

San Francisco Bay Conservation and Development Commission

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September 27, 2019

TO: Environmental Justice Commissioner Working Group Members
FROM: Shannon Fiala, Planning Manager (415/352-3665; shannon.fiala@bcdca.gov)
Clesi Bennett, Coastal Planner (415/352-3613; clesi.bennett@bcdca.gov)
SUBJECT: Draft Meeting Summary of September 5, 2019 Environmental Justice Commissioner Working Group Meeting

1. **Call to Order, Roll Call, Introductions and Approval of Agenda.** The meeting was called to order by Acting Chair Vasquez at the Bay Area Metro Center, 375 Beale Street, Claremont Room, First Floor, San Francisco, California at 11:05 a.m. Working Group members in attendance included Chair Eddie Ahn (arrived at 11:15), Commissioners Sheri Pemberton, Pat Showalter and John Vasquez.

Staff in attendance included: Chief Deputy Director Steve Goldbeck, Planner Clesi Bennett, Chief of the Bay Resources Division Erik Buehmann, Permit Analyst Walt Deppe, Planning Director Jessica Fain, Planning Manager Shannon Fiala, Enforcement Analyst Matthew Trujillo (via phone).

Also in attendance were Bay Planning Coalition Senior Policy Associate Roman Berenshteyn and Bay Planning Coalition Policy Associate Ashley LaBass, Sea Grant Fellow Katie Robinson-Filipp, Breakthrough Communities Co-founder Carl Anthony, Breakthrough Communities Co-founder Paloma Pavel, Eco Equity Consulting Director Nahal Ghoghaie Ipakchi, Bay Area Council Vice President of Public Policy Adrian Covert, and Anne Cook from the Port of San Francisco.

2. **Approval of June 20, 2019 Environmental Justice Commissioner Working Group Meeting Minutes.** Acting Chair Vasquez entertained a motion to approve the minutes of the June 20, 2019 meeting.

MOTION: Commissioner Pemberton moved approval of the June 20, 2019 meeting minutes, seconded by Commissioner Showalter. The motion passed by a voice vote with no objections or abstentions.

3. **Environmental Justice and Social Equity Bay Plan Amendment Timeline Update.** Ms. Bennett presented the following: We have a couple of dates lined up. Today we are meeting to discuss the public comments and some potential draft changes to the proposed policies.

On October 3rd we could potentially discuss implementation and next steps. We are hoping to bring the amendment to the Commission for a vote on October 17th. Our regulations stipulate that we have to publish our Final Staff Recommendation at least six days before which would bring us to October 11th. Ideally we would publish those even earlier to give more folks time to review them. So potentially, on October 4th, we could publish. Are there any comments or questions on this? (No comments were voiced)

4. Discussion on Public Comments and Changes to Draft Language. Ms. Bennett presented the following:

We received several public comments on the policies from different local governments as well as some non-profits. We also received two letters that were written by groups of folks.

We have grouped the public comments into three different types of comments. We had comments that were specific to findings and policies, where they were giving us specific edits to language or commenting directly on specific policies and findings. We had comments that were more general and talked about the entire amendment of whole sections. And we also received a few comments that were on topics that were outside of the scope of the proposed amendment.

We are going to go through those comment types in this order so first we are going to discuss some of the policies and findings-specific comments and then we will discuss the general ones and lastly, the ones that were outside of the scope of this amendment.

The recommendations you will see on the screen are not final recommendations. We are still working on wordsmithing trying to figure out how we can incorporate the different public comments that we received.

This comment was on one of the findings in the newly proposed environmental justice and social equity section. The finding was on meaningful engagement and outreach and the benefits of that outreach.

The commenter said it might be helpful if we reference the International Association of Public Participations Spectrum of public participation that we looked at with this group many months ago. It starts with inform and moves to consult all the way to empower; it is kind of a way to visualize community involvement.

However we don't know if putting that chart into the findings in the Bay Plan is the best option. We don't have anything like that in the Bay Plan now. We think it is a really good addition for our implementation materials and guidance that we want our staff and applicants to have. It is already included in the Background Report for the policy.

Commissioner Pemberton asked: Could we reference it and allude to it as referenced elsewhere?

Ms. Bennett asked: In the policies?

Commissioner Pemberton replied: Uh-hm.

Ms. Bennett continued: We could. My only worry would be that the policies should stand the test of time. And if there was another type of document or tool that superseded or people starting leaning towards something else we would be stuck with an older model.

Ms. Ghoghaie-Ipakchi asked: Are you trying to figure out a way to incorporate the message of that document into this?

Ms. Bennett answered: The commenter was just saying it might be helpful if we referenced and put in the Participation Spectrum into the finding. Our thinking is that we don't necessarily need it in the finding itself because those types of references are typically in the guidance documents or in the background report.

Ms. Ghoghaie-Ipakchi suggested: So one suggestion is to make it more concise but still capture the underlying message of that report. So "from informing to empowering" is just a way to capture the whole concept of how to move through the stages of community engagement.

You could even say "informing versus empowering" and doing community engagement as just an information effort versus empowering the community to have the capacity and the technical skills to participate.

Commissioner Vasquez asked: Shouldn't that be part of the invitation to begin with? I am not here to tell you what we are going to do. I am inviting you because I want to hear from you.

Ms. Bennett responded: Yes, I think what we are trying to do is hopefully moving from informing to empowering.

Commissioner Pemberton chimed in: I think that is really important and I like that.

Ms. Bennett continued: Here you see Environmental Policy 2. We received a comment with specific line edits that you see in the middle. We have received a lot of comments on the word, "expect". We struggled with how we would operationalize the word expect.

At the end of the day, BCDC does not have legal jurisdiction or authority over local government planning processes. We are toying around with different words that we could actually operationalize.

One of the words we are thinking about was "advocating" for it because the Commission could actually advocate for something whereas expecting it is hard for them to go out and do.

We are also thinking about changing "fall outside of our authority" to "affect our authority" to be clearer in what we mean by that.

We do want to strive to be a leader and we do want to collaborate with our other agency partners. We are planning to leave that reference in the document.

Commissioner Vasquez stated: I was thinking about the word "leader". Shouldn't we be providing the leadership?

Ms. Bennett clarified: Should be providing the “leadership” in collaborating instead of being a “leader”?

Commissioner Vasquez answered: Yes. As you say we don’t have certain authorities. I like that you took the word “expect” out because you are raising peoples’ expectations by putting that word in. We can advocate for people to consider these policies that we have.

What we are trying to do is raise awareness – right?

Commissioner Showalter commented: What I thought we were getting at with the word “expect” was that we were going to ask everybody. It was going to be part of the discussion that you have with BCDC staff – have you thought about this and what have you done accordingly?

We want to make sure that we don’t lose that. We do want to flag to future applicants that this is something that they will be discussing with us.

Commissioner Vasquez added: Yes, but they don’t have to.

Commissioner Showalter responded: Right. They may say it wasn’t appropriate in this instance. We know our community and it wasn’t appropriate. And that could be a good answer in some instances.

I just want to make sure that we are communicating to people that this will be part of the criteria that we use when we evaluate things.

Ms. Bennett agreed: Absolutely. One of the other words we have been thinking about is “request” – so “support, encourage and request”.

Commissioner Pemberton chimed in: I don’t have a problem with “expect”. I think “advocate” is maybe equally subjective. And I am comfortable with “expect”.

Mr. Goldbeck asked: And how about “request”?

Commissioner Pemberton answered: I am thinking what does “support” mean? What does “encourage” mean? We are supporting and encouraging and advocating – is there overlap in what those words mean? I think “expect” implies that this is your baseline and that you expect that. I think that suffices.

Commissioner Vasquez added: And I am speaking from local government; if you have no authority over me I don’t care what you tell me. And that is the hard part of that. You are trying to get people to work with you and not tell people they have to work with you.

And so “expect” to me indicates that you are telling me what to do and you are “expected” to do that.

Mr. Goldbeck asked: And so “request” or “advocate” would be better from your perspective? That is speaking from the local government perspective.

Commissioner Vasquez answered: Yes. The thing we are trying to do is build these relationships and collaborations saying here is something that we all need to be looking at. And we have taken the first step at it from BCDC's perspective. And we think that it is important that all local governments look at this issue.

If you want to rile local government tell them that they have to do something.

Commissioner Showalter chimed in: I am comfortable with "request". I think that is a little stronger than "advocate" and maybe more polite and it is not telling them what to do.

Commissioner Vasquez stated: All things are politics.

Commissioner Pemberton reconsidered: I support "request" (laughter) after hearing the discussion. I think it is more polite and respectful.

Commissioner Ahn chimed in: I support "request" because I think it is concrete.

Mr. Covert commented: This is Adrian Covert with the Bay Area Council. The Rule of Three notwithstanding, "support and encourage" seems adequate to me to getting across what it is BCDC is trying to get.

I am glad that there seems to be unanimity on the trouble with the word "expect". For the word "advocate," I think there is a significant legal definition that would apply to a government agency.

At the risk at practicing law without a license (laughter), I think that you might not be able to use it.

If there has to be a third one "request" is an improvement. I think "support and encourage" is preferable.

On the last edit, it artfully addresses the main concern that we have which is making sure that BCDC remains focused on its jurisdiction.

Ms. Bennett continued: So we will move on to Environmental Justice and Social Equity Policy 3. This was the policy around community engagement and outreach to meaningfully involve communities.

We received line edits deleting the word "expect". Also deleted was the part that community engagement should continue through the Commission's process and also the sentence about if previous engagement was not sufficient, conducting further engagement.

What we are looking at putting what we want as the subject. We also tried to address the vagueness of the word "insufficient". We changed it to say "if the previous outreach and engagement efforts did not reflect the scale or scope of the project" rather than say they were not "sufficient".

Commissioner Pemberton chimed in: I have a minor suggestion. I think it is stronger in the active voice. So it could read, it should be conducted by local governments and projects applicants. I think reversing that into the active – local governments and project applicants should do instead of should be conducted by. It is a stronger structure.

Mr. Goldbeck added: I like your point.

Ms. Bennett noted: We see a lot of passive voice in policy and in the Bay Plan already. It is a struggle to keep it consistent.

Ms. Cook commented: I am Anne Cook with the Port of San Francisco and I still have a little bit of concern with who decides what an identified vulnerable or disadvantaged community is. And how do you decide which engagement efforts are to be used?

These things need to be defined somehow or examples given as guidance.

Ms. Bennett stated: We wouldn't write examples or guidelines in the policies themselves. That would be part of an implementation phase of this project. It would provide applicants with examples and with guidance. There are many good guidelines out there on community engagement that have been written by community groups.

As far as the identified communities – that is referring specifically to two screening tools. The reference to “Vulnerable Communities” is BCDC’s screening tool that has been developed by the Adapting to Rising Tides or ART Program. Hopefully we will have a publicly-available version that is navigable soon.

And “identified disadvantaged communities” is referring to the California EPA’s CalEnviroScreen tool which is also publicly available.

Mr. Covert chimed in: I am still concerned that this is still a bit vague and subjective and leaves project proponents open to uneven interpretation and consistent interpretation.

The word “insufficient” is nice if that is out. But still who is going to be determining whether or not the outreach or engagement reflects the scale or the scope of the project?

You mentioned that there were some guidelines that exist somewhere – maybe of those guidelines were referenced here that could give applicants some explicit guidance as to what type of metrics they will be judged against.

So if there is going to be some metric out there it should be referenced here.

Ms. Cook chimed in: I wonder from a process perspective is the definition right? If we are getting to the end of a two-year outreach effort and we go to BCDC for a final permit and then being told it is not enough – it seems like that could be a problem for the local government and the developer.

Is there some way where a project proponent comes in early and says this is what we are planning to do, is that going to be enough and these are the communities that we have done outreach to, so that you don't have that problem at the end?

Ms. Bennett responded: I will let one of our staff talk about our pre-application process and how we do that currently with our policies as they exist now.

Mr. Buehmann explained: Our preferred process is to have a lot of pre-application process and meetings and discussions prior to the application being submitted.

And a lot of that is about identifying issues, going through policies with applicants so they understand what the process is and the policies that apply to the project, what are the issues that arise and some of the problems, identifying and diagnosing those things and trying to modify the project and the process to smooth those wrinkles out.

A lot of the reason BCDC doesn't deny a lot of projects is because we put such an emphasis on the pre-application process.

So for a lot of this, just like the climate change policies or some of the maximum feasible public access, it is going to be a lot of pre-application and asking; what are you doing, what are you planning, is that enough, how do we go back and forth about that. There are occasions where folks aren't familiar with BCDC's culture of pre-application work and will just show up with an application for a huge project. That is always an issue because then we have not done the pre-application steps and that is where we get delays in process or people having an expectation that they are just going to slide through an application process with BCDC.

Ms. Cook replied: I am not so concerned with the developer that doesn't know that. When you get to the end and of a five-year process, how do you incorporate these measures without derailing five years' worth of work?

Mr. Buehmann replied: What I am hearing you say is there is deference to that local process. And BCDC should be involved with that process to avoid this type of situation. Speaking from my position at BCDC, I would say we do currently involve ourselves with this process.

Ms. Bennett added: What we try to do is ensure this happens before it comes to BCDC because BCDC is so late in the entitlement process. We wouldn't want to make an entire multi-year process for the community that they are happy with – we wouldn't want them to have to redo that.

Mr. Buehmann chimed in: And what type of criteria would I use to tell an applicant their outreach is insufficient?

Ms. Bennett stated: It is hard to put something as specific as that in a policy because we have so many different types of projects and permits coming before us.

Mr. Buehmann stated: It is analogous to maximum feasible public access because it is a discretionary standard. At the staff level we look at several factors.

What are the numbers of people that are being brought to the site? How many workers are coming? How many visitors are coming? How many people are living there? How big is the site? How much of an impact does that have on future public assets? What are the impacts between the shoreline and the Bay?

The scale of the project and the requirements have to be reasonable and linked to that. The amount of work an applicant has to do depends on the size and scope of the project.

Commissioner Vasquez commented: I will be the applicant in this example and I have heard this from applicants. The applicant will say, we did everything that is legally required. There is always more that an applicant could do to inform the community that is going to be affected by the project.

And the example just given where an applicant has worked five years with the group and he/she is now going to come before the Commission and there are new Commissioners that haven't heard any of my efforts and all of a sudden they raise a question: Well why didn't you do this and why didn't you do that?

We have seen this in the Enforcement Committee where it is sent back to the Enforcement Committee because the majority of the Commissioners haven't heard all of the arguments for making a decision.

It can, at times, be very subjective. How do you ensure that everybody is doing what they are supposed to be doing? I guess doing what they need to be doing early in the process is what needs to be.

It seems like weekly I am dealing with this kind of stuff at the local level. I am like, wow – why didn't you come talk to us first? And yet oftentimes they are a good way into the project that is never going to work.

And if they had invested time early on and had been told that is not going to work, this would be avoided. Then you have others that have been doing these things for years, you want to be able to say that they have done a good job.

I understand the reluctance or the fear that it could all collapse. I don't know how you put that in policy.

Ms. Bennett moved on: The last policy we proposed in the new Environmental and Social Equity section talks about identifying and addressing disproportionate burdens from projects.

We received some specific line edits on this policy. One was to tailor this policy just to impacts on shoreline public access and delete the word "burdens" and change it to "impacts" and then delete "compensating for disproportionate impact" if it could not be avoided or minimized.

At the bottom you see the current preference. We have taken out the word "burden" and replaced it with "impacts". We have not chosen to tailor this project just to shoreline public access because we also have authority around fill in the Bay and other types of projects as well that we want this policy to be applied to.

We have left in "compensate" as that is a part of a multi-step process for mitigating which includes avoiding, minimizing and then compensating.

Commissioner Pemberton chimed in: I had a question on the end of the first sentence. It should be identified with potentially impacted communities – does that mean that potential disproportionate impacts should be identified in consultation or in tandem with, and I assume that is what it means, I just want to clarify it.

Ms. Bennett replied: Yes, I think so. You know screening tools and different types of data can tell us part of the story but that doesn't capture everything. They have to work with the community to find out what the impacts are going to be.

Commissioner Pemberton continued: Would it be clear if it said "by working with" or "through working with" or "collaborating with"?

Ms. Bennett replied: I think that could make it clearer. It is a struggle because these things are pretty wordy, but we need to make them clear enough so that people understand them.

Commissioner Vasquez asked: Do we know all the areas that are vulnerable and disadvantaged? Have we identified them all? Is there potential for other areas to be included?

Ms. Bennett responded: I think the screening tools are pretty good and they are getting better. They are being updated.

One of the reasons BCDC decided to take on its own tool is that we could look at more granular level. Because the CalEnviroScreen tool is based off of state median income and it is also at a larger census tract level than what we are using on that tool, we are losing some communities in the Bay Area because the overall income in the Bay Area is higher than other areas in the state.

Commissioner Vasquez asked: So by using that word does it not limit you then? There could be other areas that might come up quicker than you can identify them, but through our process you would realize that this area is more vulnerable or disadvantaged. I think I am looking for something a little more flexible.

Ms. Ghoghaie-Ipakchi commented: That is a good point. I usually hear the term "under-represented" included in that list. It is true that we have a long list of communities that qualify as disadvantaged and vulnerable. It takes being on the ground and actually seeing the community to be able to recognize whether or not it is disadvantaged.

It is good to keep room open for those communities that are not currently on the list. Does "under-represented" sound good? That is used in Measure AA.

Mr. Trujillo commented (via phone): I'd like to speak to Commissioner Vasquez's comment. I think that you are talking about something that is called an identified vulnerable or disadvantaged community. I take your point.

Commissioner Vasquez explained: I didn't want to box us or leave out any opportunity for expansion of the list.

Mr. Trujillo continued: I understand and I agree with you in general. It comes down to the language that will ultimately show up in a guidance document and/or in a regulation and how so-called vulnerable communities are treated.

If we keep it more open ended so we can identify communities ourselves that may or may not be on some list, we need to keep it in mind.

Commissioner Ahn asked: Is this “disproportionate” portion used in the Bay Plan already?

Ms. Bennett replied: I think there might be one reference in a finding in the transportation section. And we get into what that is in the findings for the section.

Ms. Ghoghaie-Ipakchi commented: I wanted to comment on Sheri’s previous request for the language around “identified with”. It sounds like it would be identified including “working with”. Because it is identified using X, Y, Z tools and then on top of that speaking with the communities.

Ms. Cook chimed in: One thing I liked about the other identified communities is that you can look at the ART Program or CalEnviroScreen tool. We just hope that there will be some guidance on how to determine what an under-represented community is.

And maybe there is some other thing that touches these points that we can look at.

Ms. Bennett stated: That is the hard part.

Ms. Cook continued: I could guess in a lot of ways who the under-represented – I imagine I would miss some. We have to keep that in mind.

Commissioner Vasquez noted: That is the conflict, right? Coming up with a working document that works for everyone?

Ms. Bennett responded: Yes and the problem is that these tools don’t capture everything. The tools are pretty good when trying to figure out who to capture.

How would a project proponent go about doing it? Do they know how to do it?

Ms. Cook added: I think the under-represented changes depending on who the representatives are. During the critical period, I imagine a lot of people feel under-represented. So it is harder to figure that out.

Ms. Bennett continued: We will move on to the public access section. This is Finding C which talks about public access in general. We proposed adding a sentence about public access being free and available to all users. We gave some examples of public access could be and what benefits it can have.

In the hearing there was a discussion about deleting the word “free” and whether or not we needed to do this and would this create conflicts with allowing events.

We also received some comment about adding something about the uniqueness of urban waterfronts to this policy.

Right now this is our staff preference. We tried to clarify this a little bit. We have kept the word “free” in there but we’ve also included the fact that public access could include activation of the shoreline through programming.

And at this point we are thinking about not including a sentence about the uniqueness of urban areas because if we did that, we would want to talk about the uniqueness of all of the different areas around the Bay.

Perhaps that could be a good addition to special area plans that we have for certain areas of the Bay.

Bay Design Analyst Andrea Gaffney commented: I do all the plan review for all the special events and all the public access.

Typically when special events are included in a permit, they are part of the special conditions. So we don’t consider them to be an activity that is a right. It is restricting the public access in some form.

When we say a “special event” – a special event could be a free event that is open to the public like a farmer’s market or a concert that you could just walk up to and listen to or it could be something that is limited by capacity. So you have a ticket and that ticket may have a fee associated with it or not.

And then there is the private event. The private event has no invitation to the public to participate. And all of those activities with the exception of the one that is just totally free and has no impact on the public access whatsoever are included in the permit as a special condition which is particular to that permit, that site, at that time.

And it is not assumed to be as a right. And so that is what we wanted to articulate, that in general, public access is free and available to all the users. And it is only under special conditions that we consider omitting that access for particular reasons that contribute to the enjoyment and use of the shoreline.

Mr. Goldbeck added a caveat: But we are not trying to say that we should never allow anything that isn’t free. So that is why we changed it to “in general”.

Commissioner Vasquez asked: Instead of trying to capture all of those uses, wouldn’t it be easier just to say that in general, the right of the public to use all of that is free except in the event when there are special events that require that conditional permit or whatever it is that we call it?

Commissioner Pemberton chimed in: I like the “in general”. I think after that first sentence it gets a little confusing. I am having trouble with this because I don’t think it comes through. I think visual access to the Bay is a critical part of public access. And then public access spaces can promote local culture identity through non-physical aspects of the Bay such as – and it loses me. I don’t know what that means.

Commissioner Showalter continued commentary on this issue: I too am completely confused by that last sentence.

Commissioner Pemberton stated: I know what it is meant to mean but it is really hard to read.

Ms. Bennett responded: So the second sentence that says it may include certain improvements such as paving, landscaping – that is in the current policy except for restrooms and drinking fountains and we have proposed adding that.

The last sentence that you have seen on the next slide is the one that we have decided we were proposing to add about non-physical aspects. And this came out of our workshop discussions in that programming is such a vital way to bring diverse audiences to the Bay and the importance of programming to promote stewardship of the Bay and programming that could be multi-cultural that could promote local communities. So that was what that addition was attempting to get at, but I see that it could be confusing.

Commissioner Showalter chimed in: I would say that, instead of saying “through non-physical aspects of Bay access” which I didn’t understand at all, how about just saying “through programming such as educational, cultural or several other activities”? I mean the non-physical aspects of Bay access – I was very confused by that; but programming makes sense.

Commissioner Vasquez posed a hypothetical: If I came to you with an event where I was going to cut off the public access for half a day or a day – what is it that I couldn’t do? What activities couldn’t I do? What would you not let me do out there?

Ms. Gaffney replied: I think that is hard to characterize because generally, we are looking at - is it bringing people to the shoreline? Are they enjoying Bay views and the waterfront experience as part of that event?

So it is pretty broad. If you are going to put up a 75-foot-tall billboard that might be a problem because you are blocking Bay views.

Commissioner Vasquez continued: What if I am screening a film that is about the Bay?
(Laughter)

Ms. Gaffney replied: So if you are screening a film about the Bay, typically my plan review suggestion would be to orient the screen in such a way that you can see the film and also enjoy the Bay. (Continued laughter)

Commissioner Vasquez observed: We are trying to include so much in this – it really comes down to the permitting process that you have in place and those guidelines in which you issue a permit or deny a permit – right?

Ms. Gaffney replied: Right.

Commissioner Vasquez opined: So trying to capture everything that you could do makes it all confusing.

Ms. Gaffney stated: So these are things that we think you should be able to have free access and available at all times.

Commissioner Vasquez replied: I understand that part of it. The true public purpose is for free access and a view of the Bay but there are times that you can come in to us and ask for an accommodation or consideration through a different permitting process to put on an activity that essentially takes away some of that for a while.

Ms. Gaffney agreed: Right. When we revise the public access guidelines, it should have some criteria for special events. That came out of the discussion around the Alcatraz permit and having some solid criteria for those aspects.

Commissioner Vasquez reiterated: Again, the difficulty is trying to capture everything and put something in place that covers everything.

Ms. Bennett added: The finding already has the word “et cetera” in there and “such as” and those kinds of words to show that these are just examples.

We could subtract words. We left these in here because we didn’t see that they were causing an issue with trying to achieve environmental justice or social equity.

This amendment is for environmental justice and social equity and it is not a public access amendment.

Commissioner Pemberton stated: That is exactly what I was thinking. I was remembering – this is about environmental justice and social equity. That is why I am struggling a little bit because I am struggling to see how that it is shining through in the language.

Ms. Bennett explained: What we wanted to get at here was really honing in on the fact that public access is free.

Mr. Buehmann chimed in: Often we will get developers coming in and they will say, well I am providing a restaurant - that is public access. I am building a residence. I am getting people to the Bay. I am providing public access.

It is a confusion, but it is important, from a staff perspective, to emphasize in the findings that public access as a baseline should be free. There are exceptions in our permitting process and there are rules and restrictions. There may be a condition that we put in the permit that allows you to close the public access in certain hours and there are a set of rules governing how the public access is managed.

Commissioner Ahn commented: I will respond to what Eric just said. How about “public infrastructure” as a term? I feel that is clearer than – what we are ultimately talking about is improvements that are available to the public that can be enjoyed by all.

Mr. Buehmann added: A lot of these public-access sites are on private lands and they are private facilities. There may be a public path on private property. So “public infrastructure” implies to me that this would be a public sidewalk or something like that.

Commissioner Ahn continued: The other comment I have is possibly including phrases like “may include” or “may allow”. I think it is hedging enough where local jurisdictions shouldn’t be that concerned with it.

Ms. Bennett added: Yes and this is a finding and not a policy. This is just setting up the stage for what the policy is. It is describing what public access is. And that is why it lists all those things; it is giving folks an idea of what public access.

Mr. Buehmann observed: That is a good distinction because if there isn't a policy that says, public access shall be free at all times - (inaudible).

Commissioner Showalter commented: I think it might be improved by adding in a sentence about – there will be exceptions for events that you can get with a permit.

Ms. Gaffney responded: We don't want to do that.

Mr. Buehmann added: I really don't think that is necessary because – basically this is almost like putting in the Bay Plan that something that is already sort of – it is in the Bay Plan in other ways but it is sort of assumed. You don't need that just like we don't need a finding or a policy that says we can do reasonable rules and restrictions on hours and things like that.

Commissioner Pemberton chimed in: I think the additional context is helpful for me. I am comfortable with moving on.

Ms. Bennett continued: The next set of comments we got was on public access Finding H which is a new finding that we proposed. It talks about the fact that public access is not equal around the Bay. There are different levels of resources for improvements and maintenance and different things.

We received comments to add that this unevenness might be because or could partially be because of requiring onsite public access which is what the McAteer-Petris Act requires now. And we also received comments to add something around the fact that special area plans could provide opportunities for us to pursue plan-based public access.

At this point we have decided not to add those comments into the Bay Plan right now. On the first one we would need a lot more research done on the issue to determine if that statement is true or not.

And then the second addition about special area plans allowing for plan-based public access – right now staff is determining through the Special Area Plan Update with the San Francisco Waterfront whether that is consistent with the McAteer-Petris Act.

So this issue is being explored through that policy process and would be addressed in the Special Area Plan for the Waterfront.

Mr. Trujillo commented: When I read it, I get the fact that the science says that public access is not evenly distributed. It seems like a finding should have a bit of vision of what we want to see in terms of public access. We want it to be equitable and do want it to be of the same quality as to the community's ability to provide those improvements or conduct maintenance.

Ms. Bennett stated: Yes we tried to address those through a series of the different policies that we are proposing. What we come up against is the fact that the McAteer-Petris Act does require public access at the project site.

And then also, we are not the ones maintaining the sites as you know. That level of maintenance and improvement is often undertaken by the local government or whoever is the land owner there.

I don't know if that is a matter of permit compliance or I'm not sure on this one. Do you have any thoughts on that?

Ms. Gaffney commented: There are cases where public access cannot be provided on site and in-lieu access can be proposed such as the San Francisco Airport, the Oakland Airport, and most of the water port sites where you have heavy maritime industrial uses.

So the in-lieu access piece of that can be overlaid with some open-space equity studies to then make recommendations for that improvement.

We try to get the in-lieu access as close to the site that is being impacted. But I think that the environmental justice overlay could provide some guidance on how and where that access could be located.

Commissioner Vasquez chimed in: Given that public access is not equal and it is not evenly distributed; shouldn't our Act talk about how we resolve that even though it is not part of the Act?

To make that kind of statement and not have the environmental justice part of it included – we should be looking to how do we resolve that or put mechanics in place so that we can provide that equal and evenly distributed public access.

Ms. Bennett replied: One of the outcomes of this process could be that we recommend that we to amend the McAteer-Petris Act.

Commissioner Vasquez stated: And I think we should say that then. This wasn't anticipated in 1965. We are now looking at 50 plus years of work. How can we refine it and really support the environmental justice part of it?

We know that these things have happened but we have not had the tools to make it equal.

Commissioner Ahn added: I agree with that.

Ms. Bennett asked: Steve what would the logistics of that look like for this project? Would we create something or put it in a staff report? Would we create a resolution? How would we go about this?

Mr. Goldbeck explained: I think we would put it in the staff report. We certainly would not put it in the Bay Plan. We would put it in the staff report saying the staff should explore amendments that –

Commissioner Vasquez interjected: Or that this is what this group came up with. So here are the issues we see and there has to be some way of resolving this.

Ms. Gaffney commented: Part of my conflict with this is that it could be part of a local land-use decision. So the local land-use authority should also be participating in this identification with gaps in their parks and open spaces. So we can look at it from a regional level but we definitely need a partnership with the cities and counties to also do this work.

Commissioner Vasquez asked: And who is going to pay for it?

Ms. Gaffney replied: Well it should be part of the open-space, general-plan update. For our waterfront park priority use areas that is part of the mechanism that we can employ to advocate for additional, open-space resources on the shoreline.

But generally we put employ those in congress with the local land-use agencies. We will have to work on that together.

Commissioner Vasquez noted: I know the staff is handcuffed a little bit by it, because of the Act itself, but this committee isn't. We can say we've identified these problems and here are some of the things we think as a full Commission, we can work on to resolve these inequities.

If we are truly going to have environmental justice, these are the things you have to do. Now whether we do them or not, we can't just not look at them; there has to be some solution to it.

Ms. Cook stated: From the Port of San Francisco's perspective we would love to have a method to look at that end of it – the distribution of the public access on a plan-based approach because so much of the economic development occurs on the northern waterfront and that is where there has been an enormous amount of public access.

Our southern areas don't have enough active access and that is where the programming needs to come in because there are not eyes on that waterfront access area all the time.

The special area plans would be one method to solve the uneven distribution.

Ms. Bennett continued: We will move on to Public Access Policy 2. This is one of those cases where we tried to build this in. Can we direct our in-lieu public access to areas that are lacking well-maintained convenient public access?

What we proposed in May is what we are still proposing. We got comments about special area plans and encouraging plan-based public access. Having one land-owner would allow for a thing like that, but I believe staff is working out whether that is consistent with the McAteer-Petris Act right now through the Special Area Plan.

So Public Access Policy 8 talks about public access improvements. We are proposing adding some additions that would allow for more barrier-free public access. We also included in here the translation of signage at publicaccess areas.

We received comments on this policy to include some of the uniqueness of urban areas and some of the different types of public access they could provide.

At this point this is what staff is recommending. We looked back at the sentence we had proposed about different constraints and felt that this was just a cleaner sentence and made more sense.

We also are proposing leaving in the additional signage. However we decided not to include the reference to the uniqueness of the urban waterfront areas. We don't think this policy would allow for those additions. We also think that could be explored through special area plans that would be specific to those unique sites.

Commissioner Pemberton commented: Toward the middle where it says "should permit barrier free access" should we think of another word other than "permit" so as not to be confused with "permitting"?

It is original language?

Ms. Bennett stated: That is currently in the Bay Plan.

Mr. Trujillo chimed in: I had a question about that word as well. Is it that we can't change it?

Ms. Bennett replied: We could and it is currently in the Bay Plan. We didn't see the word as causing some type of environmental injustice or anything.

However if the word is not clear or if there is an issue with the word –

Mr. Trujillo interjected: My thought with using that word was that when you say it should permit barrier-free access like anybody can permit barrier-free access but it seems like the onus should be on the proponents to provide that type of access rather than just to put it in there. I would change it to "provide".

Further up where it talks about that "public access improvements provided as a condition of any approval should be consistent with the project and the physical environment" – to me it would be helpful to include that this is a social justice thing or something like at the top with an insertion of something like; "it should be consistent with the project comma, the character of the local community comma, as one environment".

Ms. Bennett replied: That sentence is in the Bay Plan as it is but we can take that back and review it with our legal counsel and see if there are any issues.

Mr. Goldbeck added: Yes we can take that back and look at it.

Ms. Bennett asked: Any comments about changing "permit" to "provide"?

Commissioner Showalter stated: I like that better.

Commissioner Pemberton added: I like it better too.

Ms. Gaffney chimed in: We often have very specific language in the permits about barrier-free access or we write it as a special condition. Perhaps the word "permit" in this sentence is there to indicate that it should be a special condition. That is my only thought about why that would be in there. I think "provide" is also functional.

Mr. Buehmann stated: It has never come up in my time that this has been confused with permitting. I don't have a problem with "provide".

Ms. Bennett continued: So the next policy that we had specific comments on was Shoreline Protection Policy 1. We received a comment about tailoring this policy specifically to just adverse impacts on public access.

We also received a comment to delete calls for compensation if such impacts could not be avoided or minimized.

At this point we are not making those changes. We think that adverse impacts on other areas of the shoreline, not just to public access, are also within our authority to address.

The compensation goes along with avoid and minimize as how we mitigate impacts. So, if we were to delete that then projects would have to avoid or minimize.

Mr. Carl Anthony had questions: I would like to ask a question about public access. I'm wondering what is the way you measure public access? Is there some standard for how you know that you are serving the public?

Ms. Bennett replied: I am not sure.

Ms. Gaffney added: So the way the policies are written is that we can only deny a permit in the shoreline if the project does not provide maximum feasible public access –

Mr. Anthony stated: I can't hear you.

Ms. Gaffney continued by standing closer to Mr. Anthony: The only way we can deny a permit in the shoreline is if the project fails to provide the maximum feasible public access consistent with the project.

So it is a discretionary decision based on the particular impacts and the particular parts of the project. So how many people is it bringing to the waterfront? How much development is it bringing? How much change to the waterfront is it bringing?

And we look at a variety of factors. Is it facilitating bringing more people to the waterfront? If it is bringing a lot of people, is there enough space for those people to enjoy the waterfront? What types of activities are they going to be doing there?

And part of the environmental justice piece that we are bringing in is that we can consider local communities and disadvantaged communities.

In the past we haven't had the policy language to support that. If someone comes in and says we are going to propose a kayak launch in a community that has absolutely no interest or capacity or ability to kayak – does that make sense? Is that actually achieving maximum feasible public access consistent with the project?

In some ways it might, but in others, if you take this consideration of the community and who would be coming to the area and who would be using it, then – no – it doesn't achieve that criterion. Did I answer your question?

Mr. Anthony responded: The question I have is if you look at the overall composition of the Bay Area and you look at other factors and you look at the amount of public access, is there a way to tell or to estimate – you know this public facility does not serve a recent population of Latinos or communities of color and it is evident that it doesn't; it is just serving certain people who are already used to it.

I was just wondering – is there any kind of tipping point or anything that tells you that there might be some discriminatory access that is not being reached?

Ms. Gaffney replied: I would say that in this point in time we struggle with that information and that is part of the reason that we are introducing a finding and a policy so that we can study that and learn more about that and understand that.

And we are writing in to our permits more monitoring conditions for public-access areas with this in mind. Because we don't know who is using the spaces and we don't take that information in. But we are interested in knowing that because we want everyone to be able to come to the waterfront and enjoy it. So that is a big part of this process.

Mr. Anthony continued: I apologize that I haven't really thought a lot about this, but I'm wondering when you have the opportunity to do programming, there is a clear opportunity to create programs that actually reach out to people who are not visible and create a special program that actually serves those communities in a special way. And even if you are not able to make an aggregate statement you could say that we have six or seven communities or twenty communities and we have actually created a program so that the young people from these communities have an opportunity to come to the shoreline and we have done that six times or we had 700 people show up for this and keep track of that for a couple of years.

Ms. Bennett added: Not all of the policies are on these slides because I only picked the ones that people commented on. We are trying to write the policies that would allow for our staff to write that into the permits so that we could create conditions that say this is the type of programming that we need to see here.

Ms. Ghoghaie-Ipakchi stated: One of the major funders of shoreline projects is Measure AA, who, right now, are also trying to prioritize what Carl just described. They are talking about not only funding those types of programs but also monitoring to make sure that those are effective. That is one of the deliverables for the applicants for the funding is to monitor and make sure that they are actually getting more visitors from the communities that aren't commonly visiting the shoreline.

Ms. Bennett continued: There are two more policies to discuss. And then there are the comments that were outside of the scope.

In the mitigation findings we had some comments that asked – what does it mean to involve the communities in mitigation projects? So we are thinking about adding this sentence that just says, here are some opportunities and ways that you could involve the community in mitigation projects: planning, implementation, monitoring, on-site education and other public programming.

Ms. Cook commented: There may not be opportunities in every project. You talked about the range of types of projects and I'm wondering if every project provides an opportunity. This sort of implies that every project would involve the community in monitoring and on-site education programs. And I am wondering if that is true in every project.

Mr. Buehmann stated: I kind of agree with that. What if you are pulling out some pilings or something?

Commissioner Pemberton commented: I have a different perspective. I kind of like that there, I think "may" implies that there are projects and even though that might technically be true do we want to be signaling like maybe you can be involved sometimes? I like it how it is.

Mr. Goldbeck opined: I mean there are opportunities to involve doesn't really imply to me that all projects would have to do it. It just says that if there is an opportunity to do it let's do it.

Mr. Buehmann added: Also this is a finding and not a policy.

Ms. Bennett stated: This is the policy that goes along with that finding. We received a couple of comments on this. We got comments to define the words "meaningful involvement" and "insufficient" and "appropriate minor projects" or delete those words. I will say that the words "meaningful involvement" is defined in the findings of the newly proposed Environmental Justice and Social Equity section. So if you look in that other section you will find the definition.

"Insufficient" as we talked about earlier, perhaps we could change that to reflecting the scale and scope of the project to make that a little bit more defined. And "appropriate minor projects" is a tough one. This allows staff some discretion about which minor projects should be applicable for these policies.

There are a lot of different types of minor projects and minor permits that we see. This allows us to decide whether looking at what is the public nature of the project - is there a public-access component? Is this an area that has contamination? Is this an area that has disadvantaged or vulnerable or under-represented communities?

So to try to clarify this policy a little bit we added the word "compensatory" in here because like I said before mitigation at BCDC is a step-wise process. So you have avoid, minimize and compensate. For this specific policy we are talking about compensatory mitigation because ideally if a project is going to avoid their impacts they have been involving the community in the planning of that project. So that would already be captured in a different policy.

So this policy is specifically talking about compensatory mitigation. And then we are thinking about ways that we could change the word "insufficient" to make it more clear. So we are proposing instead of outreach being "insufficient" that it "did not reflect the scale and scope of the project".

Commissioner Showalter commented: So really this is the heart of the matter. We are trying to tell people that they need to include stakeholders from vulnerable communities in the whole process including mitigation. I think it said that.

That said, I would be fine with this but I would leave in the first projects for major projects and appropriate minor projects. I just think it is clearer but I could live with this.

Ms. Bennett replied: That first edit was just trying to make this less wordy. We weren't trying to change the meaning. We want this to be for major projects and certain minor projects or appropriate minor projects.

Commissioner Showalter suggested: It might be better if you want to take out the "for major and appropriate minor projects that both require compensation" to make it clear that compensatory mitigation applies to both major projects and minor projects.

Ms. Bennett stated: It is difficult to cut down on the wordiness but also get everything we want to say in there.

Commissioner Pemberton noted: I like the way you cut it down by removing the unnecessary – I think projects that require mitigation. I like it how it is.

Ms. Bennett continued: And lastly we received two comments that are outside of the scope of the amendment that we are working on how to incorporate in different ways as well.

5. **Adjournment.** There being no further business the meeting adjourned at 1:36 p.m.