hotel, the action on which would happen someday in the future potentially, and a smaller parcel contiguous to the shoreline that is between the private parcel and the Bay. Ms. Patel owns the private parcel that she wants to build a hotel on and then the City owns a smaller parcel that lies between the private parcel and the Bay. There is another parcel down the way that got caught up in this discussion and that has to do with a different hotel. Does that sound right, Marc?

Mr. Zeppetello replied: Yes. I just went back and looked at the agreement that is an exhibit to the Staff Report and what is described there is based on the input from prior documents. But Parcel 1 is described as the parcel owned by Ram Hotels. Parcel 4 is described as the smaller, adjacent parcel. So, it is all based on a tract map that was filed. I do not know if

Dan Reidy has any different view of that, but that was the nomenclature we used for the agreement, Parcel 1 being the private parcel and Parcel 4 the smaller parcel owned by the City now.

Mr. Reidy added: I think Marc laid it out correctly. In the agreement in the recitals, in recital N on page 4 it does describe that Parcel 1 is the one that was planned for some kind of commercial development and Parcel 4 is the part that has been dedicated to the City of Alameda for inclusion in the shoreline park. It is between the Parcel 1 and the actual Bay edge. But that parcel is Parcel 4 and it was dedicated by Harbor Bay Isle Associates to the City for inclusion within the shoreline park. Thank you.

Commissioner Scharff was recognized: I wanted to follow up on what David Lewis asked and have staff respond to that.

Mr. Zeppetello responded: In the Bay Plan this area is not a priority use area and there is no designation. There are a couple of notes in the existing Bay Plan. I went back actually this morning and found a 1969, the original Bay Plan, so those notes that are in the existing Bay Plan date from 1969 and therefore they predate the agreements and the resolution of the jurisdictional disputes in 1975 and later.

One of the Bay Plan comments is the use should be not inconsistent with airport use. That is characterized as a Commission suggestion, so presumably it is a suggestion for the local jurisdiction and not binding in any way.

Mr. Lewis asked about whether the other uses policies of the Bay Plan apply. My view right now is that the Bay Plan would only apply if there is a permit application and if no permit application is required the Bay Plan will not apply. So, if this agreement was amended and the development had to be done in accordance with the standards of the agreement then the Commission would not look to the Bay Plan. But if the agreement is terminated then staff would do an analysis as part of the application review and summary to the Commission about whatever policies are applicable, which of course would be the public access policies and might also be the climate change policies, the other use policies and any other policies.

I think the main answer to Mr. Lewis's questions is, as of today, if a proposal was considered in the context of the agreement the Bay Plan would not apply; but with termination the Bay Plan would apply. I guess that also goes to the question about amendments. Certainly, the Commission could amend the Bay Plan at any time. If this agreement was terminated and the Bay Plan was amended, then those amended policies would apply to a future project.

Commissioner Scharff noted: So, to bottom line it, if we terminate this agreement, this parcel will be treated like any other parcel that comes before BCDC and all of our plans and procedures would apply?

Mr. Zeppetello stated: Correct.

Commissioner Wagenknecht asked: In the future the planning for what would go on this site in the City of Alameda, who would be determining that land-use designation and land use? The City of Alameda?

Mr. Zeppetello replied: Yes, the City of Alameda. They do not have a local permit and they have zoning that does not allow their proposed use, so they need both a zoning change and a conditional-use permit or some other permit, however it is characterized by the City.

Commissioner Wagenknecht continued: So, they would go before the City of Alameda and get their permits and then they would come to us and we would look at exactly what?

Mr. Zeppetello explained: You would look at whether this project is consistent with the Commission's laws and policies and applicable Bay Plan policies just like any other project anywhere on the Bay shore.

Commissioner Nelson asked: Marc, first, it is not common for us to debate appropriate land use on shoreline parcels. So, can you just walk us through why we are having this debate, why the agreement in this case had the Commission designating appropriate land use for parcels in this area?

Mr. Zeppetello stated: My understanding of how this came to be is that there was an agreement in concept between the Commission and HBIA that development of the shoreline park would be developed in accordance with this agreement; and the Agreement has standards for things like setbacks from the shoreline and landscaping and paths, but there are also development parcels. And in the other areas not for this Business Park, most of the other areas are residential, but here there was a Business Park and there were certain designations. As I mentioned earlier, I believe that the land-use designations came either from the Development Agreement between the City and HBIA or from tract maps and they were just put into this, incorporated by reference into this agreement, and it was not the Commission that was an advocate or making statements about appropriate land use, we were just incorporating what the City and/or HBIA proposed.

Then we got into the position we are in, or the Commission did, in my view, because in 2014 the City of Alameda adopted a zoning ordinance which made a condition that the use had to be consistent with this agreement. So, now BCDC is in the position of designating the land use. If the Commission declines to terminate the agreement and declines to amend it, then you are implicitly saying, we think this land use should be an office or a restaurant, because you would not terminate it or amend it.

The Commission is, I believe, inadvertently in a position of having a designated land use mainly because of the convoluted history of this series of agreements and then compounded by the City incorporating a condition that relates back to this agreement and the land use designated in this agreement.

Mr. McCrea chimed in: I just want to remind everybody where this agreement came from. It came from a legal dispute about jurisdiction. So, the reason we have that agreement to begin with is because the original developer of Harbor Bay Isle and Bay Farm Island thought that they were not part of BCDC's jurisdiction and the Commission disagreed, and so instead of going to a lawsuit we created this agreement.

And what we cared about was to provide authorization over the years, provide authorization for a business park that had setbacks and provided the public access that you would see in other places around the Bay. And that was agreed to and that has occurred all except for this parcel.

If you go down and walk along the shoreline it looks much like it looks like around the Bay, there's setbacks and there's walking trails and benches, and to a large degree that agreement has worked.

This single parcel, however, has a more storied history that has a ferry terminal involved and a restaurant involved and an office building. This site was originally for the ferry terminal; however, it was deemed that the ferry terminal should be down the shoreline and so the Harbor Bay Ferry Terminal is down the shoreline today.

And then this parcel became a restaurant site, but they could never sell it as a restaurant site because it is a relatively remote area. And so, they came in some years ago and said, 'BCDC staff, can we change this parcel to something else?' and we agreed administratively to change it to a restaurant or an office building. It could be either or both. It could be an office building with a small café.

Then came along this proposal for a hotel and that is where the more recent story has begun and that is how we got into the land use discussion for this particular parcel.

Commissioner Nelson stated: Thank you, that background is helpful. We do not normally debate appropriate land uses on shoreline parcels.

Second question: Marc, our first speaker today suggested that if we revoke this agreement it has implications on the setback that would be required for the hotel on the Ram parcel if one is constructed. I want to make sure I understand that. How would it change public access requirements? How would it change any setback requirements for the hotel other than the actual land use itself? But as far as the development of this site and public access and setback requirements, what are the implications, if any, of us terminating this agreement?

Mr. Zeppetello explained: If the agreement is terminated you evaluate a permit application that comes to you in the future for whether there is maximum feasible public access. That could depend on whether it is ultimately a project on one parcel, this Parcel 1, or two parcels, and what the approvals are from the City of Alameda with respect to the public access.

But if the agreement is terminated you would be looking at it under the standards of the McAteer-Petris Act and the Bay Plan. It is not defined. It is for the Commission to evaluate. Whereas if the agreement remains in place, I believe, and Brad maybe can speak to this more directly, there are very specific requirements about paths and some setbacks. But you would not be asking the question of maximum feasible public access - you would be asking the question, does this meet the standards and criteria in an attachment from 1984 that has some site plans on it that shows a setback. I believe it would be a narrower inquiry under the agreement than you would have if you review it under the McAteer-Petris Act.

Commissioner Nelson asked: Brad, to you have anything to add to that?

Mr. McCrea replied: We know the Commission has negotiated under the agreement. We do not know what a future proposal would look like nor do we know how the Commission would consider that. However, I believe, and I believe the rest of the staff believes, the reason we brought this recommendation forward is that the time is right to terminate this agreement.

And the uncertainty with what I just said is not outweighed by the importance of taking this moment, when all parties are at the table, as you heard from the representatives, and terminating this 36-year-old agreement.

Commissioner Nelson continued: I have to say, I understand the difference in terms of how we would evaluate public access between these two paths, but the Commission has decades of experience making public access requirements work around the Bay shoreline. And unless we have a good reason for leaving this agreement in place, we are really talking about these two parcels. I do not see an advantage to leaving that agreement in place and restricting us.

What we are finding in this case is that this land-use designation has gotten us into a bit of a bind because of the reference with Alameda. I could imagine the public access requirements in this agreement doing the same thing to us if we decide that we would like to do something somewhat different from what is in that agreement. So, I do not see an advantage at this point to leaving that agreement in place.

Commissioner Gilmore commented: It seems like we are winding down our discussion and before we put this thing up for a vote, I would like to read a statement from Supervisor Wilma Chan on this topic. And her statement is as follows:

I understand why staff wants to terminate this agreement, but I do not want my vote to be seen as supporting a hotel at this site. Therefore, I will abstain, or I am abstaining.

Thank you.

Chair Wasserman commented: I want to reiterate the statements by Marc and Brad and others, we are not voting today on approving the construction of a hotel on this site. The construction of a hotel will require a permit from us because of the location and some issues, primarily public access, but we are not voting on that today.

I agree with Commissioner Nelson's comments, but I would actually turn it around. I think we gain significantly more and more correct power given our jurisdictional charge over this parcel by terminating this agreement. As has been said a number of times, this was entered into because there was a dispute between Harbor Bay Isle Associates and the Commission as to whether the Commission had jurisdiction and therefore we created this anomalous and I think almost unique construct where indeed we got into land-use issues that generally speaking we do not get into and have no business getting into. So, I think terminating this is absolutely the correct thing to do. It does not approve the project, the building of a hotel on that parcel. It does, I believe, increase our powers and clarify our powers over this site.

So, with that I would entertain a motion.

MOTION: Commissioner Wagenknecht moved approval of the Staff Recommendation, seconded by Commissioner Nelson.

VOTE: The motion carried with a vote of 21-0-2 with Commissioners Addiego, Ahn, Alioto-Pier, Butt, Scharff, Eckerle, Gioia, Gorin, Gunther, Pemberton, Peskin, Pine, Nelson, Randolph, Sears, Showalter, Vasquez, Techel, Wagenknecht, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO" votes, and Commissioners Beach and Gilmore voting "ABSTAIN".

9. **Briefing and Potential Vote on Pending Legislation.** Chair Wasserman stated: We are skipping Item 9.

10. **Briefing on Sand Mining Permit Compliance and Studies Progress.** Chair Wasserman stated: Item 10 is a Commission briefing on sand mining permit compliance and studies progress. Brenda Goeden will introduce the briefing.

Sediment Program Manager Goeden presented the following:

Good Afternoon, Chair Wasserman and Commissioners. Today staff and representatives from the sand mining industry will be presenting an update on mining activities and studies that have been conducted as required by three BCDC permits you issued in 2015.

As you may recall sand mining occurs in three areas in San Francisco Bay, in the Central Bay in the area between the Golden Gate Bridge, Alcatraz and Angel Island, on 4 areas leased to Hanson Aggregates by the State Lands Commission. As a Commission, you authorized up to 1.141 million cubic yards of sand mining annually in this area, with a peak mining at 1.395 million cubic yards, if needed, given that the total volume was not mined in previous years.

In Suisun Bay, and the Commission's Primary Management Area of Suisun Marsh, you authorized 185,000 cy annually, with a peak volume of 235,000 cy within the SLC's Suisun Channel lease area, and 100,000 cy of mining, with a peak volume of 120,000 cy from privately owned subtidal lands, known as Middle Ground Shoal, located just east of the Concord Military Terminal.

In 2015, the Commission had several questions that it charged staff and the mining representatives with investigating prior to returning to the Commission with requests for additional mining in 2025. They included:

- a. What are the impacts of mining to the benthic ecology of the Bay?
- b. How much sand is available to mine?
- c. Is the mined sand relic or in transport?
- d. Is the sand being replenished?
- e. Is mining affecting the transport of sand to other parts of the Bay and outer coast resources, such as beaches?

As part of BCDC's permit conditions, the sand miners were given the task of leading a benthic study with the guidance of a technical advisory committee. BCDC was given the task of leading a sand transport processes studies, with the guidance of a technical advisory committee and an independent science panel.

NMFS recommended the Benthic Study in its consultation, seeking to understand the impacts of mining to the benthic community, as related to prey for fish. BCDC included this recommendation as a permit condition, in accord with the Commission's fish and wildlife policies.

Tim Hammermeister from New Fields will provide a more detailed Benthic Study presentation later in the briefing. Staff notes here that the sampling was performed as described in the New Fields study plan approved by the Benthic technical advisory committee.

In addition, we find that it provides useful information to understand the broad benthic community of sand shoals, profiles of sand within the lease area, and grain size analysis. However, due to the small number of sample points that were actually mined during the study, it is inconclusive in answering the question “Does sand mining has an impact on the benthic community?” That said, the permit requirement is complete.

I am going to now share my slides with our folks from the mining community including Mr. Bill Butler, Vice President of Lind Marine who will speak first, Ms. Erika Guerra, Director of Environment and Land Resource Development from Region West of LeHigh Hanson, and then Mr. Tim Hammermeister, Senior Scientist at New Fields Consulting Firm who will discuss the Benthic Study.

Mr. Bill Butler, Vice President of Lind Marine presented as follows: On behalf of the sand mining companies we are here this afternoon just to give the Commission a quick briefing on the status of our sand-mining activities and an update on some of the special conditions and studies that are required by the permits that your Commission issued in 2015.

So, our briefing today will focus on the few major conditions that are outlined here. We are going to put some special attention on the recently completed Benthic Habitat Study that Brenda talked about, and then turn it back to Brenda to talk about the status of the sediment studies that are just now getting underway.

So just a quick recap for those of you who might not have been on the Commission when these projects were approved. Sand mining takes place on leases held mainly by the State Lands Commission. Hanson mines exclusively in the Central Bay which are the lease areas in the lower left-hand side of the slide; and Lind Marine operates exclusively on the two leases in the Suisun Bay in the upper right.

I just want to make a point here that the sand that is mined is critical to meeting the infrastructure needs of the Bay Area. It is used in making ready-mix concrete, hot-mix asphalt and in construction projects as well as in beach restoration and wetlands, restoration projects throughout the Bay Area. Both companies’ mining equipment operate in essentially the same manner. The barges transit to the lease areas where the suction pipe is dropped to the bottom and the suction drag-head or the suction pipe-end is buried in the substrate and a mixture of sand and water is pumped into the barge. When the barge is full it transits to one of several locations around the Bay where the sand is then offloaded into a stockpile for further distribution by truck. This is a critical resource for the Bay Area and the advantage of utilizing this particular resource is that it is local and it is transported in bulk to sites that are much nearer to where it is actually being used, much nearer than alternative sources of sand outside the Bay Area. Every barge load is the equivalent of 100 to 130 truckloads which means that literally hundreds of thousands of truck miles are saved each year with the attendant reduction in air emissions.

This slide shows the annual mining volumes for Hanson in the Central Bay leases over the past several years paired against the average annual permit limit of a little over 1.1 million cubic yards. This graph shows the annual mining volumes for Lind Marine with the top being the Suisun Associates lease volume and the bottom showing the volumes that have been mined at the Middle Ground lease.

We are going to transition now and talk about some of the special conditions required by the permit, several of which we are very pleased to report have been successfully completed. The first that is shown here was a requirement to fund a Bay cleanup project to mitigate for essential fish habitat. The permittees worked with State Lands Commission and the other regulatory agencies to identify a significant cleanup project at the Crockett Marina, secured the permits, and then conducted pile and abandoned-vessel removal there which was done in late 2019. The upper photo is before and the lower photo is after the cleanup.

The next requirement was to conduct periodic, multi-beam, bathymetric surveys of the leases and the surrounding areas. Surveys were conducted as required in 2014 and then again in 2018 and then the next one is due in 2023. Now, analysis of the data suggests overall erosion of the lease areas in the 2014 to 2018 period as compared to results from the prior period which suggested overall accretion of sediment between 2008 and 2014. This data will be most helpful to the ongoing, sediment TAC and sediment studies which Brenda is going to talk about in a few moments.

Next was a requirement to conduct a water-quality monitoring study, which was completed as required, and the final report was submitted to the Regional Board in 2018. The conclusion of the study was that the effluent from the sand-mining operations does not adversely impact the water column and any effects related to turbidity from the mining operations are spatially limited and are temporary in nature. At this point I would like to turn the presentation over to Erika Guerra from LeHigh Hanson and she is going to talk about the Benthic Habitat Study.

Ms. Erika Guerra addressed the Commission: As you can see most of the permit conditions have been fulfilled. In addition to the actions described by Bill, additional permit conditions include the development of two scientific studies to complement the existing information we have for sand mining on benthic ecology and sand transport in the Bay. These studies are conducted through the formation of a technical advisory committee or a "TAC."

Before addressing the current, benthic-study, permit condition it is important to reflect on the work that supported the prior permitting and the CEQA process. To support the 2012 EIR the State Lands Commission hired independent ecological specialists. They surveyed the mining sites and concluded that there would be no significant, adverse impacts on the benthic community from sand mining. However, due to the lingering concerns by BCDC and NMFS about the scope of that study, BCDC added a condition to the permit to create a benthic-habitat TAC and conduct a new study about mining's impacts.

We thought it was important to take some time today to explain to all of you the encouraging results of the Benthic Study and report to this Commission that regulatory agencies confirmed that the permit condition for this Benthic Study has been satisfied. As I mentioned before, a TAC was formed. It was comprised of the eight members you see here working in collaboration to develop the study questions and scope. As far as the process, in 2016 the TAC developed the scope and outlined the study objectives. They also reviewed and approved the Sampling and Analysis Plan. During 2016 and 2017 sampling was completed. In April of 2018 the Report was provided to the TAC members. The three agencies confirmed that the Benthic Study satisfied our permit condition in 2019 and BCDC affirmed this year in March. This accomplishment is an important milestone not only to fulfill the permit condition for the

Benthic Study, but I think more importantly, to provide a strong, technical foundation for that permit, renewal process.

I now would like to introduce you to Tim Hammermeister who is a Senior Scientist at New Fields. That was the environmental firm and engineering, consulting firm that was chosen by the Benthic TAC (BTAC) to develop the Sampling Analysis Plan and conduct the surveys to satisfy our benthic, habitat, permit condition. Tim has a Master's in environmental chemistry and over 25 years of experience as an environmental scientist, this includes benthic ecology. His expertise is on sediment management and marine science.

Mr. Hammermeister presented the following: The benthic study objectives developed by the BTAC were to characterize the benthic community and habitat at two different sand mining, lease areas; to compare those conditions before and after a sand-mining event; and to assess any potential impacts to the benthic habitat conditions and functions 12 months following the sand-mining event. The study is comprised of two, sand-mining lease, or treatment areas, and two reference, or control areas. The reference areas were located where no sand mining has occurred but were adjacent to the lease areas so that they shared similar, habitat conditions.

Three data types were collected for this study including sediment profile imaging which uses an underwater camera to capture vertical images of the sediment/water interface along with the second data set — physical, sediment parameters such as grain-size distribution and total, organic, carbon content that allowed for the assessment of the habitat conditions. The third data type was the collection of organisms found in the sediment to identify and enumerate the various species for evaluating the composition of the benthic community.

Two sampling events were conducted; one for determining baseline conditions prior to a sand-mining event and a post-mining survey 12 months after sand mining was conducted. The study design, as presented in this graphic, is known as a before-after, control-impact approach which is commonly used for assessing potential impacts to a habitat from a known disturbance event. The design also takes into account natural environmental changes that occur over time. To the left of the diagram the Treatment Area and Reference Area represent baseline conditions with no expected differences along vector A prior to a disturbance event. The horizontal vectors B and C represent the changes that occur over time between sampling events. The changes along vector B in the treatment area represent changes due to a disturbance event, in this case sand mining, and the naturally-occurring, environmental changes. The changes along vector C represent only environmental changes that occur in the unmined, reference area. Vector D on the right side of the diagram represents the differences between the treatment and the control area 12 months after the sand-mining event. Any differences observed in the treatment area relative to the reference area would be expected to be an effect of the sand-mining event because both areas were subject to the same environmental conditions over the duration of the study period.

This figure displays the sampling locations in the Suisun Bay lease area, which is in tan, and the adjacent reference area in light blue around the boundary of the lease area. It should be noted the differences in sand-mining techniques used at the two sites studied. In Suisun Bay a barge is anchored at a given location and sand is mined in a limited area until the barge is filled. This figure displays the Point Knox Shoal sand mining lease and reference area. The

Benthic Study utilized a grid pattern of sampling locations to facilitate a total of 40 sampling points in the lease area and 20 sampling points in the reference areas. All locations were sampled for sediment-profile imaging and a subset of 20 locations were sampled for sediment parameters and benthic community. The grid pattern was utilized to provide spatial coverage of the entire study area and to facilitate statistical comparisons across the range of habitat conditions observed between the lease and reference areas. Spatial analysis is key to assessing habitat conditions rather than making point-by-point comparisons. The sand mining technique used at Point Knox Shoal is to allow the dredge to drift with the current across the site as sand is collected from the bottom. It is also important to point out the difference between sand mining and dredging. Unlike dredging, which removes all the material to a desired depth from within a defined perimeter, sand mining collects only a targeted portion and a quantity of the bottom substrate.

The benthic community analysis involved the collection, identification, enumeration and statistical evaluation of organisms collected in sediment from the study areas. Benthic community results from Point Knox Shoal indicated some loss of complexity in the community in the post-mining survey but the changes observed were similar across both the lease and reference area. At Suisun Bay, changes in the benthic community were different between the lease and reference area in terms of the species represented and their relative quantities. It is uncertain whether sand mining or environmental conditions were responsible for the difference or reductions in an invasive clam species that were the most prevalent species in samples from the baseline survey. The post-mining results, though different between the reference and treatment area, indicated a slightly more complex, benthic community in both the lease and reference areas relative to what we found during the baseline survey.

The conclusions of the study found that habitat conditions observed in post-mining surveys were within the range of conditions measured during the baseline survey. Based on the data collected for this study, any potential short-term impacts due to the sand mining event were no longer apparent after 12 months and therefore there does not appear to be any observable long-term, adverse impacts at the two study locations.

Based on concerns raised by BCDC staff, a supplemental, data evaluation was developed with USGS and the BTAC that focused on a subset of the data collected. The results of the supplemental, data evaluation were consistent with the findings of the original study design though there was reduced statistical power due to the smaller data set. That is all I have, and will now pass this back to Erika.

Ms. Guerra continued: so, the other scientific study to complement the existing information is the sand mining impact on sediment transport. This is a BCDC-led process. In 2018 we fully funded the STAC per the permit condition. I will now hand it over to Brenda to provide the status of that study.

Ms. Goeden addressed the Commission: Thank you Erika. Commissioners, in our final few slides, I will update you on progress in meeting study requirements on the sand supply and transport processes that may be affected by mining activity. As a condition of the permits, each mining company was required to contribute a proportional amount of funding correlated with

the volume of sand authorized in each permit to the Coastal Trust Fund. The State Coastal Conservancy manages this fund and Ms. Marilyn Latta is the staff person who we work with and administers the funds and contracts. The total funding was 1.2 million dollars.

In 2018, when total funds were available, BCDC initiated the Sand TAC (STAC), consisting of representatives from USACE, NMFS, BCDC, SLC, SCC, CDFW, BayKeeper, CCC, GFNMS, who worked diligently to develop and agree upon management questions to be addressed by studies. Towards the end of 2018 we hired a science coordinator, Dr. David Revell, of Revell Coastal to identify the independent science panel members and manage that team. It was a one-year contract. In 2019, the independent science panel was convened, learned about sand mining from the mining representatives, and then proceeded to review the existing science on sand transport, discuss the state of knowledge and data gaps, and devise potential studies to answer the Commission's questions. The independent science panel members are all distinguished in their field, and are contributing their knowledge and expertise to this effort. They include Dr. David Schoellhamer and Dr. Paul Work, both from the U.S. Geological Survey, though Dave is now retired, Dr. Craig Jones of Integral consulting firm, Mr. Bob Battalio, a Coastal and Physical Engineer of ESA consulting firm, and Dr. John Largier, Associate Director of International Programs at UC Davis' Coastal and Marine Sciences Institute at Bodega Marine Lab.

As part of their work, they developed three conceptual models of sand transport, one of which is shown here, useful as a working hypothesis to test against while considering sand transport. This graphic was created by Revell Coastal. Additional progress to date includes the completion of a new multibeam survey at the end of 2019 that captures an approximate "one water year period," which the panel believes will further our understanding of sand transport and sediment movement. This addition will assist in answering the questions about sand replenishment and transport pathways. The 2019 change analysis report is in final independent review. The Panel members identified a novel approach to determine if sand is being replenished in mined areas. This "ring analysis" identified areas that were mined during two periods and compared the volume sand of actually mined, and the volumetric change in the same area. This work was completed by eTrac and paid for by the mining companies. The findings of this preliminary study, though not fully written up, was that approximately 50% of the sand was being replenished during these periods, though percentages vary by location.

The group has also drafted three additional scopes of work— one that will develop a sand budget, looking to address how much sand is available and if it's being replenished. The second scope is a stratigraphy study, focusing on the depth, layers, volume and type of sand within the lease areas, assisting with the "available sand question." The third scope is focused on defining the sand transport pathways, using bedform analysis from the multibeam surveys and addressing rate of replenishment by completing additional ring analysis. Marilyn Latta of the Coastal Conservancy is currently preparing the request for proposals, which brings me to my final slide.

The schedule for completion of this work:

- a. From July 1 through mid-August we will advertise the Request for Proposals.
- b. We anticipate the proposals being provided by August 15.

c. From August 15 through the middle of September the proposals will be reviewed by the Independent Science Panel.

d. On September 3rd we are due at the State Coastal Conservancy's Board Meeting to request the distribution of the remaining funds to pay for these studies.

e. In October of 2020 we are targeting execution of the contracts.

f. And from November 2020 through December 2022 we are anticipating the studies to be underway.

g. By spring of 2023 we anticipate the Independent Science Panel reviewing the findings of the studies and providing recommendations to the Commission on their interpretation and working to answer the management questions.

With that our presentation is complete and we welcome your thoughts and questions.

Chair Wasserman stated: If anyone wants to comment from the public please raise your virtual hand. Ms. Atwell replied: I have no hands raised by the public. Chair Wasserman continued: Questions and comments from Commissioners.

Commissioner Gunther was recognized: Just two questions. It is great to see this work going forward. I am very pleased to see the science being done collaboratively among stakeholders and the community. It produces much more credible and legitimate results. One question about the before-and-after, impact work. So, we had a 12 month period at which point there was no obvious difference between the two sites. I am wondering, how frequently are sites returned to for subsequent sand mining? How frequently do we go back as opposed to letting sites recover? So that we understand that 12-month period, what that represents.

Ms. Goeden responded: I think that maybe the sand miners might want to answer that question. I do have an additional slide that I could perhaps show. In this area here, the black shape is the lease area, this graphic is from the CEQA document. What you cannot see in these little blurred letters is that these are quarters of mining activity. So, this box right here, there is no data available so this represents four quarters of mining activity in a sand-mining lease. Down here is the location of that lease in Central Bay. So, what you see is each color represents mining during that period and so large portions of the leased area are not mined. However, there are concentrated areas of repeated mining over time and it varies from year to year and from lease to lease. That is sort of the best answer I can give, and I am happy to have Bill or Erika perhaps to talk to this item. Mr. Butler commented: As Brenda outlines here, we do return to the same areas frequently. The thing with the study is that we wanted to see how quickly the benthic habitat would recolonize when we stopped returning to an area. But I think Brenda has outlined that there are several areas that we do return to frequently, certainly a lot more frequently than the once every 12 months.

Commissioner Gunther continued: Right, right. So, my question then is, the study site where you dredged — was the dredging that occurred there of a frequency that is characteristic? So that when you say 12 months later the site has recovered despite the fact we did our normal thing, versus, did your study site happen to be a place where you only visited twice within a year? Mr. Butler replied: Maybe I can let Tim Hammermeister answer that or follow up with the answer to that question. But the study sites, we picked them actually as

sites that hadn't been mined in some time so that the reference area and the treatment areas would essentially have the same, would be at the same baseline. Then they did the sampling. We came in and did our typical frequency of mining over a pretty short period. I believe it was two weeks, a two-week period that we came in and did our typical how much we normally mine, and then we left the areas to start the 12-month clock so that we could see what happened after no mining for 12 months. And Tim, maybe I'll let you elaborate on that. Mr. Hammermeister commented: That is correct. It was just a week or two mining effort and the 12-month period was selected to cover a full four seasons' environmental conditions so that we were not unduly influenced by winter storms or changes over different weather periods.

Commissioner Gunther continued his inquiry: And that characteristic where you mine something for a couple of weeks then you let it sit for a year; is that how you normally treat all the area within the lease? I am trying to get at whether the conditions that we tested were characteristic of how the sand-mining operation normally operates? Ms. Goeden chimed in: I think, Commissioner Gunther, the answer to that is the mining activity is basically related to how often orders come in for certain types of sand. So while it is not a weekly occurrence that mining happens, mining can happen a couple of times a day maximum, a couple of times a week, many times a month or less depending on how much sand is needed by the folks who are ordering it, primarily the construction industry, as Bill pointed out. This particular test looks to me like it was four mining events, so November 16th, November 18th, November 22nd and 23rd, 2016 according to the document. And so, what you normally would see is mining coming back I think perhaps more regularly over a period of time in a normal year. Bill, please correct me, or Mike I know is also on the phone, if I am incorrect in that statement.

Mr. Butler concurred: Brenda, that is correct. One of the challenges with doing this is that obviously we needed to design a study that we could look at areas that had not been mined to provide a baseline. But then we wanted to stop and let the areas recover for a period of time to see what the recovery period would be — whether or not that area had been mined. Maybe the area had been mined pretty frequently for a longer period of time, but really the goal was to find out, okay, how quickly can it recover after mining stops? Commissioner Gunther replied: Great, thank you. So that is what we have really tested here. That was what I was trying to get at. And I understand that the benthic environment in the Bay is very, very dynamic and a lot of variations can occur. But I also understand that you cannot store sand under your desk and wait until somebody wants it, it is a process in a very active industry. So, I just want to as we go forward — I am very supportive of this — I just want to make sure that we have clarified now that if we give a place a year that the benthic environment can recover. And then maybe we can think about that as we go forward to make sure that we are not continually mining the same places over and over and over again if we don't have to.

That was one question. The other question I had has to do with the movement of sediment through the Golden Gate. Brenda, this is your last part. The question that I have, and I recognize you may not be able to answer this yet, this may be in fact one of the things you are proposing to do, but as we pull sand out of the Bay there is less sand available to go out through the Golden Gate and to replenish coastal systems. Now the sand we pull out of the Bay may be a drop in that bucket or it may be influential and I am trying to understand whether we are heading in the direction of trying to understand whether we are influencing the sand budget say for Ocean Beach and places south by removing sand from Point Knox Shoal. Ms.

Goeden replied: Every time we talk about the flux at the Golden Gate I always think about the Holy Grail because it is one of the most complex areas in San Francisco Bay and the near shore to understand. Aside from sand mining I work with another sediment working group with the San Francisco Estuary Institute and the question of the Golden Gate flux comes up.

Dr. Schoellhamer and his person who is now running his lab, Dr. Maureen Downing-Kunz, have been working on that question for a number of years and we don't have an answer. When working with the Independent Science Panel they talked about a study area and whether it should include the leases, the region, out the Golden Gate down to Pacifica. And as we thought through it and talked about it in quite a great bit of detail, folks thought that primarily we would be able to understand some of the more local effects first and if we were able in this complex system to really understand those local effects that could help inform the further field effects. However, I am not thinking that we are going to get all the way to the question of the magnitude of what is supplying the outer coast. I wish we could say, yes. Commissioner Gunther stated: Thank you Brenda. I recognize the complexity and I just wanted to make sure we were hopefully aiming that way even if it takes us a while to get there. MS. Goeden replied: That is definitely a long-term goal.

Commissioner Showalter commented: I am very glad to hear that this is going on. I know when I worked on the Salt Bay Salt Pond Restoration Project one of the questions that we always faced was, where was all of the fill that was needed to restore those marshes going to come from? And of course, in the South Bay we are not blessed with much sand, we have a lot more mud. But still, I am really excited to see that you are doing this investigation. And as Commissioner Gunther mentioned, I am really interested in sort of the throughput of the whole system. I was thinking more of; is enough sand coming in from the Central Valley to replenish San Francisco Bay? How is the whole sand-budget working? And certainly part of that budget analysis is how does it go out the Golden Gate or does it come in the Golden Gate from time to time? I know that from looking at the movements of sediments in the South Bay, the difference between a wet year and a dry year was pretty significant. So, I am wondering how long is this investigation going to be able to go on and are you going to be able to go through, keep it going for a number of years so that we can look at some different hydrologic situations? Or do you know yet?

Ms. Goeden answered: Well, those are a whole bunch of questions that I am going to try to answer succinctly and appreciate all of that. So, we did draft a sand budget in 2015 that is rough. We are hoping that whoever takes on this proposal can expound on that work and it would include the amount of sand, to the extent that we can identify, coming in from the San Joaquin and Sacramento area through the Suisun Channel area. So that is one part and that is part of the budget. As part of the throughput of the system, we are hoping to include navigation dredging in areas where there is sand to help inform where it is traveling and we think we have some interesting ways to look at that. As far as how long these studies can go on: currently the multi-beam studies, I am going to show you the slide. This is what multi-beam studies look like. This is a survey using multi-beam where you can really see the sand ripples, the sand waves, you can see mining activities. These surveys are required every four or five years through the sand-mining permits. If we issue new permits in 2025, I would anticipate these types of surveys continuing on that same period, which would allow us to at least track sand movement and perhaps learn more as we go on. I think that part will continue. The

funding that we have through the sand mining permits right now, my belief is we will exhaust it by the end of these three scopes that I have outlined today. I particularly think the stratigraphy study is going to be expensive, but we are hopeful that moving this information forward will really help inform the Commission's thoughts on how to continue with this activity in the future.

Commissioner Scharff was recognized: I do remember when this came to the Commission in 2015. There were lots of concerns and lots of questions and it was very frustrating for Commissioners because we didn't have the information. This is an important activity that provides a lot of jobs. It does provide a bunch of benefits in terms of not having to import the sand from other places and that has to be weighed against damage to the Bay. And so the first question was; does this damage the Bay? And staff could not answer that question. We decided that we would do these studies. So, the first study was; does this damage the benthic community? I am very unclear after the presentation whether it does or not. It seemed that everything was positive and it doesn't damage the benthic community. And yet, staff indicated that they were unsure and that wasn't necessarily the conclusion but we are not going to do anymore studies.

These permits come back in 2025, and at the time [2015] the Commission felt that we didn't really have enough information but we were going to grant the permit because we didn't have enough information and that we needed to get the information before 2025. So, I guess I want staff to address the issue of — does this harm the benthic community? Are we going to be in any better position in 2025? The studies seem to indicate that it didn't, but staff said it was inconclusive. That is a big problem for me. We obviously need to do more studies. Was this a design flaw in the study? Did something go wrong? All of that — so I have that question. And the same question was on the sand budgets, the flow of the sand; was this causing beach erosion outside of the Golden Gate? All of those kinds of questions. And, are we going to be able to answer those kinds of questions because this is going to come back to us in 2025. And if we are not going to be able to answer those questions; should we make it clear to the applicant that when they come back in 2025 that they are going to need to do studies prior to coming to us in 2025 to be able to answer those questions. That is what I want to resolve.

Ms. Goeden responded: I totally understand why you would be confused. I am flipping back to a previous slide because it helps to illustrate where I and my team feel things are inconclusive. One of the challenges that we see with the study was that there was an anticipation and an assumption made in the process, and we participated in the process, that more of the sample points would have actually been mined. And so you can see in these different points where the sample points are and this one over here that may have had mining on it. These points certainly did not. The reason we feel it is a bit inconclusive is because there was not a lot of the samples, less than half were sampled. And on the other one which I didn't have a slide for I think there was only a couple that were sampled of the 12 that were supposed to be sampled. And so, we were challenged by that and that is why we asked for a little bit additional analysis because we were thinking that maybe if we look at the ones that were sampled, we might see an effect. But we still really didn't see much.

I think the other challenge of the study was that we thought we'd be able to do more with the \$250,000 that we had available. That was what the Commission, NOAA Fisheries and the miners had agreed to via the permit conditions. We thought it would cover a more extensive study, doing a little bit more repetition as far as taking samples, coming back immediately after mining, six months and twelve months — Tim did a nice job of explaining to us that if you took the six-month out, that would reduce costs but it also reduces some of the seasonal variability that you might see. We did have a science advisor, Dr. Francis Parcheso from USGS, who is a benthic ecologist who worked with the group as well. I talked to him, again, just the other day because I am trying to get very clear on this and whether some questions were answered. He seemed to think, and I agree, that maybe a more extensive study would have been more helpful as far as answering the Commission's question. But I think also as Bill and Tim pointed out that this was basically four mining events and Commissioner Gunther pointed out that the mining is actually going back fairly regularly to a site. So whether or not the benthic ecology is truly impacted such that the invertebrates are not there, it can't really be answered very well by this Study given the difference of the Study and the sand mining itself. It is a limited study. That is my feeling about it and we have talked to folks with the Bureau of Ocean Energy and Management who also do this sort of work to try to check ourselves on — can we get to this answer? That is where we are in this point in time.

Commissioner Scharff replied: I think that is very unsatisfactory. Executive Director Goldzband interjected: Commissioner Scharff, can we actually ask the sand miners to respond? Commissioner Scharff replied: Sure. Ms. Guerra responded: Now Commissioner Scharff, I didn't have the pleasure of being here when the first mining permit was granted and all of those questions were asked. But I have been doing a lot of reading on what prompted to have these studies being conducted. We are miners and we are not scientists. Our decisions are informed by the science and whatever is decided together with the Technical Advisory Committee staff. The first thing that I will say is that as far as process — there was a process established within the condition of this permit as far as how the Technical Advisory Committee was going to work, the scope of work that was agreed on and everybody agreed on the sample plans. I hope you understand that as an applicant we need to have that process clear because otherwise this can become like a never-ending study that is not going to lead us to the black-and-white conclusion. I think everybody here understands that this is science that as the more data the better but at the same time we need to be on that practical approach and how can we move forward to give you guys a comfort that this is the right balance with the environment. I do appreciate some of the compliments made and your comment that there is a bigger picture here as far as other environmental impacts in the Bay Area and the material would have to be imported. But as far as the study there was a process to get agreement on the sampling size. We did have three agencies involved and they confirmed that the Benthic Study satisfied the permit condition. But we were also asked about a supplemental study, which is what Tim explained. And then we also had the opportunity to talk to Francis a few days ago and he supported the Study's conclusions. So, while I understand that maybe more information would be needed to find that right balance, between agreeing on a process, following that process and leading to the conclusions of that process. And I am not the one who can answer for you the details of the representativeness or the statistical for these studies but I would like to hand it over to Tim so he can give you the answer.

Mr. Hammermeister commented: One thing the Study was designed to do was to address the benthic community conditions. And in order to address an area you have to sample across the entire area and that was the reason for the grid design was to make sure that we got full spatial coverage. In water it is not possible to see where the sampling points were. It is a blank slate. We go to a position and sample and they go to a position in sand mining. So, it would be very difficult to set up a study where everything lined up. But also, you wouldn't really want to do that if you are evaluating the community. A simple analogy would be if you cut a path through a forest but then collected samples only along the path – would you really know if the forest was healthy or not? No, you would know the condition of the path wherever you sampled it. But what we are looking at is the entire community? So, if you were to sample a forest that had some paths cut through it you are just going to sample random spots in the forest and see what the general condition of it is. There may be a question about the intensity of mining but as per the study design this is what it was. Another thing to kind of remember when looking at benthic communities in the Bay, especially relative to sand mining, is both areas are very high energy and that is why they are sand. And two things happen with benthic communities when you have high-energy, sandy substrates. One, they are in a constant stage of pioneering which means the benthic community is constantly resettling itself because in lack of mining it is getting buried by new sand waves moving through and just the high energy of sand moving around. And the sand mining is just another disturbance but that doesn't affect the ongoing energy of new sand and organisms being able to pioneer the site. So, in a sense you have this incredibly dynamic habitat. The caveat on the study that twelve months later we couldn't see any effects is a key point of the study. We examined it in two points in time, and in twelve months there is no evidence that there was a negative impact. And that is not necessarily a shortcoming — it is the way the study was designed. The flip side to that is in a low-energy spot, say an embayment in Southern San Francisco Bay that is mostly mud – a year after mining you probably could find the exact pit that you mined because it is a much more acquiescence embayment. But in these high-energy areas they change quickly and in days or weeks it could very well be covered depending on the given conditions. So, it is basically just a timeframe question as I see it — the caveat to the study results.

Commissioner Scharff responded: Okay, that was the response. I mean, I don't think that changes that, I am not a scientist either. So, what I am really looking for is the big picture here. If this comes back to us in 2025 — when it came to us in 2015, we didn't have enough information of whether or not to grant a permit. The issue was that sand mining is a very important economic activity and without having the proper information we basically decided not to deny it and let it go forth. However, at that time we were basically promised that by 2025 we would have the information to make the next decision. And I am uncomfortable in that I'm not sure that we now have the information because the study seems to have been designed incorrectly or not correctly. I don't really know that. That is sort of what I am hearing but maybe I'm hearing it incorrectly. So, then I asked the question — we are now going forward with the study on the sand. And are we going to have the proper information at that to be able to say — that, yes, taking sand out of the Bay is a bad thing, that it causes beach erosion, that it has other effects on, or, no, it's fine; that it is such a small amount that it makes no difference whatsoever or it makes a really small impact or the impact is this and then but the economic advantages are huge and it stops greenhouse gas emissions because we are not importing sand. I'm just saying that by 2025 we need to have answers for these questions. And I don't get a

comfort level from this presentation that we are on track to do that. That is my concern. I mean the actual scientific stuff — it seems like the study said no but the study seems to not answer the question. So that is my concern and I guess I want to know — how are we going to fix this problem? What are we going to do to solve this issue so that in 2025 our Commission can actually make a decision and say to the public — yes, we should let sand mining go forward or we should let it go a more limited number because it not just a yes or no answer, it's how much sand mining do we allow, how much did they ask for, what are we going to do? And we need better information — that I remembered distinctly. And, in fact, I remember Commissioner McGrath saying that we need that information because otherwise we may not be able to allow sand mining in the future. So, I guess the question is — what are we going to do about it?

Ms. Goeden responded: So, I think that regarding the Benthic Study the permit condition for the study is complete; we have deemed it complete. We don't have another condition that says; they will keep studying. It was a finite condition that literally called out \$250,000 for a benthic ecology study. Before the next permit, the State Lands will be doing another CEQA document. There is some potential that State Lands could ask for additional work as part of that CEQA document. But that is a conversation that I imagine will happen with the State Lands Commission and the sand miners and potentially the other agencies. So, unless the Commission gives some direction to the sand miners outside of permitting that the sand miners then are willing to go do additional work; I'm not sure how we get there from here on the Benthic Study. Commissioner Scharff added: On that, I think all I would like to say is that, the direction that I personally as a Commissioner would like to see is, I would like to have the information by 2025 to be able to make informed decisions about how much sand mining to allow and what its effects on the Bay Area. And when it came to us in 2015 it felt like it was incumbent on us not the sand miners because it was right before us that it was either we didn't have good information or we were supposed to do the studies. I sort of feel it is now incumbent upon the sand miners in 2025 to come forth and say what the scientific information is and to allay concerns about the process. You know 2025 is not far off and that is why I feel good about saying it now because I don't want to say "no" to sand mining in 2025. I want to have the information that we can make informed decisions about how much sand mining should be allowed in the Bay and if there are any bad effects from the sand mining; how you would mitigate that or whatever. So, that is really what I would say to the sand miners. And I would hope that staff would work with them and even bring this back for a further discussion at BCDC and get some direction when that is agendized and people can think about it.

Executive Director Goldzband: You are always asking for future, agenda items — I am going to say that this should be a future, agenda item. I've already written down two things before you started, Commissioner Scharff. Number one, we are going to get to you in November and Brenda is going to explain to you the executed contract that will be already out. It will be a short one. It will be five minutes at most. But it will demonstrate to you that the contracts for the STAC are out. And if they are not out, we will explain why. And then we will get back to you in April and May after we sit down with the sand miners, after we talk with people outside of the immediate BCDC world. And my immediate suggestion is we are probably going to end up doing a public workshop in some way, shape or form to discuss the results so that we can be as informed as we possibly can, which may be the best way to discuss

this as opposed to a Commission meeting because it will be a lot easier to understand. The third thing I would say is that I took the direction from you and your fellow Commissioners and totally understand it that you don't want to be in the dark in 2025. I will tell you that it is possible that you will not be in the dark but you will only have a 15 or 25-watt lightbulb as opposed to the marvelous fluorescents and CFLs and whatever is out there now because I don't know if there are answers out there. When you take a look at the sand-mining, transport issue I'm not sure that this may not be answerable in five years the way you want it answerable. But I assure you that we will come back to you on an annual basis and let you know where we are at and what we know. Commissioner Scharff replied: All right, that's all I can ask — thank you.

Chair Wasserman asked: Peggy, any other Commissioner hands up? Ms. Atwell answered: No, no other, Chair. Chair Wasserman continued: Thank you all for the presentation. In an uncertain world do your best to bring us more certainty.

11. Briefing on Bay Plan Climate Change Policy Guidance. Chair Wasserman stated: That brings us to Item 11 which is a Commission briefing on Bay Plan Climate Change Policy Guidance. Amber Leavitt will provide the briefing.

Executive Director Goldzband chimed in: I want to say something to the Commission which is really important because it is sort of what I said about in my Executive Director's Report.

Amber came to us last year or late the year before. It was September of last year. Amber is a CivicSpark Fellow. CivicSpark is an AmeriCorps program and it is run by the local, government commission and the Governor's Office of Planning and Research. Its purpose is to build capacity primarily at the local level but we use CivicSpark Fellows because we like them.

And I would encourage all of you who are local, government officials to investigate the CivicSpark Program and to reach out to them because they are a reservoir of pretty, darn, good talent.

Amber has a bachelor's degree. She doesn't have a master's degree yet. But that didn't stop her from working with all of our folks and working in a really important way to give you this briefing.

I'm not sure whether we have had interns and CivicSpark fellows provide briefings to the Commission before but we are today and we think it is really important that you all recognize the value of CivicSpark Fellows and consider hiring them if you are in local governments.

So that is my spiel on the LGC which I really like and Amber I now give it to you.

Ms. Leavitt presented the following: Good afternoon Chair Wasserman, Commissioners and members of the public.

My name is Amber Leavitt and I am a CivicSpark Fellow at BCDC. I was going to introduce CivicSpark but I am happy that Larry did that. I started at BCDC last September. The CivicSpark Program is 11 months long so my fellowship will be over at the end of July. I will say it has been a fantastic experience and I really appreciate all that I have learned and experienced working for BCDC.

Today I will be giving a briefing on the development of a guidance document for the Bay Plan Climate Change Policy.

For today's presentation I will start with some background information on the Climate Change policies.

I will discuss the need for and use of a guidance document, what work has been done on the project to date, an overview of the content of the Guidance as well as how this project aligns with the sea level rise principles for aligned state action and the next steps for the project.

So I will start with some background information on the Climate Change policies:

Bay Plan Amendment 1-08 was initiated in November of 2008 and was unanimously approved three years later in October of 2011. This amendment added a new section to the Bay Plan titled Climate Change and it also revised the sections on Tidal Marshes and Tidal Flats, Safety of Fills, Shoreline Protection and Public Access. Later in my presentation I will go through what those policies are.

Since the climate change policies were adopted in 2011 interpreting and applying them in a consistent way has been somewhat challenging. However, implementation of the policies has been refined over time and there have been significant updates to the best available science. So last year BCDC Regulatory managers identified the need for a guidance document as a priority project for Planning staff to complete and last fall former BCDC Coastal Planner Clesi Bennett and I began developing this guidance.

This guidance document will be a resource that is based on about nine years of implementing the Climate Change policies.

It will help BCDC permit applicants more easily understand permit requirements regarding climate change and flooding.

It will aid BCDC permit analysts in streamlining their analyses of proposed projects regarding climate change and flooding.

And it should be particularly helpful for the onboarding and training of new permit staff.

It can also help local governments who are working to create resilient and adaptable shorelines in their jurisdictions by integrating related measures into their general plans, zoning and/or discretionary approval processes.

As I mentioned, we began developing this project last fall, starting with scoping and organizing the Guidance.

During the research and drafting phase we reviewed past permitted projects and their risk assessments and adaptive management plans; we met with regulatory staff to discuss how they interpret and implement the policies, including what resources and tools they use; and we studied and synthesized the relevant, best-available science.

Currently, the second draft of the Guidance is in internal review by staff and later on in this presentation I will discuss some of the next steps for the project.

Now I will go through an overview of the content of the Guidance but it is important to mention here that some of the information in the following slides is subject to change since the Guidance is still in development.

The Guidance starts with an introduction that includes:

The audience and goals of the Guidance.

An overview of BCDC's jurisdiction and authority.

Some background information on the Bay Plan Climate Change policies.

And an overview of BCDC permitting.

The second part of the Guidance is really the core content. It is the Guidance on Climate Change policies and permitting.

It starts by going through each of the eight policies of the Climate Change section of the Bay Plan and expands on when and how they are applied, including:

Explaining key terms and phrases of the policies.

Describing tools and resources used by permit analysts such as the flood elevation table shown here.

Providing examples from past permitted projects.

Noting specific information that permit analysts would like included with application materials to help them analyze a project.

And drawing connections when certain policies are often used with other related policies and/or with certain Bay Plan findings.

This section of the Guidance also includes information on related Bay Plan policies that are not in the Climate Change section of the Bay Plan as well as Bay Plan policies that apply specifically to habitat projects and a section on how the Climate Change policies relate to BCDC's Adapting to Rising Tides Program.

Before I go over the other content of the Guidance, I will remind you what the eight Climate Change policies are.

The first Climate Change Policy frames how the following seven Climate Change policies should be used by the Commission by stipulating its jurisdiction and authority in relation to the policies.

Policy 2 requires "larger shoreline projects" to complete a risk assessment regarding sea level rise and flooding and it stipulates what information should be included in the risk assessment.

Policy 3 requires that when risk assessments find that the project has flood risks that threaten public safety, the proponent has to demonstrate how their project is designed to be resilient to mid-century projections of sea level rise, and if the project's life is longer than mid-century, an adaptive management plan may be required.

Here are a few examples of projects permitted by the Commission that were considered "larger shoreline projects" and required a risk assessment and adaptive management plan.

They include the Mission Rock Mixed-Use Development in the city and county of San Francisco permitted in June 2018, the Treasure Island and Yerba Buena Island Redevelopment Project which was permitted in September of 2016 and the Foster City Levee Protection Planning and Improvements Project which was permitted in November of last year.

The remaining five Climate Change policies are less often used in permitting.

Policy 4 is an advisory policy encouraging the special consideration for preservation and habitat enhancement in undeveloped areas that are vulnerable to future flooding and sustain habitat or species or could be enhanced to do so.

Policy 5 is also an advisory policy encouraging innovative adaptation approaches. For example, a horizontal levee such as the one shown here could be considered an innovative adaptation approach.

Policy 6 calls for a regional, sea level rise, adaptation strategy for protecting critical developed shoreline areas and natural ecosystems and enhancing their resilience and adaptive capacity. This policy also lays out specific recommendations for what the strategy should include.

Policy 7 says that until policy 6 is fulfilled, projects should be evaluated on a case-by-case basis to determine the project's public benefits, resilience to flooding and capacity to adapt to climate change impacts. This policy also includes specific types of projects that should be encouraged due to their public benefits.

Lastly, Policy 8 calls for coordinating project reviews regarding sea level rise and flooding with agencies that have overlapping authority and jurisdiction in order to resolve conflicting guidelines, standards or conditions.

The next section of the Guidance contains summaries of the relevant best available science and technical information to support the implementation of the Climate Change policies, as well as some tools and additional resources for further information.

It starts with background information on the State of California Sea Level Rise Guidance, shown here, which was most recently updated by the Ocean Protection Council in 2018 and contains the projections of sea level rise that BCDC uses in its programs and policy implementation.

It then includes an overview of the science of climate change and sea level rise and it provides information regarding key components of the Climate Change policies such as explaining the "best estimates of future sea level rise," what could be included in an analysis of "all types of potential flooding" that could impact a project and information on the "100-year flood elevation," which are three of the components required by Climate Change Policy 2 to be included in a project's risk assessment.

This section ends with a summary of potential impacts of sea level rise, flooding and related hazards.

Lastly, the Guidance includes an appendix with a list of frequently asked questions and the section of the Guidance that addresses or answers them. For example: permit conditions categorized by topic such as risk assessments, flood monitoring and adaptation planning. And we also plan to attach an example risk assessment and adaptive management plan such as the one shown here.

Next I wanted to mention some of the ways that this project follows the recently developed sea level rise principles for aligned state action which Mark Gold of the Ocean Protection Council presented to you at the last Commission meeting. This project is particularly well aligned with Principles 1, 3 and 5.

Principle 1 regarding developing and utilizing best available science because, as I discussed a few slides prior, a substantial portion of this Guidance consists of summaries and explanations of the best available science in order to ensure that this information is effectively used in the implementation of the Bay Plan Climate Change policies.

Principle 3 regarding improving coastal resilience communications, as this guidance is essentially intended to communicate the requirements of the Bay Plan Climate Change policies and explain how to effectively and efficiently ensure that projects seeking BCDC permits are consistent with the Climate Change policies.

And finally, Principle 5 regarding strengthening alignment around coastal resilience, because the information provided in this Guidance is consistent with and will be updated in response to future updates to the state of California Sea Level Rise Guidance. Further, this Guidance should support a consistent approach to implementing the Bay Plan Climate Change policies.

I want to conclude my presentation with the next steps for this project.

As I mentioned earlier, the second draft of the Guidance is currently in review by BCDC staff.

Once we have internal agreement we will share the Guidance for public review and comment.

Then we will bring the completed Guidance to another Commission meeting for your consideration and a vote to adopt.

Finally, we will conduct outreach to share the Guidance with BCDC permit applicants and local governments that could utilize it.

I want to thank you all for your time and attention during my presentation. I am happy to take any questions or comments that you may have.

Chair Wasserman asked: Peggy, do we have any hands raised by the public?

Executive Director Goldzband interjected: Chair Wasserman, may I ask one question?

Chair Wasserman replied: Yes.

Executive Director Goldzband continued: Thank you. I'm going to put Brad McCrea on the spot. The reason we do guidance is to ensure that BCDC staff and the public are aligned with regard to what the public expects and how BCDC works.

Amber said right at the beginning of her presentation that it was the Regulatory Program that asked the Planning Program — can you develop guidance that can be used?

Brad will you talk for just a minute or two about how the Regulatory Program will use this Guidance with regard to developing permits and working with applicants.

Mr. McCrea commented: Sure. Thanks Larry. Unscripted. If you go back to 2009, 2010 and 2011 it was groundbreaking work to create policies on climate change.

And no sooner were those policies adopted in 2011, then in 2012 and 2013 the staff all looked at each other and said: “how do we use them?” There are no models around the nation to determine how to use new climate change policies and applicants were wondering.

Over the last eight years we’ve done a pretty good job of getting into a groove. The regulatory managers have a pretty clear understanding of how to use the policies, how to implement the policies, how to interpret the policies and the regulated community equally has a far greater understanding.

The consultants that are out there advising their clients and the developers were some of the first early adopters of these policies and interpreting them.

And yet, and still, we have new staff that come and go all the time. And so we have to continually retrain people about how we use them, where do they work, and quite frankly, where they don’t work because we put these policies together eight or nine years ago.

They weren’t perfect. And as we go forward we will be making these better over time.

The consultants that represent developers, for the most part, those folks are pretty constant and have an understanding.

But this type of guidance, a hand-out if you will, something that people can pull up on the website and take a look at will really serve — it’s more of a lay-person document.

I am hoping that this document will appeal to a lot of different levels of understanding about the climate change phenomenon, with regard to BCDC’s policies and sea level rise. So someone could get a quick understanding of what we are all about and understand it. And then if someone wants more information they can dig deeper into other aspects of it.

Executive Director Goldzband stated: That is exactly what I was looking for. The one thing that you didn’t say and that you say a lot internally; and now I am going to spread the curtains — is that during these past eight or nine years you all have worked with the development community in an experimental fashion about how to use these policies because each place is different. It is all place based.

So what you all did, for example, with Treasure Island is different than what you did with Mission Rock which is going to be different than what you did with Foster City which is going to be different than what you do in the North Bay.

And so because the Bay is very place-based we’ve learned a lot over the past eight years about what has worked and maybe what hasn’t worked quite as well.

Mr. McCrea gave accolades: I’ll just join the chorus of people in saying, “thank you” to Amber for getting this put together and we are looking forward to getting it completed.

Ms. Atwell announced: Chair Wasserman, we do have one member of the public that would like to comment.

Mr. Jim Hausner addressed the Commission: Good afternoon, Jim Hausner with the California Marine Affairs and Navigation Conference.

Amber made a comment about public safety which caused me to want to take a little further look at it. While our numbers have not seen any issues in San Francisco Bay we have seen other issues along the coast with bathrooms and sea level rise in beaches and beach parking lots and the public-safety concept coming up.

We have basically told folks — well, if the beach is underwater and the parking lot is underwater, we are going to take the bathroom down. We don't see that as a public-safety issue.

But I did look at Policy 3 because it was mentioned and in one section it talks about public safety and ecosystem services and then later on in your document you talk about regional, public safety and economic prosperity.

And so when you have different words that mean different things to different people I hope that you would address those four items: regional public safety, public safety, ecosystem services as well as economic prosperity. Thank you very much.

Commissioner Gioia commented: Amber, thanks for this presentation. I think these guidelines are very important.

So this is being done under our Planning as opposed to Regulatory function. So presumably these guidelines can be used for projects that are either within our jurisdiction or projects in which these guidelines will be helpful even though they are outside our jurisdiction, correct?

Ms. Leavitt answered: The information in the Guidance is really catered around how the policies are used and implemented. So it really is kind of specific to our jurisdiction in terms of how the policies are used.

Commissioner Gioia clarified his question: But what I meant to say by that — our jurisdiction, take the 100-foot, shoreline band, there are projects that may be outside the 100-foot, shoreline band in which these guidelines will be helpful. That was my point, that we have only regulatory jurisdiction over projects around the Bay within the 100-foot shoreline band but there are projects in which resiliency to sea level rise will be relevant, projects that are outside the shoreline band.

So that was sort of the question that I was getting to is that anyone who has a project affected by sea level rise could utilize this guidance whether or not they are within our regulatory jurisdiction.

Ms. Leavitt responded: Yes, that is definitely true. The Guidance documents how we used the policies over the eight or nine years since we have had them. So there are definitely best practices captured in there and people outside of our jurisdiction can learn from how we use risk assessments and how we analyze flooding and things like that. So to the extent that they can learn from examples and how we use and implement the policies.

Commissioner Gioia continued: To our Planning staff that will hopefully be encouraging applicants to look at this — how are you envisioning really working with applicants on this?

Ms. Leavitt replied: So we haven't fully thought through the outreach component. We do hope to utilize a form of an Advisory Committee, hopefully consisting of potential applicants and local governments to get their perspective on what we have developed so far.

And after we've received the Commission's approval on the Final Guidance we do hope to do some form of outreach but whether that is presenting to collaboratives such as the BayCAN, local government networks or other platforms like that.

Commissioner Gioia continued: But I'm thinking — when an applicant comes in seeking pre-application advice, we'll have a process in place that encourages them to look at this guidance.

Planning Manager Fiala chimed in: I can jump in to help you, Amber. It has been a pleasure to supervise Amber for the past year and have her on my team.

Commissioner Gioia, I would say that how we envision our regulatory staff using this document is as a resource. For example, if we have an applicant who has never applied or worked with the Bay Plan Climate Change policies in a permit — this is a link that we could share with them that would provide them with examples of projects that have been permitted over the past eight or nine years that would serve as a resource for permitting but also the science.

And likewise, we would add planning staff to BCDC and particularly through our Adapting to Rising Tides Program we'd be happy to work with local governments who are interested in taking Bay Plan Climate Change policies and trying to integrate them into local, general plans if a local government is so inclined.

Commissioner Gioia stated: Actually, that is a great idea in terms of putting these in general plan policies.

Chair Wasserman interjected: I want us to be a little more ambitious. My hope is that we will promulgate these guidelines not by simply sending them out but by holding workshops which are related to the ART Program as well as related to BayAdapt so that local jurisdictions as they are processing projects on the shoreline do pick up these guidelines and incorporate them into their review of applications and their permitting process as well as incorporating them into their general plans.

Commissioner Gioia asked: So when are these going to be actually coming to us for approval?

Ms. Fiala replied: We have been hopeful that we could get it done by July by COVID-19 has impacted the timeline. We are trying to get internal agreement on the Guidance and then we are hoping to get feedback from an ad hoc advisory committee, hopefully with folks from BayCAN and other local government staff and potential applicants.

So we are not entirely sure when this will be tentatively scheduled for a Commission vote.

Commissioner Gioia continued: I have sort of a legal question. Will this rise to the level of becoming a best practice as a CEQA guideline?

Ms. Fiala explained: BCDC's processes have CEQA equivalency but I don't think this would impact the CEQA process in any way.

Commissioner Gioia opined: I think it would be good if it did actually. I am saying to take a bold approach that is why I was wondering from a legal standpoint because a few years ago those of us on the Air District remember when the Air District actually adopted some CEQA guidelines and then after some litigation pulled them back and what the land-use lawyers all said is — they've already risen to the level and it is going to guide development anyway that deals with air-quality issues but I was wondering of the legal status of these.

Ms. Fiala cautioned: We would be very careful in releasing these guidelines to not be creating any kind of underground regulations. We are simply reporting to the public how these policies have been interpreted over the past eight or nine years.

We wouldn't want to include any detail that wasn't already included in the policies themselves which have been adopted by our Commission. This would simply be a Guidance that the Commission would approve through a resolution. It wouldn't actually be an amendment to BCDC's policies.

Commissioner Gioia responded: I hear what you are saying. I wonder how the lawyers feel about whether it will become a standard.

Mr. Zeppetello commented: I think we would have to give that a little more thought. So far we have looked at the issue of underground regulation or not. But we don't want to run afoul of someone challenging the Guidance because it is mandatory.

But to your question about this becoming a CEQA best practice — time could be the test of that and if they become widely used or if we got direction from the Commission perhaps to promulgating some aspect of them — from my quick review so far, it is a very lengthy document, so there may be parts of it that could be distilled into what you are sort of getting at as sort of if there is a stepwise, steps that should be taken in analyzing these issues.

So it could come to that but I don't think it would start as that. I think we would have to see how it works in practice and if it becomes more widely used it could over time become a best practice or we could take action to make that more official.

Commissioner Nelson noted: This is both good news and bad news. The good news is that the Commission has an extraordinarily ambitious climate change, sea level rise effort. The challenge there is just helping to make sure the Commission always understands how these parts fit together or not.

Ms. Atwell stated: Chair Wasserman, no more hands are raised.

Chair Wasserman continued: All right. This is not on for us to take official action. Thank you very much Amber and everyone for the report.

This is going to be a very, very important document and a very important part of our efforts to lead this region into figuring out how and a regional and local level we are going to adapt to rising sea levels.

And with that, unless any Commissioner has something they want to offer, that brings us to Adjournment. I would entertain a motion to adjourn.

12. **Adjournment.** Upon motion by Commissioner Wagenknecht, seconded by Commissioner Nelson, the Commission meeting was adjourned at 4:12 p.m.