

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190
State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

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TO: All Commissioners and Alternates

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

SUBJECT: Draft Minutes of February 18, 2021 Virtual Commission Meeting

1. **Call to Order.** The virtual meeting was called to order by Chair Wasserman at 1:01 p.m. The meeting was held online via Zoom and teleconference.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted (represented by Alternate Chappell), Commissioners Addiego, Ahn, Beach, Butt, Chan (represented by Alternate Gilmore), Eckerle, Eisen, Gioia, Gorin, Gunther, Lee, Lucchesi (represented by Alternate Pemberton), Moulton-Peters, Peskin, Pine, Ranchod (represented by Alternate Nelson), Randolph, Showalter, Spering (represented by Alternate Vasquez) and Vacant (represented by Alternate Hillmer). Senator Skinner, (represented by Alternate McCoy) was also present.

Chair Wasserman announced that a quorum was present.

Not present were Commissioners: Napa County (Wagenknecht), U.S. Environmental Protection Agency (Ziegler), Department of Business Transportation & Housing (El-Tawansy), Department of Finance (Vacant)

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

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, and this applies to everyone, please make sure you have your microphones or phones are muted to avoid background noise. For Commissioners, if you have a webcam please make sure that it is on so that the public can see you. For members of the public, if you would like to speak either during our open public comment period or during a public comment period that is part of an 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 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 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 hand. Second, if you are joining our meeting via phone, you must press *6 on your keypad to unmute your phone to make a comment. We will call on individuals who have raised their hands in the order that their hands were raised. After you are called on you will be unmuted so that you can share your comments. Remember, you have a limit of three minutes to speak on an item.



Please keep your comments respectful and focused; we are here to listen to everyone who wishes to address us, but everyone has the responsibility to act in a civil manner. We will not tolerate hate speech, threats made directly or indirectly, and/or abusive language. We will mute anyone who fails to follow those guidelines or who exceeds the established time limits without permission.

Every now and then you may hear me refer to the meeting "host" — our BCDC staff are acting as hosts for the meeting behind the scenes 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@bcdc.ca.gov. I have received emails from nine parties 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 bcdc.ca.gov along with the public comment emails we already have received.

That brings us to the Public Comment Period. If anyone wishes to address us on an item that is not on the Agenda you will have three minutes to do so.

I do want to make a brief comment. I know that there are nine comments about a project that is not on our Agenda and has not been on our Agenda thus far, in Newark.

There is some question as to whether we have jurisdiction. We believe we have jurisdiction and staff is in consultation with the government agencies involved in that.

Members of the public are absolutely entitled to speak on this item today and we will listen to you. But I want to make sure that everyone understands it is not on our Agenda, we cannot take action on it, and in fact, we really cannot make responses to you because it has not been agendized as an item and therefore as a matter of due process we can listen but not do anything else.

And my only additional element is, as I do whenever there are a significant number of speakers on a particular item, is ask you to try not to be repetitive; or if you are simply endorsing what has been said to say that and then anything different and then yield what time you may. With that, Peggy, please call those who have signed up to speak in the order they signed up.

Ms. Atwell replied: Okay. Arthur Feinstein, I am going to call you first and after Arthur is going to be Jana. Arthur, go ahead and unmute yourself and you have three minutes. State your name for the record, please.

Mr. Feinstein addressed the Commission: Hi, Chair Wasserman and Commissioners. I am Arthur Feinstein. Nice to see all of you, and those of you who I have talked to for many years. I am the Chair of the Sierra Club State Conservation Committee but I am talking on a local issue because it actually is pertinent to what happens around the state.

There will be other speakers talking even more specifically about this project but I am going to talk about the broader picture of why this project should matter to you. We want to express appreciation that you are considering and think that you have jurisdiction; we totally agree with that and we appreciate that very much.

The area we are talking about is called Area 4 in Newark. It is about a 460, 480-acre, historic, tidal marsh. It has been now a muted tidal in some places, other kinds of wetlands in other places, it has the salt marsh harvest mouse, it has a lot of wetland associated species. It has the opportunity to address sea level rise by letting our tidal marshes migrate inland which is one of the very few opportunities we have to ensure that we will have tidal marshes into the future because of sea level rise and the drowning of the marshes that we have now.

Statewide, your Bay Adapt process has found, with the Ocean Protection Council, that two-thirds of the state's tidal marshes are in San Francisco Bay. Two-thirds, it is an enormous amount. And we all know how important tidal marshes are to our aquatic ecosystem, the fish and wildlife that lived there and what makes our world livable.

Two-thirds right here, so any loss is significant. And yet we know we are going to be losing wetlands due to tidal inundation due to sea level rise, so we need areas where the marshes can move upland a little bit. Area 4 provides that. You will hear more about the project again specifically later on.

The Sierra Club, who I speak for, and many other organizations and individuals, 4,600 people have signed a petition, of which 800 have actually written extensive comments, which is very unusual, that large a number on a petition expressing concern about the development proposal that has taken place by the city of Newark on these lands.

So, we are urging you to take all the steps you can and we really appreciate hearing that you do believe that you have jurisdiction to preserve these lands and historic wetlands so that the Bay can have wetlands into the future. And on that note, thank you.

Ms. Sokale was recognized: Good afternoon, Chairperson Wasserman, and honorable members of the Board. My name is Jana Sokale and I am a member of the Citizens Committee to Complete the Refuge and a resident of Newark.

I am here today to provide an update to my December 2020 comments regarding the Area 4 Project located at the head of Mowry Slough in the city of Newark. These over 500 acres of historic, Bay lands formerly known as the Whistling Wings and Pintail Duck Clubs, have been proposed for development of 469 luxury housing units requiring 15 to 18 (audio faded).

We appreciate comments BCDC has submitted regarding the proposed project and we appreciate your agency's options to assert regulatory authority over these lands.

Today, Citizens Committee and our partners, Center for Biological Diversity, Greenbelt Alliance, Sierra Club and San Francisco Baykeeper, present you with 4,665 petitions from the residents of Newark and around the region who urge you to exercise your full, regulatory authority to challenge this terribly-flawed, development concept and to protect these Bay lands from 1.67 million cubic yards of fill.

As Arthur mentioned, more than 800 people provided personal comments on this petition. They spoke about the land, its importance, and their hopes for the future of the Bay. I encourage you to read their comments.

Restoring the wetlands and transitional habitats of Newark Area 4 offer us a significant opportunity to fight climate change, advance climate resilience and promote and protect the biodiversity of San Francisco Bay in support of numerous regional, state, and federal goals, including most recently 30 by 30, to conserve 30 percent of our lands and waters by 2030. Restoration of the varied marsh and transitional habitats will help to store carbon in addition to maintaining a critical flood buffer for communities.

Area 4's rare landscape of wetlands and native species allows these areas to migrate inland as sea level rises. Today these lands are undeveloped with no infrastructure west of the Union Pacific Railroad tracks, the inland border of the property. There are historic tidal wetlands, slough traces, brackish marshes, freshwater seeps and drainages and transitional, upland habitats. These lands are worthy of your closest attention.

In December 2019 Citizens Committee and Center for Biological Diversity filed a CEQA lawsuit. On Christmas Eve we learned that the trial court had ruled against us. However, our attorneys believe that the trial court was not responsive to our arguments so earlier this month we filed an appeal with the first District Court of Appeal in San Francisco.

We encourage your agency to continue to exert the full extent of its regulatory authority to protect San Francisco Bay from ill-advised projects such as the one proposed on these remarkable lands. Thank you for your time today.

Ms. Belenky commented: Thank you. This is Lisa Belenky, I am a senior attorney with the Center for Biological Diversity. I do not want to repeat too much of what Jana and Arthur have said but the Center for Biological Diversity certainly agrees with all that they have said and we do urge you to look at this project when it comes before you very, very carefully.

The Center for Biological Diversity, our workflow focuses primarily on imperiled species and their habitats and we work specifically to preserve critical, ecosystem functions that are needed to sustain all life on earth.

I as a Bay Area resident am very aware of how our Bay affects everything we do in our lives. It moderates our weather and it provides for many, many services, including our fabulous views and our proximity to wildlife in the ocean, so it is very important to preserve these functions.

The one thing I think I wanted to just put a little more detail on is that the adaptation issue is extremely important and very well presented in this case. Because what you have are existing wetlands and very, very low uplands; and what the current proposal is, would bring in fill on those uplands. So technically not filling in the wetlands but filling in the low uplands and creating these towering islands and putting housing on top of them. And those islands would not just be fill but they would be hardened with riprap or other construction techniques, so you have created a situation where there is no adaptation possible at that point.

And we know this area is the home to the salt marsh harvest mouse and other endangered and imperiled species that utilize these habitats. So the loss of these wetlands and these adjacent low uplands is really critical to these species.

And when you harden areas, and I know that most of you on this board certainly understand this, when you harden them there is no adaptation possible, you have created a wall and that that wall is not something that either plants or animals can really adapt to. They have to either be extinguished or try to find a way around it. So I just wanted to point out that aspect of this project. When it comes before you I am sure we will have much more to say and I thank you for your time today and urge you to exercise your full authority on this project when it comes before you. Thank you.

Ms. Foote was recognized: Hello, everyone. My name is Julia Foote. I am a staff organizer with the Sierra Club SF Bay Chapter and I am here with the Save Newark Wetlands Coalition.

In emphasizing why this development should not move forward I really want to bring attention to a meeting that I and three other environmental advocates had with the mayor and city manager of Newark back in the fall of 2019. When we were trying to discuss the importance of preserving these restorable wetlands and the impact of developing along the shoreline we had to define the words wetland, ecosystem and ecosystem services for the mayor and city manager so that they could follow along with our argument.

Leaving that meeting I was really deeply troubled that it was possible for people who do not have the knowledge to understand the true consequences of their actions to be able to make such destructive decisions. Not only was it really troubling that they had no regard for what this profit motive meant for the health and biodiversity of the Bay, but it was really clear that they did not consider the consequences of this decision on other shoreline communities of the Bay that we all share or on future generations.

As a young person I did try to offer my perspective as someone who will have to live with the consequences of the actions that decision makers take today. And when I heard that this project was moving forward I felt yet another sting of my generation not being heard, offer short-term gains for people who do not care to understand or learn about what they destroy.

So I am here to ask you to consider what kind of precedent this project would set for development into the future. What that means for my generation and the frontline communities that are already burdened with cleaning up the disasters that were not stopped when communities and advocates warned against them.

I am encouraging your agency to consider just the sheer incompetency surrounding this development decision and to continue to exert the full extent of your regulatory authority to protect the San Francisco Bay, its precious habitats, communities, and future generations from this disastrous project.

I want to close with a personal comment from one of our petition signatories. Kathy from Menlo Park signed our petition and said — Our Bay lands are an irreplaceable resource and protecting them is our responsibility. Given that they are also among the most important opportunities for adaptation to a changing climate, it is absolutely irresponsible to current and future generations to proceed with this development. Thank you so much for your time.

Ms. Brennan commented: Thank you. Good afternoon to everyone present. My name is Jessica Brennan and I am representing Greenbelt Alliance, an environmental organization with over 60 years of history here in the Bay Area. Our focus is both to protect open spaces and to foster climate smart that sustainable, mixed, affordable, resilient, and transit-oriented development throughout the region to achieve climate resilience.

First, I would like to share a testimonial from one of the 4,655 people who supported our petition to save Newark wetlands. Stacy Woolney from Campbell said, how is it that given everything we know about how much we have already destroyed, about the likely impacts of sea level rise, about the insane inequality of the housing market, anyone anywhere thinks this is a good idea? We need more wetlands to protect us from climate change. We need to reimagine housing to be fair and affordable for everyone. This is exactly the kind of proposal that we need to loudly reject and start doing things in a reality-based, sustainable way.

So in light of the testimonials we heard and our understanding of this project, I want to encourage and support BCDC to execute your full, regulatory authority to protect Newark's Area 4 wetlands and shoreline.

In addition to the immense impacts a project like this has on the environment, our communities are already experiencing firsthand the impacts of extreme climate events. It is critical to maintain natural infrastructure like wetlands as a method of flood protection and buffer to sea level rise. We need to think differently about how we accommodate the growth of our region without putting current and future residents at risk of climate impacts.

Newark Area 4 is located in a 100-year, FEMA-flood zone that is anticipated to be completely inundated by sea level rise and contains significant wildlife habitat and restoration potential.

We all need to work together to quickly increase the resilience and adaptability of our communities and environment, not make these problems worse, as this development proposal would do.

Building luxury homes in a 100-year floodplain does not solve our housing crisis and it certainly does not build climate resilience. The time for bold action and leadership to direct growth away from places like Newark's Area 4 and towards urban centers is now.

The science is clear that if we are to achieve our region's goals of fighting climate change, building climate- smart cities and increasing resilience, we must preserve places like Area 4. We thank BCDC for your years of strong engagement on this project and once again encourage you to continue to do the right thing. Thank you for your time.

Ms. Atwell announced: We have no more public comment, Chair Wasserman.

Chair Wasserman moved to Approval of the Minutes.

4. **Approval of Minutes of the February 4, 2021 Meeting.** Chair Wasserman asked for a motion and a second to adopt the Minutes of February 4, 2021.

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

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

5. **Report of the Chair.** Chair Wasserman reported on the following: I would like to recognize that newly-elected Santa Clara County Supervisor, Otto Lee who is attending his first BCDC Commission meeting and welcome you to the Commission. Supervisor Lee — would you like make any comments?

Commissioner Lee spoke: Yes, thank you very much, Chair Wasserman. Good afternoon, I am honored to be joining you all as a Commissioner. I was recently elected to represent the District 3 of Santa Clara County as a supervisor which represents North Sunnyvale, Milpitas, Alviso and Berryessa all the way to the Evergreen District representing about 400,000 residents.

I have served on the Sunnyvale City Council previously for about eight years. I am also a retired Navy supply officer after 28 years. As a Navy commander I retired a couple of years ago. I have also practiced law for over 25 years as an intellectual property attorney. Thank you very much.

Chair Wasserman continued: I would like to ask Commissioner Gilmore to provide a brief summary of the Enforcement meeting held on February 11th.

Commissioner Gilmore replied: My memory of that meeting has totally gone out of my head. I would pass this off to Karen or Priscilla.

Ms. Karen Donovan commented: Hi, this is Karen. I'm not sure if Priscilla is present but Priscilla would actually be the most equipped to provide a briefing; not that I'm trying to pass the buck but only because the briefing was largely centered on information for the newest member of the Enforcement Committee, Commissioner Wagenknecht.

So Priscilla did go over some of the details on the great progress that she and the rest of the team are making in reducing the case load and resolving some of the oldest cases and some of our particularly complex cases.

And then we largely used the last meeting as an opportunity for Commissioner Wagenknecht to get familiar with his new role on the Enforcement Committee.

Ms. Priscilla Njuguna commented: Good afternoon, Chair Wasserman and thank you Karen for your help in giving a summary. The only other thing I wanted to mention that we brought up during the Enforcement Committee on the eleventh was a broader discussion about the Union Point Park Cease and Desist Order and the related compliance in terms of the homeless community that is in that area and the broader community that has worked tirelessly since 2005 to get Union Point Park better available to members of the public as was originally envisioned but hasn't been a reality for a number of years.

And so as part of that conversation during our Enforcement Committee meeting we had mentioned to the members of the Committee that there are ongoing concerns related to homeless encampments in the city of Oakland that are close to protected waterways and so the impacts of those encampments are felt by the broader community as well as the people who are homeless.

And so BCDC is not ignorant to the broader issues that are happening on the ground but we're continuing to work with the city of Oakland and other cities that are similarly situated to address such issues.

But that is all I have in terms of the summary of the previous Enforcement Committee meeting pending any questions.

Chair Wasserman asked: Are there any questions for Priscilla or Karen? (No questions were voiced)

I do not have a lot to report in general. There have been a number of productive meetings regarding Bay Area Adapt and that is moving forward. We will have another presentation in the relatively near future to the Commission.

And as we all know our Bay continues to be affected by rising sea level. And it will only increase much more than we expect. We will get into this in some future meetings and we certainly will with Bay Adapt.

We all know but often forget, scientists are careful, thoughtful, and thorough in their work and that tends to make them conservative. In the issue of projecting potential disasters such as rising sea level may impose on our Bay, on our people, on our habitat; that may not be the best approach. We all need to do all we can to reduce greenhouse gas emissions but we continue to emit more than we had hoped for and not meet our goal. In addition to the failure for many other aspects of our lives including fire and the breathability of air — it has an impact on how fast and how high the seas are going to rise.

So our job continues to be very, very important on that ground as it does on our regulatory and planning side.

A number of you have received a phishing email allegedly from me. Several of you have let me know about this. I've talked to my IT department. I cannot do anything about it. Please, if you get something from me, but this is generally true, be careful. Even if you think it is somebody familiar — look at the full email address. If something looks funny about it don't open it.

Send it to somebody. Ask about it. You all have staffs of various kinds if you don't have teenagers in your house who are some of the best IT people as we know.

So I apologize but there is nothing I can do to correct that. Be careful out there. It is a dangerous place.

a. **Next BCDC Meeting.** We will not need to hold a meeting on March 4th. Our next Commission meeting will be on March 18th. At that meeting we expect to:

- (1) Hold a possible public hearing on the proposed amendments to our planning and permitting regulations;
- (2) Have a briefing on the Bay Adapt Initiative; and,
- (3) Hold a briefing on our Enforcement Program.

b. **Ex-Parte Communications.** The last item is ex-parte communications. In case anyone wishes to disclose an ex-parte communication they have not already registered keep in

mind that you do need to register it in writing. Does anybody wish to report an ex-parte communication at this time?

Commissioner Peskin chimed in: Chair Wasserman?

Chair Wasserman acknowledged: Yes.

Commissioner Peskin continued: Thank you Mr. Chairman. With regard to the last item of this calendar — in my role as a supervisor I don't believe that this is an ex-parte communication; I have communicated with the Port of San Francisco in the form of Elaine Forbes as it relates to the Exploratorium informational item.

I don't believe it requires me to fill out any forms but I would like to fully disclose that.

Chair Wasserman responded: I very much appreciate that. It does not because it is not yet reaching the level of an adjudicated matter. We will discuss that when we get to that item but thank you for the report.

Commissioner Peskin added: And in the same breath I actually did something rare which is I actually communicated with staff (laughter).

Chair Wasserman acknowledged: Thank you. That brings us to Item 6, the Report of the Executive Director. Larry, take it away.

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

Few books published in the United States have caused as much discussion about the purpose of literature as "The Adventures of Huckleberry Finn," which was published 136 years ago today.

I happened to re-read the book a couple of months ago thanks to the pandemic and I was struck by the sentence that actually begins the pair's travels down the Mississippi River. The people in town have figured out that Jim, an escaped slave hiding from Miss Watson, is on a small island in the river, so Huck convinces him to escape at night on a raft and their adventures begin.

As they begin to travel down river, Huck says some very famous words that have many meanings: "Stars and shadows ain't good to see by." Here at BCDC we interpret that sentence to mean that we should be as transparent as possible as the Commission and staff analyze issues and propose solutions. Chair Wasserman and I started our efforts at transparency soon after we joined the team by initiating a very transparent and new type of strategic planning process. And, as our current Strategic Plan Update has an end-date of 2021, we'll start working on a new process during the second half of this year with all of you.

a. **Budget and Staffing.** Yesterday, I appeared before the Assembly Budget Subcommittee with jurisdiction over the Natural Resources Agency and its departments, boards, and commissions. BCDC was asked to testify on behalf of the Governor's proposed budget that includes a second, three-year authorization to use the Bay Fill Cleanup and Abatement Fund to provide funding for BCDC Enforcement staff salaries.

Just a check-in here; you will remember that the Cleanup and Abatement Fund is the fund into which fines collected by BCDC are deposited. Two years ago, as the Enforcement Audit was getting underway, the Legislature and the Governor agreed that the fund should continue to be used to pay staff salaries as it has been for well over a decade, and further authorized BCDC to hire both an Enforcement manager and an Enforcement attorney who would be paid through the Fund. That three-year authorization will expire at the end of this fiscal year, June 30th.

During yesterday's hearing I was pleased that Assemblymember Mullin complimented BCDC on its progress in moving the Enforcement Program forward. Then, as we expected, he asked the Department of Finance to explain its rationale for using the Bay Fill Fund to pay for part of our Enforcement staff instead of using the General Fund.

You will remember from last fiscal year that Mr. Mullin attempted to substitute General Fund dollars for Bay Fill dollars to pay for our Enforcement staff as recommended by the State Auditor but later acceded to the Department of Finance.

Yesterday, the Department of Finance gave two specific examples of other Resources Agency departments that use such a special fund for staff salaries. However, Mr. Mullin did put BCDC and the Department of Finance on notice that he will work with his Senate counterparts to present to the Governor a budget that ends BCDC's ability to use the Bay Fill Fund for Enforcement staff purposes.

Should he continue in this direction, we shall work with his staff and the Department of Finance to ensure that BCDC's budget is not affected overall and that it will continue to support our Enforcement staff.

b. **Policy Issues.** I want to take a few minutes to ask Viktoria Kuehn of our staff to give you a short synopsis of a new publication that BCDC spearheaded — the Dredger's Handbook.

Viktoria is our Sediment Management Team's 2020 Sea Grant Fellow. She has degrees from Loyola Marymount University and the University of San Francisco and has been working on a number of projects for BCDC including a tool that incorporates the latest eelgrass data into a mapping program for dredging projects and the Dredger's Handbook which is a guide to the complicated requirements required of dredgers who work in the Bay.

As Viktoria will complete her fellowship in April, we think it's appropriate for her to share this important public-outreach document with you and then we'll ask you to share it with your networks. Viktoria, if you'll take a couple of minutes — it's all yours.

Ms. Kuehn presented the following: In collaboration with other agencies we recently finished developing the San Francisco Bay Dredger's Handbook and this is a guide on the testing, permitting, and reporting process for maintenance dredging in the San Francisco Bay. We thought you would be interested in hearing about our process and the final handbook we developed.

Some brief background. All maintenance dredging projects in the Bay are authorized through the Inter-agency Long Term Management Strategy for Placement of Dredge Material in the San Francisco Bay Region, otherwise known as the LTMS Program.

The agencies involved in this program are listed here. Because the Dredger's Handbook describes an inter-agency process we collaborated with all of these agencies to ensure that pertinent details were included in the Handbook and described accurately.

We primarily communicated with the core LTMS partners before Dredge Material Management Office or DMMO meetings to discuss the Handbook about once every two months, and then we communicated with individual agency staff between meetings. Additionally, we reached out to stakeholder groups for final review of the Handbook.

So why develop a Dredger's Handbook? The dredge maintenance process in the Bay is quite multi-faceted and no single document exists explaining this process. Because of this DMMO staff often had to clarify information for applicants who were confused about programmatic elements and they also had to update applicants on new information on an individual or project-by-project basis.

The goal of this Handbook is to develop a short guide as a reference for describing all aspects of environmental compliance for maintenance dredging in the Bay. The primary audience is small, new, or infrequent dredgers, although we hope this will become a resource that makes maintenance dredging more accessible to interested stakeholders, the broader agency staff, and the public as well.

Briefly, the Dredger's Handbook content is structured around this flowchart that was revamped from the original LTMS Program Management Plan written in 2001. It broadly covers the permit process, the sediment characterization or sediment testing process, the dredge-episode, approval process and the post-dredge, submittal requirements.

Now I would like to walk you through a few pages of the actual Handbook.

Here is the introduction where we started off by showing the LTMS Program planning area.

Here are some design elements that helped keep the document short yet informative. We included summary tables with links to detailed, reference material, footnotes throughout the document that link to more resources, pop-outs that describe terms or concepts geared towards a less familiar audience. And then we also included photos as opportunities to educate the reader about various types of equipment and operational processes.

Now I would like to walk you briefly through the appendices which we relied on heavily to keep the body of the Handbook as short as possible. We provided an updated, dredged-sediment, placement, location figure in Appendix A.

Appendix B is a series of one-page descriptions from each LTMS agency and this gave agencies room to provide additional information that is important to their own process.

Appendix C is an updated, environmental, work-windows chart.

And then lastly, Appendix D is a graphic showing tips for developing a successful, sediment-sample, analysis- results figure. This was made based off of figures that the DMMO has received from applicants that were particularly useful when reviewing projects.

In summary, we took a process that has evolved since its creation 20 years ago; spans the regulatory purview of nine agencies; takes into account complex physical, hydrological, chemical, biological, and logistical processes; has over 2,600 pages of relevant reference material; and organized into a 22-page Handbook with appendices.

With that, this was a huge team effort so we just wanted to thank both BCDC staff and external partners who helped make this possible. And then I would like to invite everyone to download the Dredger's Handbook from the BCDC website where it is now available. Thank you.

Executive Director Goldzband continued: Thank you, Viktoria. You will find a copy of the Dredger's Handbook attached to my summary of the meeting today. In addition, if you have any questions about it feel free to contact Viktoria on our staff or Brenda Goeden on our staff, commonly known as the doyenne of mud, because she definitely is our resident expert on dredging. We certainly will be able to answer almost any question you have, more than likely, and we will get you any answers that we do not know.

And I think it is really interesting that we had the Dredger's Handbook today because you will remember that Samuel Clemens took his pen name, Mark Twain, from the marks on the twine that the Mississippi River boats used to use to determine the number of feet of freeboard they had underneath their keelless boats, and that is where the Mark Twain or mark on the twine actually comes by. Because each twine was set at six feet with different marks and so the people in the front of the riverboats would yell out how many marks on the twine there were to ensure that nobody ran aground. Wouldn't Mark Twain be interested in the Dredger's Handbook?

Let me complete my ED report by making sure that you did hear about the oil spill last Tuesday at the Richmond Long Wharf where a mixture of diesel and wastewater was released from a Chevron Refinery pipeline into the Bay. Approximately 500 to 750 gallons of the diesel-water mixture were released in a little over an hour before the leak was stopped.

The Coast Guard and OSPR led the response with the Chevron Refinery utilizing on the ground and virtual communication methods.

The spill appeared as a sheen and was cleaned using booms and pads. Environmental impacts to the shoreline were minimal as the spill was restricted to one small beach immediately adjacent to the wharf and required little cleaning. There were no reported impacts to wildlife or fisheries and no injuries were reported.

The pipeline has been sealed and decommissioned and no BCDC regulatory actions were required, though our staff began to monitor the situation last Tuesday, participated in daily updates, and has been in communications with the Spill Response Team.

Finally, Chair Wasserman, one more reminder for all Commissioners and Alternates and staff — FPPC Form 700s are due on April 1st which happens to be the date of our first Commission meeting that month.

That completes my Report, Chair Wasserman, and I would be happy to answer any questions.

Commissioner Gioia chimed in: I have a comment. I want to add and perhaps Mayor Butt may want to add — with regard to the spill; I don't want to have the perception to be to under play what happened. It was a spill into the Bay. Contra Costa County has the most stringent, local, industrial, safety ordinance in the country and Richmond has adopted it.

Our Industrial Safety Committee which is myself and another member of our Board are meeting next week and will be ordering a third-party, independent investigation into a root-cause analysis. Now normally Chevron will perform its own incident investigation but under our Industrial Safety Ordinance we have the ability to also seek a third-party investigation.

Whenever a pipeline fails there are always concerns about practices. Some of you may remember the 2012 Chevron fire which was the result of a leak in a corroded pipe. So we take this very seriously because we don't want to see this happen again. I believe the leak actually went for two hours, from about 2:30 to about 4:30. I just wanted to add that.

It is true that, so far, it appears that it was minimal damage to the shoreline. The Resource Agency indicated that they were still looking at any potential damage to habitat.

Commissioner Butt commented: I can't add much to that. I think we dodged a bullet. It could have easily been very, very much worse. As Commissioner Gioia said, we'll be moving forward with a root-cause analysis and hopefully we'll learn things that can make the operation safer in the future.

Chair Wasserman asked: Any other questions for the Executive Director or comments on his literary taste? (No questions were voiced.) Seeing none, that brings us to Item 7 which is a Consideration of Administrative Matters.

7. Consideration of Administrative Matters. Chair Wasserman stated: We have received a list of the matters dealt with since our last Commission meeting and Regulatory Director Brad McCrea is present if you have any questions for him. (No questions were voiced)

8. Public Hearing on Proposed Amendments to the Commission's Enforcement Procedures Regulations. Chair Wasserman announced: That brings us to Item 8, which is a public hearing on the proposed amendments to the Commission's enforcement procedures regulations. Chief Counsel Marc Zeppetello will introduce this item.

Chief Counsel Zeppetello spoke: Good afternoon, Chair Wasserman, Commissioners. As the Commission will recall, on October 15th of last year I provided a briefing and the Commission held a public hearing on a comprehensive set of proposed amendments to the Commission's enforcement regulations, including a proposed administrative civil penalty policy. Following the hearing the Commission authorized staff to initiate the rulemaking process that would lead to adoption of proposed amendments, which we have done.

On December 29th we circulated a Notice of Proposed Rulemaking to a list of interested parties and the Office of Administrative Law published the Notice of Proposed Rulemaking, which commenced a comment period, which has exceeded the minimum 45 days required and has run from late December through today.

We also posted on the Commission's website the Notice of Proposed Rulemaking, the text of the amendments and a document known as the Initial Statement of Reasons which is a document required by the Administrative Procedure Act that provides an explanation and rationale for each of the proposed changes, also has a section on the anticipated economic impacts and benefits of the proposed regulations and has a section on alternatives.

On February 5th we mailed and posted a staff report for the hearing today, which provides a background section on the proposed amendments, summarizes the proposal, and discusses the potential alternatives to the regulatory action. The staff report was accompanied by the text of the proposed amendments, the Initial Statement of Reasons, and the Notice of Proposed Rulemaking.

Today, the Commission will hold a public hearing on the proposed amendments, and this is also an opportunity for the Commission to provide any comments or direction on any further modifications of the proposal. The Commission will not be taking any action on the proposed amendments today.

Following the public hearing and the close of the public comment period this afternoon, staff will prepare a written response to comments. We will make any necessary modifications to the text of the proposed amendments; and if there are substantive changes, we are required to reissue the revised text for a 15-day review period.

After that we would bring the matter back to the Commission at a future meeting, at which point the Commission would consider adopting the proposed amendments, including the penalty policy. Assuming the Commission adopts the amendments, we would then submit a package to the Office of Administrative Law for their review and approval to make sure that we complied with all the requirements of the Administrative Procedure Act.

Today I am not going to review the amendments as I did on October 15th, but I would like to briefly address the potential alternatives as set forth in the staff report and the Initial Statement of Reasons.

In considering the alternatives, I would also note or repeat the objectives of the proposed amendments, which are to promote transparency, consistency, and fairness in the enforcement process and to strengthen the deterrent effect of the Commission's enforcement program. The staff report and the Initial Statement of Reasons presents five alternatives. This is a requirement of the Administrative Procedure Act, to consider alternatives.

The first alternative is the "no action" alternative, that the Commission would not adopt any of the proposed amendments and would continue to implement the enforcement program under its existing regulations. Obviously, that is not a recommended alternative.

The second alternative would be to adopt all the proposed amendments and the administrative civil penalty policy, but not the proposed increases in some of the standardized fines. These are the fines that are authorized by regulation when an enforcement matter does not come to the Commission but when the staff sends a notice of violation and the violator has an opportunity to resolve the violation within 35 days; and then if the violation is not resolved, the fines kick in and escalate over time.

The staff did a comprehensive analysis of the existing standardized fees and has proposed some relatively modest adjustments and increases to promote internal consistency among the various categories of violations and also to increase the deterrent effect of the standardized fine. So, we do not recommend Alternative 2 either.

The third alternative would be to adopt all the proposed amendments, including the penalty policy, with everything except for the final section of the penalty policy, which establishes requirements and standards for supplemental environmental projects. We developed the proposed standards and requirements for “supplemental environmental projects,” or SEPs, working with the Enforcement Committee and also reviewing and modeling what we drafted based on the supplemental environmental projects policies adopted by the State Water Board and also the Department of Toxic Substances Control.

Staff believes a lot of good work has been done on this and that it will provide clarity and guidance for under what circumstances a violator would be allowed to offset a portion of a civil penalty with a constructive, beneficial environmental project. So, we would not recommend Alternative 3.

The fourth alternative is a slight variation of Alternative 3. As the Commission may recall, the offset amount in the supplemental environmental projects policy that has been proposed would be 25 percent; a violator would be allowed to offset 25 percent of the penalty by funding a project at a cost equivalent of 25 percent. There was some discussion of this issue at the at the October 15th hearing.

I want to recommend that the Commission consider whether that 25 percent figure might be increased to 50 percent; 50 percent is the maximum that is allowed under the State Water Board SEP policy and also the Department of Toxic Substances Control policy.

As we talked about on October 15th, there is some tension between offsetting penalty funds and allowing a supplemental project, on the one hand, and on the other hand, the payment of penalty amounts into the Cleanup and Abatement Fund, which is what is otherwise required by statute.

The concern that I would highlight is that given that BCDC’s statutory penalty structure is relatively modest compared to many other agencies, the amount of funds that would be available for a SEP at a maximum of 25 percent will perhaps be limiting on whether there would be projects that could actually be funded. The requirements and standards established by the SEP policy are important and they do provide accountability and strict measures to make sure that if a SEP is approved it actually happens; but the 25 percent limit might be a little bit of an impediment to actually getting projects. So, that is one area where certainly some further consideration or discussion by the Commission would be appropriate and welcomed by staff.

Finally, the fifth alternative was an issue that was also discussed at the Commission meeting on October 15th, and that was whether there should be some modification to the regulation which governs the Commission’s options when it considers a recommended enforcement decision, either from the Executive Director or the Enforcement Committee.

As you will recall, there are a number of options now. One is that the Commission can hear a matter de novo, another is to send the matter back to the Enforcement Committee, which the Commission has done on a number of occasions. But the regulations provide that the Commission cannot make changes to the recommended decision.

We considered, following comments by Chair Wasserman at the October 15th hearing, whether we could develop regulatory language that would allow the Commission to make changes. Having thought it through further and consulted with our Deputy Attorney General, we would recommend not pursuing that approach, and here are a number of reasons for that.

One is that it would be difficult to draw the line as to whether the Commission could just make minor changes or change anything that it feels appropriate to change. So, there is an issue of whether and how to define what could be changed.

And then secondly, when the Commission reviews a recommended enforcement decision, by regulation, the staff and the parties are commenting on the recommended decision. It is not an opportunity for staff or the parties to argue all the evidence in the record or to present their case anew, and so it seems inappropriate for the Commission to basically be allowed to reopen the entire matter without actually having the entire case before you.

And then next, having such a mechanism would vitiate the whole concept of the Commission hearing a matter de novo. Why would you ever hear a matter de novo if you could make minor change or tweaks without going through that process? We think that by vitiating that de novo option, in effect, you could set the Commission up for an argument by a respondent that you are impairing due process rights because you are not doing what you should do, which is to hear the matter de novo if you want to be able to make changes to what was done at the evidentiary hearing before the Enforcement Committee.

And finally, in thinking about how this could work, from the legal perspective, we would strongly recommend that if we did pursue this option, that the Commission not be allowed to, if you were to make changes, that you would not be allowed to adopt the order at that same meeting, because we would want to have an opportunity for the Commission's counsel, which would be the advisor, the Deputy Attorney General, to go back and review the order and make any modifications to the text or the findings that would comport with the changes the Commission made, and bring the order back to the Commission at a subsequent meeting. This would undercut the whole motivation of allowing the Commission to make changes, which would be to avoid delay.

So, for all those reasons we would recommend against that alternative as well.

With that, I would be happy to answer any questions either now or after the public hearing. But again, the focus for today is to hear if there are any comments or suggestions with respect to what is on the table in the proposed amendments. Thank you.

Chair Wasserman announced: Thank you. I would suggest we open the public hearing and I do so.

Ms. Atwell informed Chair Wasserman: We have one person with their hand up. Ashley LaBass, I am going to unmute you. Please unmute yourself. You have three minutes and state your name for the record. Go ahead, Ashley.

Ms. LaBass spoke: Hi, my name is Ashley LaBass. I am a policy associate with Bay Planning Coalition. For all of you that don't know, Bay Planning Coalition is a policy advocacy organization that advocates for economic growth and environmental sustainability of the region. Thank you for letting me speak here today.

I would just like to quickly applaud the efforts of the Enforcement Committee, staff and the Commission for the effort and time that they have devoted to making the enforcement process a clear and equitable one. We appreciate all the opportunities the Enforcement Committee has given for public engagement and comment and BPC looks forward to continuing to be engaged in this topic. So, thank you again.

Ms. Atwell acknowledged: Thank you, Ashley.

Chair Wasserman added: Thank you very much.

Ms. Atwell announced: There are no other hands raised.

Chair Wasserman stated: I would ask for a motion to close the public hearing and a second.

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

Chair Wasserman continued: We will now entertain questions from Commissioners. I will start with a very brief comment. Marc's going on at some length about the last issue of our ability to make changes on the fly, not my phrasing but yielding to his overwhelming logic, was just to make sure that the door was shut on that issue. I was certainly persuaded by Marc and Shari that my idea, although creative, was not meritorious. Any comment? I have a couple of other questions but before I get to that I will open it up for questions and comments from other Commissioners.

Commissioner Nelson was recognized: Two thoughts. First, I want to thank staff for presenting the detail and the alternatives. I am not very tempted. I agree with staff's recommendation that we do not significantly change our policy regarding hearing enforcement cases de novo. I am concerned with permits; those hearings take place at the Commission and sometimes they take place over multiple meetings with an enormous amount of detail. I am concerned about the temptation for folks who have enforcement actions brought against them, and frankly, for the Commission as well. Because we do not hold the hearings, I am very concerned about our tweaking Enforcement Committee recommendations, so I agree with the staff's recommendation that we do not weaken our policy regarding de novo hearings. We can make changes if we want to hear it de novo, we can send it back to the Committee with direction, but I think the staff is on the right track there.

Second thought, a question regarding the potential adjustment regarding the offset payments, the Supplemental Environmental Projects provision. I am really tempted by that. My instincts are that it might make sense to increase that 25 percent cap up potentially to 50 percent; but before I offer that formally, a question for staff. Staff, can you based on our past experience, I know that past performance is no indicator of future results, but can you give us a sense of what the difference might have been in actual dollar terms had we used a policy like this either at 25 or 50 percent in the past? Thanks.

Regulatory Director McCrea responded: Marc, I cannot off the top of my head. Maybe Karen or Priscilla might know if you do not want to field the question.

Mr. Zeppetello replied: I will comment and maybe Karen or Priscilla can add. We have had some cases in the past few years where the penalty, if the penalty were \$100,000 then the delta would be either \$25,000 at a 25 percent versus \$50,000 at 50 percent; or if we had a penalty of \$200,000, the delta would be \$50,000. That is the ballpark for a relatively larger enforcement action and for something smaller the delta gets to be not significant at all, really.

Commissioner Nelson added: In light of that, given the cost of putting Supplemental Environmental Projects together, it is not clear to me that we can do very much with that provision and I would like to encourage that. When we are done with discussion let's come back to this, but I am tempted to try to bump that 25 percent up to 50. Thank you.

Chair Wasserman asked: Any other comments or questions? Peggy, am I missing any?

Ms. Atwell replied: Yes, Commissioner Showalter.

Commissioner Showalter commented: Mine was similar to Commissioner Nelson's. I think that in light of the discussion we were having earlier about the budget, is there any way that the money for funding for the enforcement staff would be coming from the General Fund? Is there any way to change this if it is coming from the General Fund? Obviously, right now we are we are using it to fund some enforcement positions, right, am I understanding that?

Executive Director Goldzband responded: I will take that. The Bay Fill Fund is used this year to pay for three staffers. Usually it is only used to pay for two staffers. It is used this year for three staffers given the uncertainty surrounding our budget this year due to the pandemic.

We anticipate next year that it will only be used to fund the two staff positions that are currently authorized. To be honest with you, while I cannot predict the future, I do not believe that BCDC will face any liability with regard to reduced funding for the enforcement staff, so I really do not think that this is going to ultimately affect in any large way at all, much less probably even in a small way, the ability for us to pay our staff.

But the cool thing is that the Enforcement Committee would have the option whether to offer a SEP or not to offer a SEP. And should funds not be available, that is, should funding be tight for staff, which we do not foresee during the next few years, then the Enforcement Committee can certainly take that into consideration. So, I do not think this really has an effect on our ability to do our jobs.

Commissioner Showalter noted: Well, it has been my experience over the years that people who are faced with paying fines are much happier to give up their money if it is going to a project that they can see and feel like they are doing something good. So, with that experience in mind I would say I think the increase to 50 percent is a good idea.

Chair Wasserman asked: Any other comments or questions before I demonstrate how much of a troublemaker I can be?

Ms. Atwell stated: No other hands are raised, Chair.

Chair Wasserman continued: I have several questions but the first one is, what is the definition or range or set of examples of a Supplemental Environmental Project?

Executive Director Goldzband observed: I think Marc is grabbing the document.

Chair Wasserman stated: I tried to find it and I could not. I am not saying it is not there.

Ms. Donovan chimed in: While he is doing that, I can just highlight that the parameters of what would constitute a SEP are laid out in the policy. We have tried to keep it general. I will turn it over to Marc now.

Mr. Zeppetello concurred: Yes, Karen is right, it is in the policy. It is Item 9, or no, Number 2: BCDC has identified the following four categories of projects which may qualify as a SEP: (1) Removal of Bay fill; (2) Enhancement of the Bay's resources, including habitat restoration; (3) Cleanup or abatement of pollution or contamination; and (4) Enhancement of existing public access to the Bay or its shoreline. A SEP may fall into more than one category.

Chair Wasserman asked: That is in which policy?

Mr. Zeppetello stated: It is in the Administrative Civil Penalty Policy, Section E. It is on page 47 of the proposed amendments package.

Chair Wasserman asked: What is the process to amend that policy?

Mr. Zeppetello stated: It would be a rulemaking amendment.

Chair Wasserman acknowledged: Okay. The wheels of the state bureaucracy grind slowly but they grind exceedingly fine. You will see in a moment why I was asking those questions.

I would support and certainly support, as Commissioner Showalter and Nelson have said, the 50 percent. But I would actually advance, and I recognize this might be a substantial change and require it coming back to us, that it be up to 100 percent. Part of the reason I say that is, we know from the work that our Financing the Future Working Group has done, we are going to have to scratch and claw and beg for every dollar we can to accomplish and implement the measures to protect the Bay from rising sea level. It seems to me this is an additional source.

As Marc pointed out, this is not mandating that it goes to a SEP, it opens the opportunity. I would just put out there for discussion that perhaps we should do two things. One is, make it up to 100 percent if we can do that legally; and two, that we either examine the policy carefully or revise the policy to include measures that would advance the cause of protecting the Bay from rising sea level.

Mr. Zeppetello noted: Chair Wasserman, since it has not yet been adopted, you would be free to propose 100 percent now rather than 50 percent. Certainly, we could make that change prior to bringing it back to you.

We could also give some thought to adding an additional category, we would have to figure out how to word it, related to adaptation or resiliency. So, we could put that in and bring that back for consideration as part of this rulemaking process.

Ms. Donovan added: I did want to note one additional thing that was sort of part of Marc's initial presentation. While the policy is intended to set the parameters that BCDC would use in entertaining a SEP, we typically expect a SEP to be proposed by the violator as what they would like in order to offset what the monetary civil penalty would be. It is not binding in all cases. In other words, there could be a fact-specific situation where, based on whatever the unique characteristics are of that particular action, we would entertain a SEP that exceeded 50 percent if that is the direction we go in or 25 percent. That is kind of the way we have been treating them in the past too.

The objective here is to be very transparent about what we feel are the appropriate parameters for a SEP. I wanted to raise that because I do not know that in all cases adopting this policy as-is will preclude us from entertaining a SEP that would go, for instance, beyond a 25 percent or a 50 percent level. In most cases we would expect, however, that there be some contribution to the Bay Fill Fund in addition to a SEP and that is what is spelled out in this policy.

Chair Wasserman continued: Any other questions or comments from Commissioners? (No questions were voiced.) Marc, assume for a moment that we wanted to have as possibilities, not mandates, that it would be up to 100 percent. Taking into account Karen's comments and that we would want to explore making sure that those SEPs could include measures that would address adaptation, what do we need to do?

Mr. Zeppetello explained: What we would need to do is that staff would draft some further changes to the current draft and when we bring this back for a vote the Commission would have an opportunity to review those. If that is acceptable, you would vote to adopt and if you want to make further tweaks at that point, we would have to bring it back again.

But we have got direction here and I think that we can, as staff, take that direction and make some changes to this proposed document and bring it back as a revised proposal all within the context of this rulemaking, for your consideration at the next hearing.

Chair Wasserman acknowledged: Thank you. Since we do not require action on this, unless there is an objection to what I have suggested I would like staff to consider that and bring it back with the package that they bring back to the Commission.

Commissioner Nelson was recognized: I will admit that initially I was resistant to your suggestion, the Chair's suggestion about adding adaptation, because I was thinking that Supplemental Environmental Projects should, in broad terms, address the impacts of the violation. But now that we have permit conditions that address adaptation I could imagine us in the future having enforcement cases that are specifically built around violations relating to sea level rise, so I have come around to saying the wisdom of the Chair's recommendation and support it.

Chair Wasserman (laughing) stated: Thank you, sir. And I guess the one other thing I want to add is that — and I very much appreciate that, Barry — but we, Commissioners, and staff alike, we need to continually push ourselves to think outside the box. Just as we have, not easily, but we have pivoted from the position that any fill in the Bay unless truly necessary means something different today in the light of rising sea levels where we may have to fill the Bay to protect the Bay. We need in other areas to think outside the box.

I thank you for your support and unless there are any other comments from Commissioners, we will conclude that item and turn to Item 9.

9. Briefing on Exploratorium Conceptual Proposal. Chair Wasserman stated: Item 9 is a briefing by staff of the Exploratorium and the Port of San Francisco on a conceptual proposal to fund a rising sea level public education and information campaign with funds that would otherwise, under the existing permit, be used to remove fill alongside the San Francisco Waterfront under the permit. I want to actually introduce this matter and provide a little bit of background.

I, as you will hear, have been involved in this discussion, which has only been a discussion, for a bit of time. In 2018 the Exploratorium approached former Commissioner Alex Zwissler with an interesting idea — to substitute, indeed, a new rising sea level education program in conjunction with BCDC for the existing permit condition requiring the Port of San Francisco and Exploratorium to raise money, generally in the neighborhood of \$2 million, to remove fill in the Bay. Commissioner Zwissler, as some of you know, had been the executive director of the Chabot Space and Science Center in Oakland and as a science educator he thought highly enough of the idea to approach Larry and myself with this idea.

The two of us sat down with the Exploratorium several times over the course of a little more than a year to better understand their concept, to digest it, to give thoughts and comments, without entering into any kind of formal negotiations, which we have not done.

We, Larry and I, did agree that the concept, and I want to be clear at this point in time it is a concept, not a specific proposal in any sense, deserves consideration by the Commission through its normal public processes, following comments that have been made earlier about Larry and my commitment and the full Commission's commitment to being very transparent.

The Exploratorium and the Port presented their concept to the Education Working Group two weeks ago. BCDC staff has worked with both the staffs of the Port and the Exploratorium to incorporate some of the recommendations that were made that morning into this presentation that we are about to hear.

I want to emphasize a couple of points. One, we are not voting on this today, we are discussing a concept. Two, this very much folds into my comments a minute or two ago about thinking outside the box. In order to accomplish what we know we are going to have to accomplish, even though we do not know the exact parameters of what we are going to have to do to adapt to rising tides, we know it is going to cost billions of dollars. Not millions, but billions. And we know that that is going to have to be done in order to protect against the tens and hundreds of billions of dollars that it might cost to repair damage from rising sea level to our people, our habitats, our built environment, our natural environment, if we don't do that.

A critical part of this is the educational campaign. That is not in many ways the business of BCDC. But we are going to have to figure out how to do that if we are going to prepare the public to support across a range of actions that will need to be undertaken if we are going to raise the kinds of money that we need to raise to do that. And when I say "we" I do not mean BCDC, I mean our region, our Bay as a whole, all of our people and our businesses and our governments.

So, we are asking them to make this presentation to determine whether it makes sense to continue to explore this and to make the concept more specific so that, in fact, it can be something that we consider through the formal process. So it is not a yes or no, it is whether it is sensible enough to continue to pursue it. With that introduction, I would like —

Ms. Atwell interjected: Chair Wasserman, sorry to interrupt. Commissioner Peskin has his hand up.

Chair Wasserman replied: I will recognize Commissioner Peskin with pleasure.

Commissioner Peskin spoke: Thank you, Chair Wasserman, and thank you for that presentation of the matter that is before us. I go a little way back on this. I go back to the 1996 Tripartite Agreement between then Save the Bay represented in those days by Marc Holmes, the Port of San Francisco in those days represented by Dennis Bouey, and BCDC in those days represented by Will Travis. There is a lot of history here. That Triparty Agreement ultimately resulted in amendments to the Special Area Plan (SAP) that happened in 2000 that were adopted by the Board of Supervisors that I sit on. In 2001 I voted on those.

The permit, the McAteer-Petris permit that went to the Exploratorium, a storied institution. And I have to say my parents took me there when I was a young child and it is an institution that I think everybody in the Bay Area holds in the highest esteem. But that permit included Bay fill and that permit was based on the removal of Bay fill in the amount of \$2 million.

I concur with you, Mr. Chairman, that we are not an educational institution but we have become in recent years an institution that is leading the charge on sea level rise, on climate change, as it relates to the nine Bay Area counties. But a deal is a deal is a deal. And I am happy to have this conversation, I am going to move to my phone as I go to my pre-op here in a few minutes — but let me be clear. And I have spoken to the director of the Port, she would much prefer to use that \$2 million to actually help sea level rise and remove fill as was the original deal. That deal we could extend. That may be the right thing to do. But the notion of turning that into educational dollars in the most educated region in the United States of America is respectfully, Mr. Chairman and colleagues, folly.

With that I can see my colleague Mr. Gioia raising his hand, and I am going to go to my cell phone and go to my doctor and will participate from my cell phone. But thank you, Mr. Chairman, for entertaining my very candid, very rare comments.

Commissioner Gioia was recognized: I am candid, but I am not sure my comments are rare, that is a fault. I just want to note, as we hear this presentation, I have been on the Commission for a long time and remember approving some of these Special Area Plans and the permit and actually my thoughts are very similar to Supervisor Peskin's.

I just want to say, as we listen to this presentation, and this is maybe putting a burden on the Exploratorium, the analogy I think of here, and it is not a perfect analogy, is when an agency approves, let's say a development that impacts wetlands, and it has a negative impact on wetlands, places a requirement for that development to mitigate that and replace and build wetlands elsewhere. And then 10 years later the developer says, you know, we can't build the wetlands somewhere else so let us do a public education campaign about the value of wetlands.

I am interested to hear sort of why the Exploratorium wants to get out of a permit requirement to remove fill when there was fill that occurred as a result of their project and wants to instead educate. If it is about money there's many ways to get money to educate, there's not many ways to remove fill.

Chair Wasserman acknowledged: Thank you. If there are no other comments, and you are obviously not giving up your right, you will have the right to comment after the presentation, I would ask Erik to do his short introduction and then have representatives of the Exploratorium and the Port speak.

Planning Manager Buehmann presented the following: I am Erik Buehmann. I am the Long-Range Planning Manager at BCDC. Today the Exploratorium staff will give a presentation about their concept to amend the San Francisco Waterfront Special Area Plan and a permit issued to the Exploratorium, which is BCDC Permit Number 2006.009.04. The Special Area Plan and permit require certain fill to be removed along the waterfront, the San Francisco Waterfront. The Exploratorium would like to substitute the requirement to remove the fill with a proposal to design and implement a sea level rise adaptation education program.

To start I am going to give you a little background and context to the Exploratorium's presentation. No action is required; rather, these presentations are intended to start a discussion on the proposal.

Since it was adopted in 1975, the San Francisco Waterfront Special Area Plan has provided a holistic framework for the Commission and the Port to determine where fill and development should be located along the entire San Francisco Waterfront. The Plan also guides where public benefits such as public access and open water should be provided.

In 2000, as Commissioner Peskin noted, the Commission approved a comprehensive amendment to the Special Area Plan for the Northeastern Waterfront.

One of the public benefits of the amendment was the removal of fill to create open-water areas, including removing the deck and pilings that formed the quote "valley" between Pier 17 and Pier 15 and non-historic additions to Pier 15 and Pier 17 sheds.

On December 3, 2009, BCDC adopted Bay Plan Amendment Number 1-09 amending the San Francisco Waterfront Special Area Plan to facilitate the relocation of the Exploratorium, a nonprofit educational museum, to Piers 15 and 17. A 2009 amendment modified some of the policies and requirements in the earlier 2000 amendment, allowing the Exploratorium to retain a portion of the valley and non-historic shed additions at Pier 17 and Pier 15, which were integral to the overall project benefits that required the Port to conduct fill removal at equal or greater amount for any remaining fill at another location along the San Francisco Waterfront.

If the fill removal occurred in the Northeastern Waterfront the fill removal requirement was a 1:1 ratio for pile-supported, decked structures. If the fill removal occurred in the Southern Waterfront the ratio of fill was 2:1 with at least 1:1 constituting pile-supported, decked structures.

Additionally, the timing of fill removal was required to occur within 10 years of the certificate of occupancy, with an incentive that decreased the requirement if completed within five years.

Subsequently, BCDC issued a permit for the Exploratorium development with special conditions that required fill removal consistent with the SAP amendment, among other things, there are other special conditions. The BCDC permit requires that the Port provide a plan for fill removal no later than eight years after the issuance of the Certificate of Occupancy for Pier 15 and the removal take place no later than 10 years after the Certificate of Occupancy. The permit for the Exploratorium project has received a number of amendments over time to accommodate changes in the program for the site.

As I stated earlier in my presentation and Chair Wasserman noted, the Exploratorium wants to get feedback today on their concept but there is no vote to be taken today on the Exploratorium's proposal.

Based on this discussion, if the Exploratorium and the Port decide to move forward with a proposal, there will be a public process in order to amend the SAP. This slide is a summary showing the necessary steps to amend the SAP.

And with that, that concludes my presentation. I would like to introduce Robert Semper of the Exploratorium who will brief you on their proposal.

Mr. Semper addressed the Commission: Good afternoon, Chairman Wasserman, and Commissioners. It is with great pleasure I can come before the Commission to talk about this idea. As the Chairman has stated very specifically, this is an idea that we hope to get your thoughts and comments on in order to decide whether it is worthy of moving forward on this work.

I am joined today by my colleagues, Laura Zander, who is the Chief Financial Officer of the Exploratorium, Gregg Miller, who is counsel for Coblenz and has supported us in the permit process in the past and present, and Diane Oshima, who is Deputy Director for Planning and Environment.

I really am excited to talk to you about this project, partially because you at BCDC were so influential and important in us able to make the transition from the Palace of Fine Arts to the Piers 15 and 17, which was truly a transformative position.

I have been at the Exploratorium since 1977 and to me this opportunity to move from that space to the pier on the waterfront was an extraordinary action. We successfully opened the Exploratorium at our new site in April 2013 and have, since then, successfully operated with millions of public coming to visit us, many, many educators being trained by our work, and many people being influenced by the work that we have done with a particular focus on the Bay.

One of the things that this project allowed us to do was actually become a participant in discussions about the Bay, which we could not do in the Palace of Fine Arts even though there we were maybe 500 feet from the waterfront. Here we are over the waterfront, which indeed makes a very big difference. We have noticed that our location is a very interesting location, a very interesting spot to do discussions about the Bay and its relationship to the natural phenomena and the human phenomena that live around the Bay.

In particular this redevelopment project and its ongoing operation have satisfied and continue to serve all of the public and policy goals set forth in the permit. The substructure marginal wharf and piers were seismically strengthened as part of this project. The redevelopment of the piers for the museum, office space, event space, retail use, provided a new way for the public to have access to and to enjoy the Bay.

To date the project has resulted in a net increase of almost 45,000 square feet of open space and 78,000 square feet of new public access to the piers and the Bay.

The refurbished pier actually serves as a deep-water port for large research vessels from NOAA and others and Navy ships during Fleet Week, and the numerous outdoor Bay-related, educational exhibits have become available as part of the public-access opportunity. And I want to make clear that we as the Exploratorium will continue to fully implement all the expectations and requirements of its 2010 BCDC permit.

What we are coming to you today about is a proposal for discussion. Our proposal, as has been mentioned, would be to satisfy the remaining BCDC permit fill obligation with a public-education, program alternative.

The rationale for coming with this proposal are numerous. Probably primary and I think we would all agree at the Commission level about this issue, the world is different 10 years later, with a critical Bay Area need to focus on adaptation to rising sea level.

Secondly, the Exploratorium's established educational practice and partner network can uniquely support this work. And I think one of the things I want to point out here is that we are in a sense a very special developer. I understand very much the comments that were made earlier about developers. We are a very special developer because our job is education. That is the work that we do as our primary function, that is what this project was designed to do in terms of our relocation and that is what we are proposing to do in our plan.

As was mentioned, there was a \$2 million lease requirement between us and the Port to support in that case fill removal. And we believe that it can be used more effectively and substantially and be amplified to support BCDC's public education goals as part of the original project.

We think, for example, the proposal actually expands and fulfills the public benefit intent of the original permit. So rather than a project that is different, in many respects, in our view, this is a continuation of the reason why we did the relocation in the first place.

And finally, substantial fill has already been removed by the Port since this permit was issued in 2010, and the Port can speak to this in detail at some point if it is of interest, but this has not been holding back the fill removal along the Bay in the San Francisco Waterfront area.

Just as a specific reminder, one of the reasons that we could not remove the full amount of Bay fill requested in the original Special Area Plan, which is indicated here on the left in the early picture from the SAP was that both safety issues, public-access issues, and program space needs all reduced the options to remove that fill. The site-specific area actually was what caused this discrepancy between fill removal expected earlier and the use of this space for the Exploratorium space.

Since the permit was issued about 407,000 square feet of fill has been removed by the Port along the San Francisco Waterfront.

And there is limited, Northeast-Waterfront, field-removal sites still in existence to use.

The current cost of fill removal is estimated depending on the project site to be between \$72 and \$150 a square foot.

And just so you know, all the other permit requirements have been met in full for this project.

I want to talk a little bit about the context of this project where this proposal fits in and then talk about the some of the elements of the proposal.

So from a context perspective, as we have been talking about, there is really a changing Bay Area concept. Regional adaptation efforts require public engagements for success as the Bay Adapt project is showing us through the work they have just been producing.

There is actually a big lack of educational efforts to support youth participation and public participation in adaptation planning.

There is a lot of work, of course, that has been done on issues about climate change, a lot of educational work done on the science of sea level rise. But frankly, there has not been very much work done on the educational efforts around adaptation and how people can think about adaptation, can learn about the various features about it, and can actually participate in it in a planning process and also learn about it from an educational perspective, which provides ownership and support.

Bay Area leadership in an effective, socially-responsible-framed, resilience education, has a chance of garnering even more support for the issues we have with adaptation in the Bay. And here is a picture of the San Francisco Chronicle article about the San Francisco Bay Restoration Act that was just submitted in Washington by our representatives to garner more support for our issues around adaptation. And there is an urgency, which I think is now, about getting this education process started.

The changing BCDC context we have talked about a bit already. The Strategic Plan in 2017 talks about an educational campaign to increase the public's understanding of vulnerabilities and resilience strategies. And the workshop in 2016 talked about working with others to develop the educational campaign to increase this awareness.

The Special Area Plan alignment we believe is very strong as well. This is the Bay Area Special Area Plan and there was a statement on page one about the important resource that the Bay provides for maritime, public access, open space, recreational sites, and water-oriented, commercial recreation. And in thinking about this I would posit that the Exploratorium project realized many if not all of these values. The opportunity to apply Bay-oriented education, which was not addressed in the SAP Plan, seems to be opportune.

And the commitments of ongoing fill removal are happening through the Port and through other projects. And I think at the end I will ask Diane to make a few comments as co-permittee on this about the presentation that we are doing.

Regulatory background is presented here. We believe that this is possible; this change is possible within the McAtteer-Petris Act and is doable. I will not go into the details.

The public education program would elevate the focus on climate change.

And we think that there is authority within the Commission to do this kind of swap.

Let me talk now about the project itself. As was mentioned by Chairman Wasserman, this project started in a discussion we had back in 2018 with continuing talks in 2019.

It has a specific focus on sea level rise education and adaptation education for the public and K-12 audiences.

It would have a regional approach with an emphasis on the hot spots, which really are crucial from an environmental-justice perspective.

And we think we have a unique position to provide this educational work because of our location and because of the background that we have.

So for program goals I put a picture of the Bay Adapt here, which is I think the best thing to indicate. This program would actually increase public understanding of adaptation, it would increase public support for the regional process, it would increase participation in planning, and I think we can make the case that it would make much more visible student engagement in a particular feature that is important, which is problem-solving for innovative solutions. For after all it is the youth that are going to have to live with the solutions to the problems that we are addressing today.

The framework of the project is that we are basically making a \$2 million new commitment over four years for the work. It would be split approximately two-thirds in terms of the staff that would be developing exhibits, programs, and educational offerings through this project; and one-third would be supporting the educators, community partners, materials and marketing that is necessary to carry it out.

And I would like to say that we have already been doing fundraising activity for this work and have received some funds from private foundations, from government grants at the National Science Foundation and the NOAA and from other agencies that would support this.

Program deliverables would be on the public experience and communication engagement side. Exhibits, programs, and online media, both at the Exploratorium but also at field stations that would occur around the Bay. So this is not an Exploratorium-specific project in the least. It is meant to be distributed Bay Area-wide and would also include data visualization and adaptation stories online.

The educator experiences would involve workshops with educators on providing classroom resources that could get the story of adaptation into the schools, into the classrooms. A focus on field trips at Bay Area locations and the Exploratorium. And importantly, professional development activity that could happen for community group leaders to help them lead the process.

In closing I wanted to show you some pictures of past projects that we have done to give you a just a sense of flavor of how this could work, whether it is at Buchanan Mall that was developed with neighborhood participation in the Western Addition of San Francisco, a mobile library project that involved going to San Mateo libraries giving citizens the opportunities to look at maps and data to talk about the planning in their county, a proposed Mare Island Field Station as part of the Resilience by Design work that you all know about that we were part of the design process.

The next slide shows educational slides with teacher workshops that happened in this case on King Tides by Laurie Lambertson, one of our educators, outside along the Bay. Science snacks, which are in-classroom activities relating to exhibits for students to use and classroom and field trip activities.

Crucial is a set of planning meetings with regional stakeholders to refine goals, equity approach, action evaluation metrics and a timeline. This is not a project that would be done or pushed by one organization - it has to be a collaborative project.

There will be an advisory group of stakeholders; and importantly, an independent evaluation process to measure accomplishments against the educational objectives in the Strategic Plan.

Finally, a couple of words about the Exploratorium, our background. People, of course, think of us as a place they come to visit on a Saturday afternoon with their family. It is important to realize that we build and develop and design all of the educational experiences that you see in that environment and we offer them to the public, a school group, to educators and students.

We have 850,000 annual visitors, 130,000 field trips students of which two-thirds come from Title I schools. A science-alumni group of 2,500 alumni, 250,000 visitors to our offsite projects in the Bay Area, and one million monthly web visitors, and a new Latinx Community Engagement Program.

And the last slide shows us the partners that we are engaged with today, many of them you know, many of them you are a part of. We really believe in partnership in terms of development and this project would absolutely need partnership, including partnership leadership to make it work.

I am going to end there. I think the next slide was our conclusion that the Exploratorium and San Francisco Port believe that this tradeoff is worthy of consideration by BCDC because of the unique public/private partnership opportunities it represents, focusing on adaptation to sea level rise education.

We have some ending questions but I thought before that I would invite Diane Oshima from the Port to talk briefly about how this fits into the Special Area Plan initiatives that the Port is deeply involved with.

Ms. Oshima commented: Thank you, Rob. Good afternoon, everyone. I am Diane Oshima with the Port from the Planning and Environment Division. I think Rob's presentation really speaks for itself for the most part.

From our perspective, and I have been at the Port for a long time too, so I could go back to when Commissioner Peskin was there at the beginning of the Special Area Plan process.

BCDC and the Port really have accomplished quite a bit under the Special Area Plan. The Historic District, all of the projects that have been able to restore those landmarks and open them up to the public is something that we take great pride in and we are grateful to you all for.

Fill removal clearly was a key part of the Special Area Plan. But as we are moving forward and we are working with your staff now on amendments that will be coming up for the Special Area Plan for our Waterfront Plan I think resilience is probably the biggest issue that is before us that we know that we need to have recognized in the Special Area Plan.

The fact that Exploratorium has been a very unique partner for I think both BCDC and the Port is a great opportunity, so we were really pleased to hear how the discussions with BCDC and the Exploratorium got started for looking at advancing education around the resilience discussion.

Because notwithstanding the community engagement that BCDC is leading or that the Port and the City are involved in for the Embarcadero seawall and our resilience efforts, I think we have a recognition that our reach into the classrooms and into the broader community to understand adaptation planning is not as strong as it could be and that there is a real opportunity there.

That said, it is not to deny the importance and the commitment that we have along with BCDC to fill removal and there have been and continue to be fill removal, waterfront park and shoreline, public-access improvements that the Port has continued to support through this period as well. So it is not necessarily only an either/or choice in the context of one tenant but we have removed a significant amount of fill within the Northeast Waterfront as well as in the Southern Waterfront and Fisherman's Wharf as well.

So we are, like BCDC, supporting a multifaceted Bay ecology and improvement mission. We support fill removal, so I do not want there to be any mistaking about that and I think that Elaine Forbes, our director, made that pretty clear to Commissioner Peskin. But this is a new opportunity and we are very happy to be here to be in this discussion to see what kind of partnership that we have in this arena as well. So I am happy to answer any other questions that you might have. Thanks so much for having us.

Commissioner Gioia chimed in: I thank the Exploratorium for all their good work over the decades, having also gone there as a child.

Let me just ask. I know there was a lot more in the presentation about the benefits of the public education campaign so I want to understand, since there is a permit requirement, more about the impacts or consequences if we were to decide not to fulfill the permit requirement, ask you not to fulfill it. So you said you the Exploratorium has removed over like 420,000 square feet of fill, correct?

Mr. Semper answered: Yes. From the analysis the Port and we have looked at, since the permit started there was 407,000 square feet of fill removed along the San Francisco Waterfront, yes.

Commissioner Gioia asked: If the permit condition stayed how much more fill would be removed?

Mr. Semper replied: It is an interesting question to try to determine because the question would be, I suppose, of the 108,000 square feet that was in the permit requirement the question would be; does any of this material that has been removed count against that? And another way would be to, and I should have done this, divide the cost of permit removal into the \$2 million financial item, right, that would be another way to talk about how much we would be at risk probably for not being removed possibly if this funding was not there.

Commissioner Gioia continued: Maybe it is a question best put on staff. It seems to me to the staff, we have an incomplete record if we do not understand how much additional fill would need to be removed under the permit, or at least a range of fill. We have got to know that in some way. I guess maybe I am expecting a bit more staff analysis here about what is being given up. What I think we owe the public is, and frankly, we are a regulatory agency. And if we are going to give up, if we are going to change a previously issued permit, just like if we were to change an enforcement decision for an education component, I would imagine, I am conscious of what the Legislature would say looking at our own actions and saying, you gave up enforcement or regulatory actions for an education campaign. So I think we owe it to the public and to the Legislature to understand if we are going to consider this. What are we giving up? What are the benefits that we are losing or giving up by not following through with the permit? Which means, how much additional fill would get removed? What are the benefits that would have resulted from the removal of that fill? And then how did you come up with the

\$2 million? Because if you do not know how much fill you are going to remove, and if the education campaign was going to be equal to the cost of removing the fill, it sounds like you had to give some thought to how much fill you were going to remove and were you calculating it at the low end of the \$72 a square foot or at the higher end of \$150 a square foot? How can you shed some light on that?

Executive Director Goldzband noted: Chair Wasserman, I think Laura Zander of the Exploratorium would like to perhaps answer.

Chair Wasserman acknowledged: I am happy to have that answer. The question is a very important one. I want to be careful not to go too deeply, I don't know whether I am going to say in the weeds or the mud. Because, again, the purpose here is to say, is this concept worth more exploration? To some extent this is a threshold question, I understand that, so I am not trying to cut it off. I just want to recognize that we need some answer — we do not necessarily need 100 percent of the answer.

Commissioner Gioia stated: Maybe this is a question to the staff, which is really responsible for making sure our permit conditions are met. Some general understanding of what are the benefits we are giving up by not having the rest of the fill that was going to be removed — removed? It seems to me that that is part of understanding this, at least for me in thinking about how much more effort we put into pursuing this. So I am sort of looking maybe, whether it is the staff, to respond to that.

Mr. Buehmann chimed in: Jessica, do you want to respond or do you want me to respond?

Commissioner Gioia continued: I don't want to get a call from our state legislator saying, you know, hey, what did you guys do? What did you give up when you did that?

Mr. Buehmann explained: So just to clarify and set it up, the Exploratorium project when it was permitted, it had fill removal as part of that permit, which is different from what we are talking about with the 108-plus, 1,000 square foot of fill. So there was about a 20,000 square foot reduction of fill as part of that project. So the project itself did not require fill removal as mitigation for any fill impacts for the project itself. Rather, the permit was requiring, in order to achieve consistency with the Special Area Plan, removal consistent with the Special Area Plan requirements, right. So the Special Area Plan requirements have all this about if you are in the Northeast Waterfront, if you are in the Southeast Waterfront the ratios are different, but you need to do some kind of fill removals. As far as I know that accounting has not occurred where the Port has said, we have removed X amount of fill to satisfy the requirement in the SAP and in the permit. And Diane can correct me.

Commissioner Gioia observed: But no one can answer the question of how much additional fill removal is being given up? I am sort of surprised.

Mr. Buehmann continued: Well, I think it is something that we would be, because we are going to start a process, something that we would need to, to do that calculation. But right now I would say it is probably none of that 108,000 square foot of fill has been removed pursuant to the requirement in the Special Area Plan.

Commissioner Gioia continued his inquiry: And would the cost of removing whatever fill we determine needed to be removed be less, the same, or more than \$2 million?

Mr. Buehmann answered: That would be something that we would have to determine.

Commissioner Gioia noted: But what I just heard is that what the Exploratorium wants to spend is what they would have spent to remove the fill and then they propose \$2 million. But what I have just heard you say, we have no basis to understand whether two million is less or more so the two million was essentially just grabbed from the air as an amount. Like, let's spend \$2 million on a public-education campaign. Which I am not saying public-education campaigns are bad, they can be very helpful, but we owe some due diligence to understand here, we are saying, don't remove the fill you were required to remove, and oh by the way, \$2 million sounds about right.

Chair Wasserman interjected: John, I absolutely appreciate your questions are important. I think we have gotten enough answers or non-answers.

Commissioner Gioia opined: I guess they are non-answers.

Chair Wasserman replied: Well, they may be non-answers. If we want to pursue this idea further we are most certainly going to have to get those answers as part of the process. So let's hold the further delving into these particular set of questions, not because they are not important, they are, to see what other comments or questions.

Commissioner Gioia stated: Those are my questions, I appreciate that. I will just say I don't think I have the answers to help me.

Chair Wasserman concurred: You don't, clearly you don't. Other Commissioners who wish to speak? Aaron is back and I see his hand up close to his mask; he is in pre-op.

Commissioner Peskin spoke: I am in pre-op. Mr. Chairman, thank you for recognizing me a second time. I just want to rise, as they say, to a point of information, which is the 407,000 square feet of fill removal has nothing to do with the Exploratorium.

So that number keeps being thrown around. That is fill removal that has been done by the Port. It has not been done by the Exploratorium. It has nothing to do with the McAteer-Petris permit that was granted to the Exploratorium. Respectfully, the Exploratorium is taking credit for other things that BCDC has mandated. It is subterfuge.

Chair Wasserman chimed in: Well, I am going to ask a question because I am not sure that is accurate.

Commissioner Peskin replied: Okay. Ms. Oshima?

Chair Wasserman stated: My understanding, and I could be wrong, is that the obligations under this permit are in fact joint obligations; and that the obligation to remove the additional fill is actually the Port's, the obligation to raise the funds is actually the Exploratorium's, or some of the funds.

Commissioner Peskin explained: It is a function of the Exploratorium's lease, which is not BCDC's problem, but it is actually a contractual obligation that the Exploratorium has pursuant to a contract called a lease.

Chair Wasserman continued: I am going to ask whether any other Commissioners have any questions for the moment. Commissioner Hillmer?

Commissioner Hillmer inquired: My only question is, I guess a comment. Please make sure in answering the question, 'Do we want to look further into this?' that you address the information brought back to the audience of permittees, people who hold permits. Because how this permit holder is treated, every other permit holder is going to have their version of a similar request. Please be careful how we walk into addressing this. Thank you.

Chair Wasserman acknowledged: The particulars of this situation are very important and your point is one that is well made. Other comments or questions?

Commissioner Butt commented: Some great questions, some of which I would have asked. One thing I don't understand about this is it appears that the obligation to remove fill is that of the Port of San Francisco. It just seems like we are co-mingling issues, which makes it more confusing.

Why is the Exploratorium making a proposal to substitute something for an obligation the Port of San Francisco has? Shouldn't this whole thing be initiated by the Port and then the Port and the Exploratorium can flesh out issues between them about who is going to pay for what and who is going to do what. But I think it is very confusing to approach it in this way.

Chair Wasserman responded: Both the Port and the Exploratorium are here. Both of them have advanced this. There is a division of responsibility between them but they do both have responsibilities regarding the existing permit. If this change were to be considered, and if it were to be ultimately made, would have effect on both of them. Commissioner Gunther I think was next in line.

Commissioner Gunther was recognized: Thank you, Mr. Chairman. If I understand things correctly, the original rationale here, the reason that we have this permit condition for the Exploratorium, was because the generation of open water by removal of fill was considered a very important public benefit and this was a decision that was made over 20 years ago. From my perspective there is, at some point here we do need to recognize that the Bay is starting to create open water all on its own and that it is quite possible that after 20 years here that it is reasonable to entertain the idea that there may be an alternative way to generate even more public benefit.

I know that as a scientist starting to talk about legal matters, that there may be constraints on this, but I am certainly personally quite interested in this proposal. I would much prefer that the Exploratorium was doing something they are good at rather than trying to get fill removed from the Bay. I am also quite interested in whether or not we can make any kind of assessment about the resilience of the region, given to sea level rise, whether the fill is removed or not. I could see a physical argument that could be made under certain instances that, in fact, leaving the fill in place will create resilience in the future to sea level rise and so I would like to see those questions addressed.

In addition, there are two other things. One is that if the Exploratorium is going to do this, this is totally in your wheelhouse and as a consequence I would like to see you tugging on the wheel a little harder.

So, if there was going to be \$2 million put up to dredge and you want to substitute public education and science education for that, I could see an argument that you should be able to, with your power in this area, do a little bit more.

And then lastly, I do have a question about enduring impact. The idea that if we removed fill we would get open water, we could see an enduring impact of having open water in that region for, really these days, for as long as we would want it. The question I would have is whether we can describe an enduring impact as well from the proposal for the public education. Thank you.

Commissioner Eisen commented: I am similarly laudatory of everything the Exploratorium has done over the decades. And I am very open to the idea of thinking outside the box as the Chair has asked us to do.

And I know that a deal is a deal but I also know that, especially in the time of COVID, we may need to have some flexibility in what we expect of those we have made a deal with.

I am concerned about some of these questions that have been asked. I don't know how many other permittees are there who have a similar requirement. What sort of percentage of the outstanding obligations to remove fill is this particular obligation?

How are the other permittees going to be treated if they come up with a similar request? It sounds to me like we are doing is entertaining a modification of the permit application, in essence. And maybe that makes sense as Dr. Gunther said because modifying it now is actually more beneficial than leaving it as is.

Is there a process for modifying a permit application? Have we done something like this before? If we felt inadequate to handling an education campaign ourselves — would we be permitted as an agency to send out an RFP saying, we want permittees and anybody else who thinks they are up to the task to apply to do this educational campaign for us and open it up to potentially minority-owned organizations or other organizations that might help us better meet our social and environmental-justice goals.

And I have a little bit of the cart-before-the-horse thing because in order to answer the question of whether I think we should proceed to learn more I feel like I need to know more as to whether or not that is a good idea to move forward with more discussion.

So, it is a little of the egg-and-the-chicken problem. So those are the issues that I've been thinking about during this conversation.

Commissioner Gorin was recognized: Thank you so much. I find this whole discussion absolutely fascinating. It brings in history. It brings in precedent. It brings in environmental benefit of removing fill. And I have to applaud everybody for creating innovation and looking to the future. How are we going to educate not only our children, they are the first actually great class to learn anything because it carries forward in their lives but also their parents and families.

So all of those questions are important. I have confidence that the Chair and Larry are going to answer all of those questions and bring back to us but I am interested in exploring this.

I think it is really important to start the educational effort. I love the Exploratorium. I wish I was closer to my grandchildren so I could take them. Thanks all.

Commissioner Nelson commented: A couple of thoughts. On the one hand it is very clear and the Commission has said this very clearly that there is a pressing need for large-scale, public education related to sea level rise and adaptation — a huge value there without any doubt.

It is also true that the Exploratorium is extraordinarily, highly qualified to do that work although it is important for us to note, as one of our other Commissioners did, that if we were doing an RFP that would be an open-bid process in which the Exploratorium would no doubt be very competitive but others might be as well.

As a couple of other Commissioners have mentioned, do we have to think about the precedent here when we think about converting a mitigation requirement to a very different kind of requirement?

There is one thing wanted to note here. And that is, the Exploratorium presented not a lot of detail about the proposal they would propose as a substitute. And I appreciate that they said that they would like to develop this proposal with us and that this is an initial exploration. But I just want to note that one of the things the Exploratorium mentioned is that they would like to spend roughly two-thirds of this \$2 million on Exploratorium staff and it troubles me that we would consider even for a really unique applicant — that we would consider taking a mitigation requirement and allowing that applicant to convert that mitigation requirement into spending that money on their own staff expenses even if it's for a really meritorious purpose. That is not what mitigation is about even though the Exploratorium is extremely, highly qualified in order to provide that important educational service. At the moment the question here is — is this worth exploring?

I'm not going to say that I am opposed to any further exploration but like Commissioner Peskin, at the moment, I find myself thinking; a deal is a deal.

Commissioner was recognized: I want to make an observation because there have been some comments generally made that this is an observation that this is a benefit. We don't have enough information to know whether this is a benefit. So I wanted to set the record straight.

There is some possibility. There is speculation but we don't have any staff work on this. So we don't know if it is a benefit. So I want to observe that for the record because we can't let it go that the Commission believes there is a benefit here. There could be but we just don't know yet.

I think if this were to go forward it would, and I'm not certain I have enough information to want to spend more time on this, but I think there is a lot of unanswered questions and a lot more information we would need that gets to first primarily what we're giving up.

And I think some other Commissioners raised the issue of precedence which is really important. Once we open the door to doing something like this — what is the precedence that this sets?

And another permittee comes and says, well you did it over there so why don't you do for me?

And the other thing to think about is whether removal of fill somewhere else or some other physical — I mean, we're focused a lot on educational. If a permittee wants to get out of a permit condition for, let's say there is a good reason to do that and there is greater benefit to do something else, maybe it's something else other than education.

Education is about money and the right folks to run that program. But there may be other quid pro quos that provide greater benefit to the Bay than education programs. I would want to understand that. I mean if there is good reason to change a permit condition and is there something from an environmental-justice, equity standpoint that should be done somewhere else?

I think those are questions we need to put on the table if we're going to think about this and need probably more discussion about what all those things would be if we are going to entertain this more.

Chair Wasserman asked: Are there any members of the public that would like to speak?

Ms. Atwell informed the Chair: No, I see no public hands raised for public comment.

Chair Wasserman continued: As I said in the beginning, this was not on for an action item. And obviously there is some disagreement amongst Commissioners even about potentially going forward.

I'd like to suggest why I think it is important to go forward and to let out a bit of a path for doing so. There is unquestionably and odd and maybe not appropriate intersection here between a permit requirement that, as Commissioner Peskin noted, partly because of contractual issues outside of us, outside of BCDC, is also a fundraising issue.

One of the reasons that this was an interesting idea to me was not simply abstractly that it would be nice to educate the people of this region more about sea level rise. It is from my perspective that if we don't figure out a way to educate people in the Bay Area about the consequences of sea level rise and the potential for adaptation we won't have adaptation.

I want to make that very clear from my perspective. If we fail to educate our children, our people, our stakeholders, our officials on the need for adaptation we won't be able to do it.

We won't have the jurisdictional cooperation we need. We will have no chance of raising the funds. And I think that is in documents we've already adopted.

So the discussion of how to do it is an appropriate one. The odd juxtaposition here is that this proposal, which may not be appropriate to approve for any number of reasons, puts together an institution which is close to uniquely positioned to help in this effort and a potential source of funds — these are not funds that the Exploratorium has in the bank or the Port has in the bank, I'll be very clear about that; and I know that Rob and the other representatives of the Exploratorium will thank me for that — it's a true and simple statement.

Before we put out an RFP if we chose to do that we'd figure how we are going to fund that because we ain't got the money. I think these discussions are worthwhile to have. I think if this particular concept is going to advance further a good number of the questions that have been raised in this discussion absolutely need to be asked.

So I think there is value in spending the time to do this for this Commission and our staff. I hope that even with uncertainty it is worthwhile for the Exploratorium and the Port of San Francisco to continue exploring this.

And I believe that even at the end of it this particular concept wouldn't work for whatever reasons that there would be benefit most certainly to BCDC in accomplishing some of the purposes which are not only embedded in but are critical to the accomplishment of our Strategic Plan which is being revised and looked again this year and much more importantly our Bay Adapt plans and our overall adaptation approach.

So unless there is very strong objection I would ask that we do request our staff and the Exploratorium staff and the Port staff to go back and with the questions they've heard here come forth with answers to those questions and the questions include just how much fill has been removed, how that affects the existing permit requirement, what fill actually would be removed if there is no change, what is the timeline for that as well as fleshing some of the benefits as well as fleshing out some of the elements which were admittedly and directly stated are still at a conceptual level not terribly specific.

And that it come back to us with answers to those and a fuller if not necessarily full proposal. It may take some more discussion and iterations and given the tenor of the discussion we've had that is probably the case.

Commissioner Gioia was recognized: I think it is really important if this is going to go forward that we also understand that we need to engage environmental justice communities about what it means to look at outreach.

I wouldn't want BCDC staff in a room with the Exploratorium to cook up what this plan would be. We have an Environmental Justice Equity policy. If we are really going to give meaning to it we're going to engage those communities around the Bay that actually are often most at risk of sea level rise like the areas Mayor Butt and I represent in West Contra Costa County along the Richmond Shoreline.

Those communities around the Bay need to be engaged about what this would look like.

And we can't have this just be about hiring additional staff at an agency. Other organizations or entities around the Bay otherwise it seems a permittee has come to us and said, we're going to increase our staff — oh — in exchange for you not holding us to a permit and we're going to do some work for you.

The optics of that don't look very good. I think I heard the idea of an RFP process or something like that. And if we're doing that then really isn't it more than BCDC and the Exploratorium that are going to work up what a plan would be?

So there are two sides to this coin. One side is — what are we giving up by not holding them to the permit condition in terms of not removing fill? What harm occurs or what benefits are we giving up? What is the precedence that this sets?

Then on the other side — what are we getting in return? And how are we engaging communities in understanding who we are really trying to reach and educate on building resiliency?

As some speakers have pointed out there is a lot very well informed people in the Bay Area but there is also people who may not fully appreciate it. And frankly it's the city council members, planning commissions, planners — cities themselves need to be engaged because to implement resiliency we need their cooperation. How do we have their involvement in something like this?

If we're trying to educate it's not just educating the general public; it's educating the many cities around the Bay that are making land use decisions all the time that may not address resiliency.

So I think it is complicated. So all of those things really need to be understood.

Chair Wasserman added: It's a multi-sided coin. It's not a two-sided coin. And I would just note for the record because the public is listening; nobody talked about BCDC and the Exploratorium going into a back room and cooking up a plan — to the contrary — the Exploratorium's presentation talked about a very broad outreach, many partners and in the discussions that I participated in we certainly talked about the importance of including the under-served and under-represented communities and including our environmental-justice and social-equity partners in the discussions of how we develop, if we're going to do so, an education plan and whether it is through this mechanism or another.

Commissioner Hillmer commented: I would just request that when you bring information back I would ask that it be placed in the frame of answering the question — do we want to look at this further and what is our current process for modifying a permit and seeing it first through that filter?

Commissioner Ahn was recognized: I do want to affirm of what Commissioner Gioia said. I'm personally a big fan of education programs and community outreach programs but I do want to see more nuance than what is presented today. So I look forward to continuing engage in these discussions and follow up on this.

Commissioner Pine commented: This has been a good conversation. I think it is worthwhile to be continued as a discussion but it probably is advisable to have it come back relatively soon without really a complete analysis done.

If we took a vote today I'm not sure it would have the support. So I think it would be advisable to flesh out some of these questions and provide guidance before too much work is done.

Vice Chair Chappell commented: I think we're mixing up two different things. There are permit conditions and there are educational programs.

If we decide we want to get into the education business I think that is fine. But I don't think we should get into the education business because of what is essentially a random proposal from one permittee.

If we want to get into the education business I think we should decide that on its own and not mix it up with a particular permittee and a particular permit.

Commissioner Eckerle commented: I was going to say that I totally agree with the comments just made by Commissioner Chappell and the need to think about decoupling permit conditions and making findings consistent with our law and the incredible need for a really significant outreach and engagement approach.

It's something that OPC (Ocean Protection Council) is trying to spearhead and in coordination with all of our state agency partners including BCDC.

But I really appreciate the questions and the concerns that Commissioner Gioia and others have raised today. I'm also curious when we see this again — have we ever made decisions like this before where we are offsetting the impacts of fill by implementing educational programs? I think the answer is no but I would love to hear more from staff the next time we discuss this.

Chair Wasserman continued: I think you all know that I think this concept has real merit. I 100 percent agree, we don't know enough to vote. I wouldn't vote today for it. It was not up for a vote. I don't want anybody to think we were trying to push this to a vote that's why I said what I said at the beginning. That's why it was put on the Agenda today.

But I think that our staff and the Exploratorium staff and the Port staff has certainly heard a great deal. They will talk. They will digest it. We will bring it back. I also agree with Commissioner Pine — we need to do that. It's going to take some discussion but we need to do that as soon as reasonably possible.

With that we are at our last item which is always a most exciting one — adjournment. Will someone please make a motion to adjourn?

10. Adjournment. Upon motion by Commissioner Butt, seconded by Commissioner Showalter, the Commission meeting was adjourned at 3:44 p.m.