San Francisco Bay Conservation and Development Commission
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November 10, 2016

TO: All Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
Sharon Louie, Director, Administrative & Technology Services (415/352-3638; sharon.louie@bcdc.ca.gov)

SUBJECT: Approved Minutes of November 3, 2016 Commission Meeting

1. **Call to Order.** The meeting was called to order by Acting Chair Halsted at the Ferry Building, Port of San Francisco Board Room, Second Floor, San Francisco, California at 1:16 p.m.

2. **Roll Call.** Present were: Vice Chair Halsted, Commissioners Bates, Chan (Represented by Alternate Gilmore), DeLaRosa, Gibbs (Departed at 3:17 p.m.), Gorin, Kim (represented by Alternate Peskin), McGrath, Nelson, Randolph, Sartipi (represented by Alternate McElhinney), Sears, Spering (represented by Alternate Vasquez), Wagenknecht and Zwissler (arrived at 1:20 p.m.).

Acting Chair Halsted announced that a quorum was present.

Not present were Commissioners: Association of Bay Area Governments (Addiego, Techel), Santa Clara County (Cortese), Department of Finance (Finn), Contra Costa County (Gioia), U.S. Army Corps of Engineers (Hicks), State Lands Commission (Lucchesi), San Mateo County (Pine), Governor (Wasserman), U.S. Environmental Protection Agency (Ziegler).

3. **Public Comment Period.** Acting Chair Halsted announced: Our next order of business is public comment if anyone wants to address the Commission on any matter which the Commission has not held a public hearing on or is not scheduled for a public hearing today you have three minutes to do so. I have one card here, John Coleman.

Mr. Coleman addressed the Commission: John Coleman with the Bay Planning Coalition. I am passing around a flyer to make you aware that we have our last in a series of workshops and briefings that is going to occur next Wednesday at the Port of Oakland. This meeting is on dredging and beneficial re-use; something very important to BCDC's activities and charge.

The topics we will discuss are, updating beneficial re-use opportunities, data and web tool demonstrations, updating the Dredge Management Office or LTMS strategy, the industry perspective on off loaders, funding opportunities to be able to do more beneficial re-use and dredging and then your Executive Officer, Mr. Goldzband will be talking about BCDC's action against the Army Corps of Engineers.

If you have not signed up we would love to have you sign up. There is information on the bottom of the sheet that shows the website you can go to. It will begin at 9 a.m. on Wednesday morning and conclude by 1 p.m. We look forward to seeing some of the Commissioners and staff.

Acting Chair Halsted moved to Approval of the Minutes.

4. Approval of Minutes of the October 6,2016 Meeting. Acting Chair Halsted asked for a motion and a second to adopt the minutes of October 6, 2016.

MOTION: Commissioner Randolph moved approval of the Minutes, seconded by Commissioner Gilmore.

VOTE: The motion carried with a vote of 15-0-0 with Commissioners Bates, Gilmore, DeLaRosa, Gibbs, Gorin, Peskin, McGrath, Nelson, Randolph, McElhinney, Sears, Vasquez, Wagenknecht, Zwissler and Vice Chair Halsted voting, "YES", no "NO", votes and no abstentions.

5. Report of the Chair. Acting Chair Halsted reported on the following: I am Anne Halsted and I am sitting in for our Chair, Zack Wasserman who regrets that he cannot be here today.

a. **New Business.** Does anyone have any new business to propose? (No comments were voiced)

b. **Next BCDC Meeting.** At our November 17th meeting, two weeks from today, here at the Ferry Building, we are likely to consider the following matters:

(1) A consideration and possible vote on an enforcement issue concerning Point Buckler Island in Suisun Marsh;

(2) A public hearing and possible vote on an application by the Water Emergency Transportation Authority to expand its operations near the Ferry Building in San Francisco;

(3) A briefing on the ramifications of transferring properties along the Oakland tidal canal in the City of Alameda; and,

(4) An update on information regarding sand mining in the Bay.

I also want to let all Commissioners and Alternates know that our meeting on December 1st – four weeks from today – will take place at the new regional headquarters at 375 Beale Street in San Francisco. Also, it will consist of a public workshop to discuss how we shall implement the rising sea level recommendations we adopted on October 6th. We shall follow up with each Commissioner and Alternate both to remind you of the location and to encourage Commissioners and alternates to attend.

c. **Ex-Parte Communications.** That completes my report. In case you have inadvertently forgotten to provide our staff with a report on any written or oral ex-parte communications, I invite Commissioners who have engaged in such communications to report on them at this point.

Commissioner Nelson reported: I received some ex-parte communication with regard to the enforcement action we received today.

Acting Chair Halsted added: I think we all received an email and I do not think that needs to be reported if we all received it. She moved on to the Executive Director's Report.

6. Report of the Executive Director. Larry Goldzband presented the Executive Director's report. Executive Director Goldzband reported: So, last night the Cubs broke a remarkable string of baseball futility lasting 108 years. While I hate the fact that each World Series game was played in cold darkness instead of in 72 degrees of brilliant sunshine, I do think we can apply a lesson from baseball to the somewhat brutal politics that we see around us. We're lucky – BCDC Commissioners tend to agree on facts surrounding jurisdiction, authority and policies before discussing how each views, from their respective seats along the Bay, the intricacies of permits and plans. In that way they seek to work with each other, instead of against each other. That is one reason why the Commission's history is filled with success instead of riddled with antipathy. My favorite baseball player of all time is Sandy Koufax. I believe that he understood both how to strike out a batter and how to gain political consensus. He once said, "I became a good pitcher when I stopped trying to make batters miss the ball and started trying to make them hit it." While Sandy's curveball was unhittable despite his opponents' best efforts, he recognized that the only way to be successful was to draw your opponents toward you, not to push them away. To mix the metaphor here; BCDC Commissioners grow closer by helping each other call policy balls and strikes and work as a team. I hope that others will do the same.

With regard to staffing, BCDC is fortunate to have gained a new intern. Abby Mohan, a geographer, marine scientist and sea captain has joined BCDC as a GIS intern. For the past 10 years Abby has worked on the San Francisco Bay as a captain and sailing instructor. She is now also a Gator, as she is completing a Bachelor's degree in Natural Resource Management and Geography and is starting a Master's Degree in Marine Science, both at San Francisco State. Abby will be helping the ART team advance our understanding of regional shoreline vulnerabilities, risks and potential for adaptation. Please let me know if you have any questions or concerns about her temporary position at BCDC.

In your packet you will note that we have a letter. It is a letter that our WRDA coalition of BCDC, the Coastal Conservancy, the Bay Planning Coalition, Save the Bay and the Bay Institute sent this week to the Senate and House conferees who are trying to finish their deliberations in time for the upcoming lame duck Congress. We were able to agree quite quickly on how we would formulate a compromise between the two chambers' desires to maximize the Corps of Engineers' beneficial reuse of dredged materials. We think that you will find the legislative language attached to the letter absolutely elegant. I hope that we shall have good news to share with you by our meeting on December 1st.

That completes my report, Acting Chair Halsted, and I am happy to answer any questions with one more thing that I forgot to put in.

You will remember that we have a new Bay design analyst Andrea Gaffney who is sitting behind Commissioner Bates. In a previous life Andrea helped the Landscape Architecture Foundation write the new Landscape Declaration which I have put into your packets. It is really interesting reading. It is a vision for landscape architecture in this century. We are thrilled that Andrea was part of the team that helped shape this and we look forward to her being able to implement it at BCDC.

7. Consideration of Administrative Matters. Acting Chair Halsted announced: Jaime Michaels of our staff is here to answer any questions you may have on the administrative matters. You have the administrative listing that we mailed on October 21st. Are there any questions? (No comments were voiced)

8. Consideration of and Possible Vote on the Enforcement Committee's Recommended Enforcement Decision Involving Proposed Stipulated Cease and Desist and Civil Penalty Order No. CCD 2016.03; Scott's Jack London Seafood, Inc., and the Port of Oakland. Acting Chair Halsted announced: Item 8 is Commission consideration and vote on the Enforcement Committee's recommended Enforcement Decision regarding a Proposed Stipulated Cease and Desist and Civil Penalty Order to Scott's Jack London Seafood Inc. and the Port of Oakland. Adrienne Klein will introduce the matter and discuss the Committee's recommendation then Marc Zeppetello will review the Commission's options regarding the recommendation. I should note that the Enforcement Committee's Chair, Commissioner Scharff, was called away on a family matter yesterday and he apologizes for not being here.

Commissioner Gilmore exited the room.

Chief of Enforcement Klein addressed the Commission: Today you are scheduled for a possible vote on the Enforcement Committee's recommended enforcement decision involving Proposed Cease and Desist and Civil Penalty Order No. 2016.03 that would be issued to Scott's Jack London Seafood Inc. and the Port of Oakland to resolve violations such as unauthorized construction and the unauthorized private use of a public access area at the foot of Franklin Street at Jack London Square in Oakland.

There are also a number of permit violations that I will describe in more detail in a moment.

The terms of the settlement agreement and order were crafted in an effort to reach a settlement. Also in a spirit of reaching settlement, no formal enforcement proceeding was commenced by staff. This recommended enforcement decision was heard and adopted by the Commission's Enforcement Committee on October 20th as mentioned by Chair Halsted. You will hear from the respondents and the public. We wanted to point out that in addition to the materials in your packet you also have five additional letters that have been submitted this week.

You have a copy of the permit, which I will describe now. In 1995, Permit No. 1985.019.09B authorized Scott's Restaurant to construct a pavilion in a public access area and to enclose the pavilion with fully removable hanging canvas tent walls. This pavilion area was authorized to be used for 73 private events per year and that is 20 percent of the year. The pavilion is required to be open for 80 percent of the year and that is 292 days.

The violations that are to be resolved are described on page 3 of the Order and also in Attachment A to the Order. They consist of: Without BCDC staff approval, in late 2012 and early 2013 the permittees replaced the canvas tent walls with a combination of permanent and retractable wall panels and a metal entry doorway. The permittees have a 10 year long history of using the pavilion for more than 73 events per year.

The permittees also constructed other structures without first obtaining a permit amendment consisting of a storage area between the restaurant and the pavilion, a stage at the front of the storage area, roof connection between the pavilion and the restaurant, and placing planters. The permittees have not been adhering to the event reporting requirements. They have not recorded the legal instrument to dedicate the public access area. They are not installing the required public access seating and signage in the pavilion when it is public use mode. They are storing planters and business-related equipment in the public access areas.

Following the discovery of the violations staff immediately notified the permittees of the violations by telephone and also in an onsite meeting and in an enforcement letter. Staff worked closely with the permittees for two years between 2013 and 2015 to resolve the violations. The permittees failed to agree to remove the permanent metal entry doorway or to submit a fillable permit application. The staff planned at the end of 2015 to commence a formal enforcement proceeding but instead entered settlement negotiations.

The decision before you is the result of these negotiations.

The terms of the Order found on pages five through nine are summarized as follows: This agreement was reached on September 28, 2016. The Order would require the permittees within certain timeframes to comply with the permit, to make the pavilion available to the public for 292 days a year, to stop storing restaurant-related equipment and planters and displaying promotional materials in the public access areas, to remove the metal entry doorway to the pavilion, to obtain staff approval of a plan to place a single planter adjacent to the pavilion on an interim basis, to use the pavilion for private events only in a manner fully consistent with the permit, to submit applications to retain the unauthorized pavilion enclosure system and other unauthorized structures plus additional retractable wall panels to replace the metal entry doorway, to propose new public access in the Franklin Street Plaza, to install public access furnishings and signs in the pavilion when it is in public use mode as required by the current permit, to record the legal instrument to dedicate the pavilion as public access as presently required, to submit past due quarterly event schedules, to pay a $250,000.00 administrative civil penalty, and in addition, the Order also requires the payment of stipulated penalties ranging from $500.00 to $3,000.00 per day for missing any of the deadlines outlined in the Order.

The Order also states that staff shall recommend approval of an application that seeks to increase the private use of the pavilion from 73 to 124 events per year. Twenty of those 124 events must be for non-profit purposes. The application must propose: to hold no more than one event per weekend, To hold no more than three events in a week, To limit the duration of all events, most of them to 14 hours and a limited number to 18 hours, To install a camera to monitor pavilion use and to create and maintain a real-time web-based calendar of events available to the public.

The permittees must also agree to a permit condition to pay a $10,000.00 penalty for each event in excess of the 104 for-profit events and the 20 non-profit events set by the new permit plus other penalties for holding more than one event per weekend or more than three events per week or events longer than allowed or storing anything in the public access areas or failing to install the public furnishings and signs in the pavilion when it is public-use mode.

Finally, the Order states that the ultimate decision regarding any such application and its provisions is in the Commission's sole discretion. Thank you.

Chief Counsel Marc Zeppetello addressed the Commission: The options available to the Commission in this matter are outlined in a regulation, Regulation 11332 entitled, Commission Action on Recommended Enforcement Decision. This regulation sets forth a number of options. I will go over them; however, there are a couple of options outlined in the regulations that are not available to the Commission today because this matter is coming to you as a stipulated order on a settlement rather than through a contested proceeding with an evidentiary hearing.

In summary there are four available options. One option that is provided for in the regulations, that I do not believe is realistic or that anybody would consider practical, I will just dispose of at the outset and that is: you could dismiss the matter and vote not to issue any order in this proceeding.

The first option that is available to you is to adopt the recommended enforcement decision without any change and issue the proposed order that is in front of you.

The second option is to, with the consent of the permittees to changes, if there are changes that the Commission would like to make and the Port and Scott's agree to those changes, you could adopt the Order with those modifications today.

A third alternative in the regulations, which is actually not available to you but I think is important to discuss, is that you could adopt the recommended decision with respect to certain requirements of the Order and dismiss the Order with respect to certain other requirements. So to illustrate this, on pages five, six and seven of the Order there are various things that the permittees are ordered to do. So you could accept some of those things and dismiss others. You could require a penalty but no cease and desist provisions. You could impose the penalty and not require any other orders.

But this option is not available because this matter is a stipulated matter and I will explain further on that in a second. I want to point out that this provision of the regulation does not authorize you to modify the Order or the recommended enforcement decision from the Enforcement Committee.

And, in fact, there is no provision in this regulation that allows you to select certain parts of the recommended decision that you like and modify others.

There is a provision in the regulation that would allow you to adopt your own order, but again, that option is not available in this procedural context. That option would be to reject the recommended enforcement decision and to decide to consider the entire matter de novo by holding a public hearing yourself. The reason that option is not available to you today is that an order that you would adopt needs to be supported by findings based on substantial evidence in the record.

We have an order with proposed findings but they are stipulated to by the Port and Scott's. Absent that stipulation there are no findings and in order to adopt findings you would have to direct staff to issue a violation report, give the permittees an opportunity to submit a statement of defense and then have an evidentiary hearing where the Commission or the Enforcement Committee resolves the factual matters and makes findings and issues an order.

So that brings me to the final two options that are available to you. The regulation also provides that the Commission could remand the matter to the Enforcement Committee or to staff for further action as the Commission directs.

Now a remand to the Enforcement Committee would not be helpful in this situation because the Enforcement Committee, like the Commission, is somewhat constrained by the fact that this is a stipulated order. So the Enforcement Committee would have the same constraints in terms of not being able to modify the Order without the consent of the permittees.

But what you could do is remand the matter to staff and direct that the Executive Director issue a violation report and give the permittees an opportunity to file a statement of defense.

If you were to choose this option, staff would request that you provide direction as to whether you would like the matter to return to the Enforcement Committee or come back directly to the Commission. If it goes to the Enforcement Committee first they would adopt a recommended decision that would be forwarded to you. But once it comes to you, the Commission would be in the same situation you are today; you would need to either accept it, accept it with changes that could be agreed to, accept it in part and reject it in part, or else hold a de novo hearing yourself, a second hearing, following the Enforcement Committee.

The final option that would be available under the same provision of the regulation would be to remand the matter back to staff with direction to work with the permittees to see whether it is possible to formulate a different stipulated order based on direction that you provide here today and bring it back to the Commission at a future meeting.

At that point if those negotiations were successful and came up with a stipulated agreement that was acceptable to the Commission you could adopt it. If those negotiations were unsuccessful then you would be faced at that time with the same choice as today, which is either to adopt the revised recommended decision, assuming there is a an agreement, or to remand the matter back and at that point direct the Executive Director to issue a violation report to have a formal enforcement proceeding.

Just to summarize, the four options are: Adopt the recommended decision without change, Modify the proposed order with the consent of the Port and Scott's and adopt it with their consent as modified, Remand the matter back and direct the Executive Director to issue a violation report and give the permittees an opportunity to file their statement of defense or Remand the matter back and direct staff to work with permittees, if possible, to see whether we could come back with an order that addresses concerns that the Commission might have. Thank you very much.

Acting Chair Halsted continued: The next order of business would be the respondents, Scott's and the Port of Oakland to identify themselves and to state whether or not they agree with the recommendation and whether they have any comments.

Mr. Raymond Gallagher spoke: My name is Raymond Gallagher. I am the founder of Scott's. I would like to respectfully request that the matter be accepted today. Mistakes have been made but two years of diligent work between the staff, the Port and the BCDC staff, I believe, have created a final settlement that settles everything going forward and makes a very clear record of what we can and cannot do. Thank you very much for your consideration.

Mr. Richard Sinkoff addressed the Commission: I am with the Port of Oakland. We also support the recommendation of the Enforcement Committee. Thank you.

Acting Chair Halsted announced: We have not scheduled a public hearing but there are a number of people who want to speak on this matter. We have three minutes per person. The first person is Sandre Swanson.

Mr. Sandre Swanson was recognized: I served Oakland in the State Assembly for three terms and I was also Deputy Mayor for the City of Oakland. My relationship with Scott's grew out of those activities. I came to ask for you to approve the agreement. It has been a painful time over the last couple of years.

Scott's has been a very good citizen. They have tried to bring people down to the Port. They have been an anchor tenant at Jack London Square.

We have seen them because of their charity work, and many of these excessive uses had to do with their charity work, as being someone who has embraced the community and is making a very positive contribution. They are one of the good guys. They have not tried to harm the beautiful environment of the Bay in any way. They have been very generous and then they are an institution in the community that has had the longest serving staff at their facility and they have provided so many jobs for the people that have worked for them for many, many years.

We are asking you to approve this agreement so we can move on with a very positive relationship. The new management and staff at Scott's would be able to proceed and go forward with their improvements and continue to be one of the most important anchor tenants that the Port of Oakland has. Thank you so much.

Ms. Liz Gallagher was recognized: I just wanted to say that we agree with this stipulated order and as the next generation of ownership I guarantee you that I will stick within the letter of the agreement. My management team will speak today and it will fall on our shoulders to make sure it happens and I assure you that it will. Thank you for your consideration.

Mr. Ramiro Carabez addressed the Commission: I am here today to apologize for the mistakes that we have made in the past. It was ignorance that caused these mistakes. I have learned so much from working with the Commission and I will make sure that what we have learned is implemented. Moving forward I can guarantee you that there will be no mistakes and that there will be no more misuses and that we follow everything by the letter of the law. Thank you.

Steve Hanson spoke: I am an ex-employee of the Port for 25 years so I did a lot of the development work in Jack London Square. I am very familiar with BCDC and the procedures. I am happy to say that I am going to be working with the BCDC staff to make sure that the stipulated orders and requirements are met. I think we can do that in the timelines stipulated. Thank you.

Mr. David Lewis addressed the Commission: I am David Lewis, Executive Director of Save the Bay. You have my letter asking you to reject this recommendation and instruct the staff and Enforcement Committee to additional penalties, requirements and changes to the Scott's permit.

In this case Scott's is a serial permit violator that has been illegally taking public access for private gain over many years. Until the statement a moment ago the permittee has been unrepentant for knowingly, brazenly constructing illegal unpermitted structures.

I salute the instinct to settle matters like this if possible to avoid litigation and confrontation. But here BCDC staff and the Enforcement Committee have not responded appropriately. They should have issued a cease and desist order two years ago when Scott's refused to respond promptly to the May 2013 Enforcement Letter by removing those structures and ceasing use violations.

The staff has not come to you or the Committee sooner to ask for your support and backing to enforce the matter more firmly and I cannot fathom why but they have been far too patient and as a result Scott's has delayed and dithered and resisted and tried to apply political pressure to the point where today you are being told to be pleased that there is a settlement.

This settlement is woefully inadequate. It rewards illegal activity and bad behavior with an offer of more private use and a penalty that is a fraction of what is merited. It is bad for the public access. It is bad for Jack London Square. It is also bad for BCDC because it would set a terrible precedent of weakening BCDC's legitimate enforcement regime and its credibility to set and enforce permit requirements. It would reward intransigence and bad behavior and delays. That could encourage other permit holders to ignore the requirements that BCDC permits have and to also delay.

It is especially egregious in this settlement to increase private use of this public pavilion. Jack London Square has grown a lot. There are many other private businesses that would like to have access guaranteed to that private space. That should be opened up for consideration in the future, not guaranteed to Scott's in this settlement.

You will see in my letter exactly what I am asking the Commission to do today; the changes that I am asking you to support and recommend to the staff and Enforcement Committee with the full knowledge that Scott's may not agree to those in the stipulated order and that then would require proceeding with an enforcement action and potentially litigation. I think that is merited in this situation both for the location in question and for the Commission's ability to enforce permits in other places. Thanks very much.

Commissioner Gibbs had questions: I want to understand what it is that you are recommending. You do talk about the removal of unauthorized construction. What are you asking to be taken down?

Mr. Lewis replied: All of the illegally constructed structures that have been placed there without permit which the staff identified to Scott's in 2013.

Commissioner Gibbs continued: And so in your understanding what would that leave there?

Mr. Lewis answered: Anything that was not originally approved in the permit.

Commissioner Gibbs pressed for clarification: You spoke broadly of the best interests of Jack London Square. What do you think is in the best interests of Jack London Square broadly speaking with respect to a pavilion available to the public and associated or not with Scott's? What is in the general overall best interests of Jack London Square?

Mr. Lewis clarified: I would support the pavilion as permitted. BCDC should open up in a future permit how many days that pavilion is allowed to be closed to the public and who has access during those private days. The reason for that is since the permit was issued there is a lot more use by the public of that area. There are a lot more business that would have an interest if they were invited to be considered for that purpose and that it should not be exclusively reserved for Scott's. If that were changed then the requirements for maintaining that pavilion should not only be Scott's either.

Commissioner Gibbs expanded the conversation: So overall with respect to drawing people to Jack London Square, you do think it is a good idea to have a pavilion like this?

Mr. Lewis responded: Yes. It is definitely an asset.

Ms. Barbara Vernon addressed the Commission: I am with Scott's Restaurant. I do appreciate what has been said. Our goal is to work with BCDC and also to work with the community and to provide a space that is beneficial for everyone. I believe that Scott's has done so much to enhance the waterfront at Jack London Square and continues to do so; that in our structure behind the restaurant it basically was a garbage area that we have brought in a structure that brings people to the waterfront and also encourages those that are around that structure to keep that area clean, to keep it presentable, to keep it inviting for those people that do come to Jack London Square days when we are using it and days when it is not in use.

We certainly will put up signs to make sure that is available for people but also it is important to know that we provide a service just in having that structure there because it encourages people to come to Jack London Square when they come to the restaurant, when they come to events that have civic worth for the community. Not everything is private. A lot of these events are public events. They are events that are fundraisers for the community, for all of the Bay Area. People come from all over the Bay Area to Scott's. It is important to keep that in mind. I know we have made mistakes and we will correct those mistakes. I do not think we need to be penalized any further for that. Thank you.

Ms. Kelly Hodgins was recognized: I have been employed with the Gallagher family for 26 years. The last two years I have been the director of catering. I can assure you that we will abide by all the rules and regulations that are going to be set forth. Thank you.

Ms. Sandra Threlfall addressed the Commission: I am the Executive Director of Waterfront Action. I was one of the original people who submitted to BCDC a suggestion that, yes, let Scott's build the pavilion. It will be a public place.

It is not a public place. Scott's is a very successful restaurant but this place needs to go back to what the original permit permitted and you do not give them 50 more days of closure. I do not understand how that is enforcement. They openly violated you and me as part of the public by ignoring every letter, every correspondence, every communication and doing it their merry way. A cease and desist should have happened the May that they received that letter in 2013.

Ms. Savlan Hauser made public comment: I am the Executive Director of the Jack London Improvement District. We improve and promote the waterfront district for the benefit of workers, residents and businesses. Our spectacular transit-accessible waterfront is the highlight of our district. It is essential that public access to it be maximized and vigorously protected particularly as we invite more investment and activity to the waterfront.

Scott's Restaurant is appreciated for its contribution to Oakland. It also illegally blocked public access to the waterfront. These are two separate facts and one does not diminish the other. Jack London Square is becoming increasingly popular with more residents, workers and hugely popular festivals and seasonal celebrations. The Port and Square's property managers deserve kudos for this. Twenty years ago Scott's may have been among the most significant contributors to activity. But that is not the case anymore. Also, the Square has a new owner, CIM with an exciting vision to upgrade public spaces at the Square.

The proposed settlement sets a precedent that undermines BCDC's authority. One of the main areas of support that we are asked of small businesses that set up shop in Jack London Square is in compliance with code. They take rules seriously. We all increasingly rely on BCDC authority as the area becomes more successful and intensively used.

The proposed settlement invites a permit amendment to increase Scott's private use by 70 percent. In the eyes of our stakeholders this is a missed opportunity. Allowing anyone to reserve the pavilion through a transparent system and having a caterer or brewer or winemaker of their choice will spread the economic benefit and privilege of this private use to a broad range of local businesses consistent with the public purpose of the pavilion. Thank you very much.

Commissioner Gibbs had a question: You stated that the public access is blocked by the pavilion. I wanted to clarify exactly how this is so. I recall having seen events at the pavilion and in my recollection there is a gangway behind the back of the restaurant that generally remains open where the public can still walk. Am I getting that wrong? Are they somehow blocking it off?

Ms. Hauser replied: Yes. With the increased use and the illegal constructions both are aspects that block the public access.

Commissioner Gibbs asked a clarifying question: So as it currently happens when they have an event there; the public cannot walk along the shoreline there because it is blocked off?

Ms. Hauser explained: Sometimes it is extremely obstructed. It is definitely not clear visibly how to maneuver. It feels like a private-type space that is not open for public use.

Commissioner Gibbs opined: I guess I would say I think there is an aspect of that feeling but if you are trying hard enough you can go through. It is an important distinction.

Ms. Hauser agreed: Sure, sure. These are just observations.

Mr. Ignacio De La Fuente was recognized: I am here in support of the negotiated settlement agreement. I had the opportunity to work with your staff for almost eight months. I know that this issue has been going around for years. Things have changed and now there are more people coming to Jack London Square. There are more businesses that want to use the pavilion or use the public space. Let's face it; Scott's has been around for almost 35 years in Jack London Square. It is one of the people that stuck around when times were not as good as they are now and attracted people.

And yes, they have exceeded the number of events. I can guarantee you that the majority of those events have been for non-profit events; that would be for police officers, firefighters, schools and others raising money and we provided that information to your staff.

I can tell you that we had very lively negotiation discussions with your staff. They did a very good job representing not only the interests of BCDC but the interests of all the citizens that use the waterfront. When it comes to the negotiated settlement agreement it is something that it is what it is. You are trying to reach agreement, to be fair, to be balanced; but I can tell you that Scott's Restaurant, one of the institutions that has provided jobs for 120 families, has done so on a steady basis for the last 30 some years.

We also understand the importance of living up to the agreements that we sign. I was personally involved in negotiating the final agreement with your staff. We are absolutely committed to abide by the letter of that agreement. We have exceeded some of those numbers of events but at the same time we have brought people to the water. The mission of BCDC, the mission of all those is to bring people to the water; to open up the water to the people. When thousands of people have come to those events they have learned and looked at new restaurants in Jack London Square and they come back.

We have to reward the people that have not only invested their money, invested their time, sacrificed when Jack London Square was empty and now that it is successful, everybody wants it. So people are not saying, don't have a pavilion. People are saying, let us have a share. And we are doing that. We have negotiated those events and we have stricter rules so that we can have that open space open earlier and closed later. We have agreements now that require only two hours before and two hours after. All of these things were not included in the initial agreement. It is a compromise. I hope that you support this compromise because there is a lot of work invested in it.

Commissioner Bates had a question pertaining to days allotted for activities: So how many days would be available for private use?

Mr. De La Fuente answered: There would be 104 days for private use and 20 days for non-profit events.

Commissioner Bates continued his line of questioning: So what about other people who reside in Jack London Square? Would they have access to those days, private days?

Mr. De La Fuente replied: I think all the public days - -

Commissioner Bates interjected: No, no, I am not talking about public days. I am talking about another restaurant, another forum – -

Acting Chair Halsted interceded: Commissioner Bates I think we could answer that question after we finish the public testimony.

Commissioner Bates added: Well, since Commissioner Gibbs was given those, I thought it was appropriate.

Acting Chair Halsted explained: I'm sorry I let that start. But anyway, here we are. I would like to correct myself. Questions of this particular speaker are appropriate but not ones that have to do with the whole situation. If you would not mind, please defer until after we have concluded the public comment.

Mr. Keith Miller spoke: I am with California Canoeing and Kayaking. I have been at ground zero of this since its inception. I stand in support of David Lewis's comments from Save the Bay regarding this. Regarding the structure removals it will be specifically asking to remove the stage, the fixed walls and the roofing which physically connects the pavilion to Scott's.

These additions are indicative of Scott's attempted annexation of this public space and must be removed. The pavilion was designed as a stand-alone structure and should remain so to recapture its public identity. Furthermore, the planter to be placed in the common area on the north side of the pavilion is another unpermitted public impediment which should not be allowed. It is an affront to CIM Group, California Canoeing and Kayak, and is a private intrusion into public space.

How this Commission handles the enforcement action puts BCDC at a crossroads and sets precedent for all future actions. BCDC staff did a magnificent job in its report clearly describing Scott's willful and calculated violations of the public trust.

The public pavilion has become a self-perpetuating revenue machine for Scott's who now uses this public resource among other reasons to financially influence elected and appointed officials to act on their behalf. These same officials likely have no idea how Scott's has egregiously violated the public trust, ignored BCDC and cheated the city of Oakland. It is it any wonder that so many young people today are frustrated with the system when something as blatant as this occurs and the perpetrator is rewarded for its actions.

It is not enforcement when a permittee consistently exceeds their user days and the problem is fixed by increasing the number of allowable days. That is called capitulation. And as Michelle Obama recently said, "Enough is enough".

Commissioners, please do the right thing. Reject this enforcement order. Option Four, direct the entrance frame, roof connection, fixed walls and connected stage storage unit be removed at once. Revise the penalty from $250,000.00 to one million. Demand Scott's adhere to the original permit which they signed years ago for a period of one year prior to accepting any amendment applications from them. Furthermore, I urge the Commission to direct staff to

provide you with an analysis as to why Scott's should continue to receive this massive public benefit. They have retired their original capital outlay and reaped millions of dollars in profit from both the permitted and illegal use. What justifies this continuing?

Two, direct staff to form a subcommittee comprised of BCDC, CIM Group and local neighborhood organizations to come up with a plan for the public activation of the pavilion and Franklin Plaza.

Times have changed at the Square. It is way past time to come up with something new.

Finally, it is time to demand transparency. All actions by public officials elected or appointed made on behalf and in favor of a BCDC permittee during a permit violation action need to be reported to staff and made public. We the people deserve to know. Thank you for your time.

Ms. Jennifer Koidal addressed the Commission: I represent CIM Group. I am the Vice President and General Manager for Jack London Square. I am here today representing our development team in southern California; Sean Burrin who submitted a letter on November 1st.

That letter has been submitted and as developer of the residential hotel site and a huge investment in time in creating a master plan effort for the common area improvements, as operator for the common area, we just encourage you to consider our requests as a developer to collaborate with BCDC on any redesign of the public pavilion so that there is synergy with our plan as well as Scott's plan. Thank you.

Mr. De La Fuente moved to the podium: Can I finish my –

Acting Chair Halsted interjected: I think you have spoken.

Mr. De La Fuente explained: Oh, I thought I had three minutes.

Acting Chair Halsted asked: You mean you did not finish your three? Is that what you are saying?

Mr. De La Fuente added: I did not finish my three minutes ma'am.

Acting Chair Halsted explained: I do not think that is the way it works. You may get a chance to respond to questions later, thank you. At this point I think it would be beneficial if someone is inclined to move the staff recommendation, put it on the floor so that we can use that as a starting point that would be very helpful.

MOTION: Commissioner Vasquez moved the staff recommendation, seconded by Commissioner Zwissler.

Acting Chair Halsted continued: And now we will proceed to Commissioners' questions and comments.

Commissioner Nelson commented: I wanted to start by thanking the public for raising this issue and unfortunately it has taken many, many years and repeated appearances by members of the public. I want to thank those folks for bringing this issue to our attention and thank the staff for their hard work and thank the Enforcement Committee as well for their work here.

I do have a number of very serious concerns about the current proposal. But I wanted to start by mentioning the length of the violations here. When you go back and look through the summary in the staff report it is astonishing how long this violation has been outstanding despite enormous patience by the staff.

And touching on Commissioner Gibb's comment; I have been out at this site a number of times at times when the pavilion was in use and even though I know the remaining space is open to the public – even with that knowledge I felt very uncomfortable using what was left of the public access in that area. And if I feel uncomfortable I think a lot of members of the public are going to look at the public access as it has looked frequently for the last many years and simply feel that they are just not welcomed there. I think that is an important issue for us to consider.

I have four specific concerns. First, the size of the penalty sounds significant but reading through the staff report and recommendation one of the items in there is a note from Scott's that revenue from the pavilion is $800,000.00 annually and increasing. In light of that and in the light of the length of the violation I do not think the current penalty is sufficient.

Second, I am concerned about the proposed increase. If I have this right the changes in the permit are not before us today but will come back to us at a future time. I have two concerns about the proposed use of the pavilion. The first is increasing the total number of days that the pavilion would be used for private purposes.

The second concern is with regard to the community-based charitable events. We have heard a lot about that and more from speakers and more in the letters we have received. I would like to point out that the current language in the document on page 10 of the stipulated cease and desist order states that there would be a maximum of 20 events. First, I think that should be, "minimum" not "maximum" and second, I do not think 20 is the right number. My understanding from the Enforcement Committee is that something like, that Scott's has indicated, something like 30 or 30 percent or a third of the events in the pavilion have been community events. This would reduce that number to 16 percent.

So I am concerned about the number of days the pavilion would be accessible to the public.

The third concern, given how long this violation has been ongoing I would like to make sure that some public review, a formal commission review is hardwired into this settlement, meaning portions of this agreement could sunset after X number of years, come back to the Commission and have to be formally renewed. I would like to make sure that we do not face the situation we have been in now for many years where the public has kept reminding us again and again about this. I would like to make sure that we hardwire formal commission review.

And then finally, just an open question. The source of the conflict here has been a paradigm where we have a pavilion that has public use, private use, and quasi-public use in the form of community events. I am just asking whether that is the wrong paradigm and whether we need to step back and really rethink that. I have not reached a conclusion on that but I am really struggling with a really messy situation that has gone on for a long time and part of it is because of the paradigm for this facility itself. We have heard a couple of different perspectives on that but I am not going to offer a recommendation yet. But those are my four concerns.

Commissioner McGrath commented: I believe in restorative justice, not punitive justice, but I do not see it. I am going to vote against this and I am going to recommend that you all vote against it too. And I am going to tell you a little more about why.

I worked at the Port of Oakland from 1990 to 2006. I ran the Environmental Department. My retirement lunch was in the Scott's tent before the current violation. I was in the Square almost every day. I kept a guitar behind my desk and about one day a week I managed to go out in the Square and I used the public space. And about one or two days a month I went with the Port's IT Manager and we went out and played. And we went frequently to the Scott's tent because it was not the Scott's pavilion. I would remind the Commission and I would remind Scott's that this is public space. It is public tidelands. It is subject to public use. The tent was either up in anticipation of an event that night or because it had not been taken down from the day before. When it was down this public space was uninviting. The chairs and the tables that were supposed to be there were frequently not there.

I did not keep records. I did not call Steve McAdam. I represented the Port of Oakland. But I was well aware of what was going on. I did not need to be told that Scott's had political juice in Oakland. When Steve McAdam came over to the Port to talk about the other violations, this goes back well more than a decade, this was the parking of cars in the public use area despite the garage and the valet service; the director of commercial real estate walked out of the community meeting so one of the Port Commissioners could scream at Steve and me about why we were harassing Scott's.

This is public space. The idea that somehow you can benefit from the use of public space, public tidelands – the other thing to remember is during all of this time Jack London Square had a huge amount of vacant space available. It is not fair to have a different set of rules for one applicant than the other. There are many restaurants in Jack London Square. They compete with each other. If you look at the exhibit that is attached to the site you will see the tent down and you will see it is rather uninviting space.

I have no problem with the concept of some type of settlement that is restorative; that looks at this site and says, this site does not work very well. We will let it continue to be used and maybe even a little more used for events that benefit the community because we are going to put into play something which is, in fact, a net betterment.

I retired 10 years ago and at that time you could not find the chairs. The maintenance of the space was private. That goes to whether or not it is really of any use.

There is a lot of common area at Jack London Square; a better job could be done. I want to see something that is restorative not something that rewards people for an extra, however much it is – I do not see anything in the record that says that this particular applicant does not net benefit from this. So under those circumstances I cannot possibly vote for it.

Commissioner Zwissler was recognized: I have some questions. First on how we got here. Can we get a quick summary on why it is these many years? In fairness and in full disclosure to all of us let's maybe air our laundry. How come this took so long?

Mr. Brad McCrea answered: Not unlike Commissioner McGrath the staff has been aware anecdotally of the alleged misuse of this structure. For a number of years, through a change of leadership, we have lacked the leadership to enforce a number of projects including this one.

And that led us up to about three years ago when we engaged with these permittees. We thought that through negotiations we could get there. And for two years, up until 13 months ago, we engaged in a soft back-and-forth; fits and starts you might call it. Exactly 13 months ago we engaged in this effort to reach a settlement agreement. It was difficult. As Mr. De La Fuente mentioned it was lively and it was lot of back-and-forth. In the end this compromise was reached.

I do not know that anyone is happy with the compromise. I think that normally when we enter into enforcement discussions with permittees who have alleged violations things move much more quickly than with this permittee, specifically, Scott's. I think in part it is this case. The combination of benefits on both sides to come to a settlement was not easy. What they want out of the deal is more days. And you have heard that. What we want for the public is assurance that if there are future violations there are built-in penalties. And you heard those represented. More public access improvements would be required as part of this. The structures will come down. And there is the $250,000.00 penalty which, like that number or not, was not easily reached.

Commissioner Zwissler continued his inquiry: On the issue of precedent; are we following a precedent under this currently as we are applying this settlement agreement? In other words, are there precedents for this? And I would like to hear an opinion on whether we are setting a future precedent.

Ms. Adrienne Klein asked for clarification: With regard to any specific element of the settlement Commissioner Zwissler?

Commissioner Zwissler explained: I mean generally of course.

Ms. Klein responded: It is very common to settle violations and in this manner. We can elect to or not to issue the violation report in advance of entering into settlement negotiations.

Executive Director Goldzband added: I would probably supplement that. The process question that makes this complex is that what has been presented to you is an enforcement action as well as a framework that staff will use to present to you eight weeks after you adopt this, if you were adopt this, as a permit that the Commission can either accept, amend or defeat.

When Commissioner Bates asks the question that I think he will probably ask after Commissioner Zwissler is done which is about the number of days that people are talking about; that number of days is not accepted by the Commission if the Commission were to adopt this enforcement order.

What is accepted by the Commission is the acknowledgement that staff will present to you in two months if Scott's actually completes an application for a permit amendment or a new permit that would include a certain number of days that you have before you. It is up then to the Commission to decide what the appropriate number of days is. I would assume that there will be a tremendous amount of discussion about that.

With regard to your question about precedent, I will look at Steve and Brad – I do not know that there is precedent. I doubt that there is precedent; Steve is shaking his head. I do not think there is precedent for this.

The only way that staff was able to negotiate a solution on the enforcement side to get this to you was to also preview for you what the policy issues would be and provide you with a periscope for that about what staff will recommend with regard to an upcoming permit. Those things are combined here.

Commissioner Zwissler continued: There was some indication that if we reject this and we go to litigation or in a formal enforcement action that there is some reason to believe that we would not be successful because of some element. Is it because of the amount of time we have dragged on or what is the concern about being successful in a formal enforcement action? Did I misread that?

Mr. Zeppetello answered: I would not characterize it as not being successful. I think that if this were to go to formal enforcement or be challenged, in certain aspects such as removal of the unauthorized construction seem very clear.

I think what the concern was from staff's point of view is that there are certain elements with respect to the violations where, although on paper the maximum penalty is much more substantial than the stipulated penalty that has been agreed to, that the permittees have equitable arguments and maybe some statutory legal arguments of why in the end the high end of the potential range is not very realistic. I would rather not say more on that to present what those arguments actually are but that was our concern.

Commissioner Zwissler commented further: The characterization of the non-profit use; what does that mean? In other words, are you charging a non-profit less for use? I do not understand what that means. Is it free?

Mr. De La Fuente replied: That is exactly what it means. Schools, 501(C)(3) non-profit organizations and public agencies; they only pay the cost.

Commissioner Zwissler asked: Does that include food and beverage?

Mr. De La Fuente answered: It does not include food and beverage.

Commissioner Zwissler continued: So they pay cost for everything?

Mr. De La Fuente explained: They just pay the cost. They don't pay anything else.

Commissioner Zwissler reiterated: No rental fee and cost for everything, thank you.

Ms. Gallagher added: I do want to state that when we do have fundraisers my father is always giving gifts and taking care of people. So it goes beyond us waiving our food costs and just asking them to pay for the service charge.

Commissioner Bates commented: I have a procedural question. I see Commissioner Gilmore has not been here for a while. I am assuming she has – -

Acting Chair Halsted announced: She has recused herself.

Commissioner Bates continued: So what constitutes a majority of the Commission?

Executive Director Goldzband answered: We have 14 present. For an enforcement action a majority of those present is what is required.

Commissioner Bates continued: I am interested in the number of days, the private days; could we get a clarification of what would be allowed.

Acting Chair Halsted asked: The private days for Scott's you mean?

Commissioner Bates replied: Which days would be used for private use and which would be used for non-profit public use?

Acting Chair Halsted asked for clarification: If you would not mind going over that again; it would be very useful to understand. And we need to understand whether or not we are actually engaging on that issue and whether Scott's thinks we are engaging on that issue.

Commissioner Bates explained: I want you to say what was presumed under the old permit and what it would be under the new stipulated agreement.

Ms. Klein replied: The current permit from 1996 allows for the construction of the pavilion which is an open-air structure. It allows for the erection of canvass tent walls from the roofline to the ground 73 times per year.

There is a more complex formula attached to the permit as an exhibit. In the simplest terms it is 73 private events per year. When the pavilion is not in private use mode the canvass walls are removed and there is to be tables and chairs and public shore signage.

And under the agreement Scott's is allowed to ask for an additional 51 days totally 124 private events, 20 of which would be for non-profit purposes.

And the enclosure method has changed from the canvass tent walls to partially permanent walls and partially retractable walls.

Commissioner Bates continued his commentary: I find the $250,000.00 to be a paltry amount. Given the history I think it is an insult to bring this forward. I never would support that.

I also feel that the private days are way too much and there should be more opportunity for the public to have access to it.

If the applicant would consider an amendment raising the fee to one million dollars and 70 days of private and 30 percent of those 70 being open to the public I would support a motion like that; but other than that I am not going to vote for it.

Commissioner Gibbs had questions for the Gallaghers: My understanding when you came up you described yourself as the founder of Scott's and Ms. Gallagher you as the next generation of ownership. Mr. Ramiro Carabez, behind you, who also spoke; is he a member of Scott's ownership?

Mr. Gallagher answered: No, he is the General Manager.

Commissioner Gibbs continued: So he is an employee?

Mr. Gallagher replied: He is a 28-year employee.

Commissioner Gibbs asked: So why is it that he is the only one that apologized? You sir said that mistakes were made. And you Ms. Gallagher promised that in the future there would be compliance, but he was the only one that stood up and issued an apology.

Mr. Gallagher responded: That is my shortfall. I should have apologized.

Commissioner Gibbs added: I am a huge fan of your restaurant. This little bit of Mr. Carabez apologizing is the only unpleasant experience I have ever had with the relation to Scott's. And I do hope that you are a key part of Jack London Square going forward.

My thoughts are that this is really much bigger than Scott's. This has to do with all of Oakland and the waterfront down there. Scott's is the jewel of Jack London Square. As Assembly Member Swanson and Councilman De La Fuente said, we need to have people coming down to Jack London Square to enjoy Oakland to see what Oakland has to offer.

The most important thing to me is that this feels very rushed to me right now. We have not considered all the broader implications and unless the Executive Director or someone else on the staff says that we cannot take another month to try and think this through with the active involvement of some subset of the Commission or something then at the end of this that is what I hope we are going to do. It seems we got it wrong in a very interesting or confusing way. Looking back to the past the fines do seem very inadequate to me. But looking forward to the future I do not see why we want to have limits at all on the number of days that people can come down and enjoy Jack London Square and see this marvelous facility. The more people come down there and understand that they can have this kind of experience in Oakland the better for the future of Jack London Square.

I do not know what the exact number is and there may be some kind of logistical limit or some other limit, but as far as I am concerned I do not know why it is not 365 days; we could have wonderful events exposing more people to Jack London Square and then it just becomes a matter of how do you adjust the ratio between public and private and also how do you let other commercial entities down there or other non-profits also have access to it.

Just to sum up; this is really a key to the future of Oakland and the public waterfront in the East Bay. Scott's is the classic of that area and we have to find a way to ensure that we can maximize public access and private enjoyment there. It just seems to me that right now we are rushing into something. So I am actually going to vote against this motion and then however it is appropriate ask for about a month to see if we can consider more fully the big picture.

Commissioner Sears acknowledged Commissioner Gibbs remarks: I want to acknowledge what Commissioner Gibbs said about the benefit of these kinds of public pavilions. We have a public pavilion at Larkspur Landing that is a tremendous value for the community and is very highly used. I am not trying to under estimate of this kind of a public space. I want to particularly thank Brad McCrea for a very frank description of how we got here and what the background is. That is very helpful. I think it is very important that this Commission vigorously pursue enforcement and I also appreciate the staffs' efforts in most circumstances to try to find a good resolution of a disagreement. A lot of times if you are in litigation you go to mediation. You get a good resolution when you come out and everybody feels awful.

To me that is not the standard by which we should be judging this particular moment. This is really about Commission enforcement of ongoing, flagrant abuse of our permits. We all appreciate the importance of taking permit requirements seriously; taking it seriously if you are a person subject and taking it seriously if you are staff members and you are Commission members in making sure that you are looking for violations and stopping violations of our permit requirements.

Like many of my fellow Commissioners I have serious problems with what is proposed here; part of it is the structural complexity. I am not seeing the reason to increase the number of events from 73 to 124 in a settlement of a dispute. I think the penalty is way too modest. I also really appreciated Commissioner Nelson's suggestion that we hardwire in formal Commission Review. I think there are just a lot of problematic issues here that have not been resolved with what is being proposed.

Commissioner Peskin was recognized: I agree with Commissioner Gibbs that this is larger than Scott's and larger than Jack London Square. I think it is larger than Oakland. It really goes to whether or not this Commission is going to create a precedent that when a permittee violates that permit they are, in essence, rewarded as part of the enforcement action.

We had a case here earlier this year where an entity in South San Francisco had violated their permit. We went through an enforcement action then they came back subsequently and asked for an amendment to their permit.

That is the normal order of things. To do this in one fell swoop really undermines the Commission's enforcement powers. And it says to permittees all over the Bay Area, hey, go ahead and violate, we will take three years to enforce and we will reward you. And what does that say? This Commission is just going to get steamrolled.

Commissioner Randolph commented: I share the concern about the size of the fine and this situation is aggravated by the length of the violations. Having this happen over years and not being non-responsive for years puts a particular light on it.

I am confused about the added days whether by voting for this stipulated settlement we would be approving that added number of days or whether that number would come to us in a subsequent meeting. And if we were to approve this now but disapprove the number of days in a subsequent meeting what would the effect be on the settlement.

Executive Goldzband replied: The latter. The framework that was developed includes both the enforcement side and a preview of the permit side because that is what was necessary from staffs' perspective in order to get Scott's to this point.

Staff is unable, unwilling and not even thinking about committing to Scott's or any permit applicant that what staff would think is appropriate in a permit application is what the Commission would approve. Commissioners have that prerogative not staff.

What you would see would be a permit application, if one comes from Scott's, and it would include a certain number of days with a certain number of events that includes non-profit and for-profit. And then the Commission would take it upon itself to have a discussion about whether that is the proper amount of events at the space.

Commissioner Nelson commented: I was going to make a substitute motion but I thought I would wait if there are other comments by the Commissioners.

Acting Chair Halsted added: In reviewing this I was shocked at the increase in the number of events. I find that very confusing and lacks understanding from my viewpoint.

I think we need to clarify what is before us. Which pieces of this agreement are actually before us to vote on regarding the proposed amendment or the substitute amendment?

I find myself concerned because of seeing a lot of things go wrong. Usually when people violate things regularly, they keep violating. I am not convinced that the people who have regularly avoided complying will comply in the future unless there is some big hammer over their head.

I think we have to very careful about how we follow through on whatever we do.

Commissioner Wagenknecht commented: One of the issues I see with this is to me $250,000.00 sounds like real money so that was not the big issue to me. Right now what is supposed to be on the permit is 73 days of activity and we are moving it past that. It would be nice to bifurcate that and have an enforcement action and then let it go through a process of looking at what is appropriate on that site for the future.

I feel badly for our little Enforcement Committee that has not met for years and all of a sudden get this in and we are throwing them under the bus here today. I think that could be rectified over time so that they are a regular part of this. I feel badly for the process they went through.

Commissioner Zwissler asked: Is there anyone here from the Enforcement Committee that could speak to it?

Executive Director Goldzband explained: Unfortunately the people who were at the Enforcement Committee when they held this all could not make this meeting. This was for a variety of reasons. It is one of these perfect storms where they all were unable to be here.

Commissioner Nelson commented: Marc you laid out four options for us in terms of actions available to the Commission. The fourth option was providing direction for another round of negotiations. You said for the result to come back to the Commission. I wanted to make sure that there was nothing inappropriate about remanding it to the Enforcement Committee before it comes back to the Commission.

Mr. Zeppetello replied: It could be remanded to the Enforcement Committee if you want them to, first, consider any revised agreement that staff and the permittees may come up with. We could do that but the Enforcement Committee cannot revise the Order without the consent of the permittees.

Commissioner Nelson continued: And the alternative to that would be the third option you laid out which was to begin a formal enforcement process. I am going to make a substitute motion that we pursue the fourth option meaning another round of negotiations with the results of that to go back to the Enforcement Committee.

I think even though I am not comfortable with the public days recommended here we are not acting on those public days here. Despite my discomfort I think I am going to set that issue aside. We can address that issue later when it comes back before us as a permit application.

The two issues I would like to suggest as direction to the staff and Enforcement Committee are that the penalty be significantly increased and that an appropriate part of the permit be designed to sunset in three to five years so that there is formal Commission review and renewal of that part of the permit so we hardwire review in to make sure that this future settlement is actually working.

Acting Chair Halsted asked: Is there a second to that motion?

Commissioner Bates replied: I second it.

Commissioner Vasquez had a question for staff: I have a question for staff as to how that would look if it came back. You have asked us to approve a stipulated agreement but what does this do to that?

Mr. Marc Zeppetello explained: We would take the existing order and use that as a basis to start negotiations but we would take the direction into account. I would anticipate what we would come back with through the Enforcement Committee is a, assuming the permittees are agreeable and we could make progress based on this direction, a revised stipulated order.

So this one would be the basis but revised. If we go with the substitute motion it would go to the Enforcement Committee and they would refer the recommended decision back to the Commission since only the Commission can actually adopt the order. It would be a two-step process. We would be back here with a revised recommended decision.

Commissioner McGrath commented on the substitute motion: I do not disagree with Commissioner Gibbs that public trust space that is used to encourage public use is appropriate. The question is how does that get set up? What borders get put around it? I do not want to in this action frustrate meaningful discussion on that. I also do not want to predestine it one way or the other.

It is certainly possible to create significant public access benefits in other areas such that something like that might go forward as a permit amendment. I do not want to necessarily make that impossible but I do not want to say that we would go for that no matter what.

That brings us back to Barry's substitute motion. I think it may be more appropriate to bring back to the full Commission given the interest rather than the Enforcement Committee.

I want to make sure that one aspect of restorative justice is accomplished. Barry you mentioned $800,000.00 a year. That is a lot of money if somebody violated a permit for $800,000.00 a year for 10 years. That is a whole lot of money compared to $250,000.00.

I am also not saying that this is necessarily true. What I want to make sure is that we are not approving something that sets a fairly thinly disguised precedent that you can benefit a whole lot and pay just a little bit.

I want to make sure that the discussion makes sure that there has not been a windfall profit accompanied with a paltry fine. I do not want to say necessarily that 250,000 is too small or insulting or it is too big. What I want to make sure is that we have actually got some facts and some findings that we can adopt and say; we are not worried about this as a precedent.

With that understanding I think I could support Barry's motion. So that is further direction to the staff.

Commissioner Peskin commented about timeframes: I am interested in seeing timeframes on that. If these negotiations take another eight months or another three years that staff understands that they should pursue an enforcement action at a date certain.

If this does not come back, whether it is through the Enforcement Committee or through the full Commission in a reasonable amount of time, that staff is directed to enforce.

Commissioner Gibbs spoke: I think Mayor Bates is already mad at me and I do not want this to be, so I will let him go first. (Laughter)

Commissioner Bates commented: I wanted to address the maker of the substitute motion. I am the seconder and I enthusiastically support the thrust of where it is going. I am wondering about the issue of having it come back to the Commission instead of the Enforcement Committee because it seems like when you look at the fine and you look at the violations accumulated over the years people need to have the opportunity to speak to what is significant.

My assumption is that if it comes back we will not be able to amend it. I really want to know that if we go to the Enforcement Committee and we are not happy with the Enforcement Committee can this body then overturn that decision and make it higher?

Commissioner Nelson explained: My understanding is that if a stipulated settlement comes back to us we would then have the same options before us that we have now which is that we could not amend that settlement without the approval of the permittees.

Commissioner Bates continued: I question whether that is a good idea. I think we should bring it back to the full Commission and then we could make a determination and you would not have to go back and forth and we could stop this ping-ponging.

I also liked the suggestion by Commissioner Peskin that we set a timeframe for when this could be done. Can we consider that in the substitute motion?

Commissioner Nelson replied: I had suggested that we send it back to staff to try to negotiate another stipulated settlement in recognition of the fact that if we start a formal enforcement proceeding at this time it is going to take a lot of time to work through that process in something as contentious as this.

I heard two suggestions. The first is that it comes back to the full Commission instead of the Enforcement Committee and I would accept that. The second is that we put some time limits on that. I think that is an excellent idea. I am thinking that we provide direction to try to bring something back here within four months? Staff?

Mr. McCrea replied: Here we are heading into the middle of November. I think in the first meeting we would know where we stood. I think two months is enough.

On that point if I might add another option; we could go ahead and begin the formal enforcement proceeding with mailing out the violation report and then enter into negotiations. We could always stop the formal enforcement proceeding if we can conclude negotiations.

Commissioner Nelson continued: So then staff would mail out a violation notice and continue negotiations. I just want to make sure that we have a clear trigger to make the decision about whether we are going to continue negotiations or continue a full enforcement proceeding.

Can you walk me through how that would work?

Mr. Zeppetello replied: I think that would be a possible approach. A consideration is that once the violation report goes out that starts a clock, a 35 day clock, by which the permittees have to file their statement of defense and response. Now they could agree to an extension or the Executive Director could extend that date with the consent of the parties. We could mail out the violation report and then hold it but as a practical matter we would probably have that first meeting that Brad referred to prior to then.

Mr. McCrea added: To give you some context the violation report is nearly ready to go. We had it drafted. We could probably have that ready to be mailed out by the end of November.

Mr. De La Fuente advanced to the podium: With all due respect I think that - -

Acting Chair Halsted interjected: Excuse me. Would you wait to be called on. We are at Commissioner comments. Would you like to make a comment in response to something that has been said?

Mr. De La Fuente replied: Yes. I was the person that reached an agreement with staff. I think the suggestion of four months is a good one. I do not think that notice of the violations would allow us to do even better afterwards than sitting down with the staff and trying to reach an agreement. I think, again, in all fairness, that was an agreement that we reached with the staff and I hope that we can continue working on this.

Acting Chair Halsted: We appreciate that. Thank you.

Commissioner Gibbs was recognized: My question relates directly to this. I thought at the beginning the structure that was outlined, staff would start engaging in some new negotiations then it would come to the Enforcement Committee. To me that represented another bite of the apple, another chance to shape something that would be to the Commission's pleasure and then it would come to the Commission where if we wanted to reject or make a counter proposal as Mayor Bates did earlier today the Commission could still do that. I wanted to say I think that having the Enforcement Committee layer in there is actually an effective thing to do and I would not see it taken out.

Commissioner Bates stated: I want to speak to why you should keep it in. I thought you said you were okay with bringing it back to the full Commission rather than the Enforcement Committee. We need a clarification of that.

And then I thought the idea was a good one that was brought up. Maybe we should say we would not start the enforcement in action until a couple of months. We can have the negotiations and then start the enforcement at that point in time.

We need clarification on whether or not you are bringing it back to the full Commission or to the Enforcement Committee because I thought you said you were going to bring it here, the full Commission.

Commissioner Nelson agreed: I did say that, you are right. I suggest that we bring it back here. I am thinking about Commissioner Wagenknecht's comments about the Enforcement Committee. He is absolutely right. The Enforcement Committee has not met for some time and I think they have worked hard here, and as staff said I do not think anybody is thrilled with where we are today. I am reflecting on the need for us to make sure we support and strengthen the Enforcement Committee so I have not heard from staff and I would suggest that we want to see something would go to the Enforcement Committee within two months. It would go to the Enforcement Committee before it would come here and that if we do not have something before the Enforcement Committee in two months that at that point staff sends out the notes of violation. In the real world that is maybe a one month delay.

Acting Chair Halsted asked: And is that an accepted change to the amendment? Does the secondary accept that?

Commissioner Bates commented: Well, I do not like it. So I am going to withdraw my second. Somebody else can second it.

Commissioner Wagenknecht stated: I will second it.

Commissioner Nelson commented: So the direction would be to direct staff to begin another round of negotiations with the goal of bringing something to the Enforcement Committee within two months. So it would go to the Committee before it came to the Commission. If they were unable to bring something to the Enforcement Committee within two months at that point they would send out the violation report and begin formal enforcement proceedings. Did I miss something?

Executive Director Goldzband added: Yes. You originally talked about increasing the penalty.

Commissioner Nelson agreed: Correct. That they come back with a significantly larger penalty.

Executive Director Goldzband continued: You also talked about having a sunset provision or a revisit provision.

Commissioner Nelson stated: That we hardwire to a portion of this agreement a sunset so that performance of this settlement comes back to the Commission for a formal review.

Mr. McCrea added: And Commissioner Nelson on the point of the matter of days, direction on that would be very helpful. Currently the permit allows 73 days and the stipulated order had 124.

Commissioner Nelson replied: I am looking for a way to reach an agreement on this. It is quite clear from my perspective that I am not comfortable with the substantial increase in the number of total days in what looks to me like a substantial decrease in the number of community days. It is not clear to me if we need to provide direction on that now. That is going to come back to us later in a subsequent action. So staff, would it significantly handicap you in these discussions if we do not provide direction on total days?

Mr. McCrea answered: It would not except I do want to address on the bottom of page nine of the stipulated cease and desist order, a sentence reads, "Staff agreed to recommend approval of such amendments to the permit, provide the application et cetera." This assumes that the staff will come forward with a recommendation of approval at a future date after the application is received.

Deputy Attorney General Chris Tiedemann spoke: I think it might be cleaner to add to the motion that the Commission is today rejecting the stipulation that is before it and directing staff to begin another round of negotiations and everything else that was included in Commissioner Nelson's motion.

Without rejecting the stipulation that is before you the Commission is really hamstringing staff in the negotiations. The motion can contain direction to staff but the motion should include that this stipulation is rejected.

Acting Chair Halsted added: I would like to say also that I heard fairly roundly from Commissioners that the increased number of days proposed was not acceptable to most Commissioners.

Commissioner Nelson stated: I am happy to add. It seems quite clear to me that the Commission is not comfortable with the number of total days and the percentage of those days that would be dedicated to community events. At a minimum we need to make sure that we are at least guaranteeing the same percentage of community events that we have had in the last several years.

I would add that to the motion if my second agrees.

(Commissioner Wagenknecht nodded agreement)

Commissioner Vasquez commented: It is really important to go back to the Enforcement Committee. The fact that they are not here and they are fellow Commissioners and this is what they came up with is important. I would have liked to been able to hear their reasoning for where they are at.

I am a little troubled about telling them how much to increase the fine or whether it is a little bit more or a lot more. I think that is something that they need to work through as our body. And then whatever they come up with should we not agree with that then we can do it as a whole Commission.

I think it is unfair to them because they went through a process and they had their hearings and they made a recommendation to us. It should go back to them which it is hopefully going to do and that we know that there is a great deal of concern about what came up out of that.

Commissioner Zwissler was recognized: I have a potential friendly amendment. I am also concerned about an arbitrary, “this is too high, this is too low” assessment of the fine. What is the net margin on $800,000.00 a year?

The point is, whatever that fine is just give us some basis for it so that we can feel comfortable. An abstract number is challenging.

Acting Chair Halsted agreed: I feel the same way about the days. There should be some rationale behind it.

Commissioner McGrath commented: Back to the number of days; in terms of making sure that we are encouraging negotiations I do not think this has to be in the motion but it has to be clear to both the applicant and the staff that it may be a close call among the Commission as to whether or not there is willingness to entertain more days. If the staff wants to bring back something in the furtherance of good faith negotiations I am certainly not going to forbid it. I would also want to make sure that you make very clear that there is a condition on that which is providing substantial offsetting benefits.

In other words, some equivalency between what is lost in terms of the use of public area and what may be gained in other public areas.

I think negotiations are good and we are sending it that way. I am sensitive to Commissioner Gibb’s point that it does provide one kind of access but I want to see metrics.

And I want to see some rationale, not just: we are committed to do this because we have our arm behind our back. In fact, some way that we could have this kind of quality discussion about whether or not there are offsetting benefits.

Commissioner Bates opined: You cannot do that on the Enforcement Committee because you cannot have that discussion because it is not before you. They are bringing you a description in a stipulated agreement; you either like it or you do not like it and then you have to go through this thing again. I think it is ridiculous and I think we should bring it here and have it out and find out what they want.

Acting Chair Halsted stated: It is the substitute motion that would get voted on first.

Commissioner Vasquez commented: I would request that the motion I made earlier be cancelled and this becomes the original motion.

Acting Chair Halsted reiterated: We are voting on the substitute motion only.

Chief Deputy Director Goldbeck spoke: Madame Chair, staff would like to make sure that we understand exactly what the motion is so as they proceed we have a good direction. We have had some good back and forth but if the maker would not mind one last time giving us directions.

Commissioner Nelson commented: We would reject the current proposed stipulated agreement. We would direct staff to bring something to the Enforcement Committee within the next two months. If in their judgement they were unable to bring something to the Enforcement Committee within two months at that point we would automatically begin a formal enforcement proceeding. Our direction to staff is to make sure that there is a provision in here that includes some sort of a sunset and hardwired Commission review of the performance of the settlement in

the next three to five years. We are rejecting the current penalty and requesting that a settlement come back to us with a new penalty amount and justification for that amount. The staff should provide us also with an analysis of the justification for the number of days that would be allowed for community and non-profit days.

MOTION: Commissioner Nelson moved that the current proposed stipulation be rejected and that formal enforcement proceedings be started if something is not brought to the Enforcement Committee within two months, that the negotiated settlement include a sunset and a hardwired Commission review of settlement performance and that justification for penalty amounts and community/non-profit days be included, seconded by Commissioner Wagenknecht.

VOTE: The motion carried with a vote of 12-2-0 with Commissioners DeLaRosa, Gibbs, Gorin, McGrath, Nelson, Randolph, McElhinney, Sears, Vasquez, Wagenknecht, Zwissler and Vice Chair Halsted voting, "YES", Commissioners Bates and Peskin voting, "NO" and no abstentions.

(Commissioner Gilmore returned to the meeting)

9. Consideration of and Possible Vote on the Enforcement Committee's Recommended Enforcement Decision Involving Proposed Stipulated Cease and Desist and Civil Penalty Order No. CCD 2016.04; Marina Village Associates, LLC. Acting Chair Halsted announced: Item 9 is Commission consideration and vote on the Enforcement Committee's recommendation regarding a Proposed Stipulated Cease and Desist and Civil Penalty Order to Marina Village Associates LLC. Maggie Weber will introduce the matter.

Enforcement Analyst Weber addressed the Commission: I am an enforcement analyst with the Commission staff. On October 20, 2016 the Enforcement Committee voted to recommend the issuance of Stipulated Cease and Desist and Civil Penalty Order CCD 2106.04 to Marina Village Associates, LLC.

I will now give you a condensed version of my Enforcement Committee presentation. For brevity's sake the respondent will be referred to as, "MVA".

The proposed stipulated order arises out of an enforcement action at Loch Lomond Marina in San Rafael, Marin County.

In 2007 BCDC issued a permit to authorize the construction of a new mixed-use community and extensive public access improvements located inland of the existing marina.

In March 2015 enforcement staff conducted a site visit and observed some unauthorized activity. Staff performed research and found additional violations and held several meetings with an MVA representative in effort to resolve these violations.

On November 20, 2015 staff sent MVA a letter summarizing the violations with proposed resolutions and a proposed settlement agreement. MVA did not respond to our proposed settlement agreement.

On May 20, 2016 staff issued a violation report and complaint for the imposition of administrative civil penalties and upon receipt MVA and its counsel met with staff multiple times to discuss the violations and negotiate a resolution.

On August 15, 2016 staff issued a supplemental violation report and this report eliminated two of the originally alleged violations, modified the scope of one of the original violations and provided notice of seven additional violations that had occurred either before or since mailing the original violation report.

The following violations are subject to the stipulated order. There are several physical violations which include: riprap placed adjacent to the boardwalk at a slope steeper than the authorized 2-1 grade that was not engineered and lacked plan approval, unauthorized stockpiling of construction materials in the shoreline band that caused a mud wave that resulted in unauthorized fill in the Bay, unauthorized work in the Bay and shoreline band to repair the seawall, boardwalk and riprap destroyed by that mud wave, unauthorized placement of riprap in the Bay and shoreline band in two different locations on the East Spit, unauthorized placement of electrical posts and associated electrical wiring in the Bay and shoreline band located adjacent to the boardwalk, unauthorized placement of many utilities in the dedicated public access area located in the shoreline band and failure to provide and make available for public access use a park, playground and restroom on the East Spit and a striped pathway on existing asphalt to connect the park located on the West Spit to the existing public access located on the adjacent property among other public access amenities that were failed to be provided.

There are several paper violations as well which include: Failure to submit the approved or recorded two instruments that dedicate the required public access and open space areas to the public by March 31 of this year, failure to submit written certification of contractor review prior to commencing any grading, demolition or construction, failure to record the amended permit on all parcels affected by the permit with Marin County within 30 days after the execution of the amended permit and finally the failure to establish two membership associations that recognize the requirements to maintain all public access improvements.

The agreement codified in the stipulated order before you today was reached on October 5, 2016 and approved by the Enforcement Committee on October 20th. The stipulated order would require, if you approve, Marina Village to cease and desist from all activity in violation of the permit, submit a complete application for after-the-fact authorization for unauthorized activities and fill that can be authorized after the fact, remove all items of fill that cannot be authorized after the fact, pay a $210,000.00 civil penalty to the Bay Fill and Clean Up Abatement Fund, pay stipulated penalties for any failure to comply in a timely manner with the requirements of the stipulated order, study and address the tidal flooding of the public access area that adversely impacts the public access and public shore parking areas by creating potholes, erosion of pathway surfaces and unseasonably muddy conditions by preparing a report and implementing measures to reduce tidal flooding issues.

The Commission issued the permit four years prior to the adoption of your sea level rise policies in 2011 but the permit does require that all public access areas be maintained and necessitates repairs to any public access areas damaged by flooding.

During negotiations staff determined that any agreement reached needed to address and rectify the frequent tidal flooding and post-tidal standing water and further needs to reflect new information regarding sea level rise.

Staff took the unknown cost of the report and information of its recommendation into account when agreeing to reduce the penalty from the originally requested $563,500.00 to $210,000.00. Thank you very much for your time.

Acting Chair Halsted continued: I would like to ask the respondents, Marina Village Associates to identify themselves and present and state whether they agree to the recommendation and have any further comments.

Mr. Burroughs advanced to the podium: This is Jim Burroughs attorney for the MVA; that is, the entity subject to the stipulated order. We certainly do agree with the recommended stipulated order that staff has presented to you.

We appreciate the hard work that staff has done with us for the last couple of months to reach the stipulated order that we have reached. I agree with everything that Ms. Weber has just presented to you and everything that is in the report that has been submitted to the Commission for consideration.

Just by way of one statement to try and put some of this in context; this is an ongoing construction project. And in the process of this ongoing construction project MVA has been put in a funny position a couple of times which has led to some of these violations.

For example, on some of the things that we have failed to open in time such as the public restroom and some of the other violations that have been alleged; we are perfectly willing and prepared in wanting to do that but we have the city of San Rafael to deal with. The City has its own views on how things should be done. We need their authorizations to open up restrooms and make public parks available. We need to meet their punch lists of things we need to abide by.

And we have been working that out but, unfortunately, working that out was not per the schedule that we were given under the permit. There in nothing that we are profiting from here we are just trying to meet our construction conditions.

We do support the stipulated order.

Acting Chair announced: We did not schedule a public hearing if anyone from the public wants to comment on this matter you are welcomed to do so. (No comments were voiced) We will now move to Commissioner questions and comments.

Seeing none is there a motion?

MOTION: Commissioner Vasquez moved the staff recommendation, seconded by Commissioner McGrath.

VOTE: The motion carried with a vote of 14-0-0 with Commissioners Bates, Gilmore, DeLaRosa, Gorin, Peskin, McGrath, Nelson, Randolph, McElhinney, Sears, Vasquez, Wagenknecht, Zwissler and Vice Chair Halsted voting, “YES”, no “NO”, votes and no abstentions.

10. Public Hearing and Possible Vote on Updated Commission Guidelines for Access to Public Records. Acting Chair Halsted announced: Item 10 is a public hearing and vote on updated Commission guidelines for access to public records. Marc Zeppetello will make the staff presentation.

Executive Director Goldzband commented: This is the kind of presentation staff really is nervous about making because it is not sexy in any way. It does not deal specifically with what is going on out there. I can tell you that the amount of time and resources that staff spends on Public Record Act requests is absolutely huge.

We love having interns because it is a great way for them to learn about the public process. (Laughter) But we do not always have interns and our staff really dreads it when Marc says to them, you are up. We really beg your indulgence on this. It will not take more than a few minutes but I want to stress the importance of this.

Mr. Zeppetello presented the following: There is a provision in the Public Records Act that requires the Commission and a number of other state agencies to have guidelines for access to public records and have those guidelines available to the public.

You can see on the monitor the guidelines that were adopted by the Commission in 2006. Late last year we were in the process of doing some updates to the BCDC website and Sharon noticed that the Coastal Commission had guidelines that were considerably more extensive than the BCDC guidelines for access to public records.

Over a period of time I retrieved the guidelines for access to public records from a number of other agencies including the Attorney General's Office, the State Water Board, State Lands and the Coastal Commission.

What I found is that the Attorney General's Office had put out guidelines in March of 2012 that were rather extensive and they had been modelled by CARB, the Air Resources Board, while a number of other agencies such as the State Water Board had relatively brief guidelines from a decade ago.

I took on the task of updating the Commission's guidelines using the Attorney General's guidelines as a model. That is the document that you have in front of you. I tailored it somewhat to the Commission's unique mandate and also looked at the guidelines from the Coastal Commission and State Lands since they deal with environmental issues and some of the same things that we deal with.

That is the basis of the guidelines. I do not intend to go through them in detail but they have a number of topics modelled on the Attorney General's guidelines. They encourage requests to be submitted in writing.

For the first time we are stating that written requests should be directed to the legal division so as to have a central point of contact and coordination on records requests.

The guidelines define public records. They talk about the procedures for inspecting records, processes for copying, copying fees; a number of exemptions in the Public Records Act are summarized.

And then in addition to the guidelines themselves I also prepared a series of frequently asked questions and responses and this was also something that I found on some other websites, and would propose that we do not make those FAQs part of the guidelines and that would allow the Commission staff to revise those as, for example, new technology for copying comes into effect or comes online. We could modify them slightly.

Unless there are any questions the recommendation before you is that the Commission adopt the updated accompanying BCDC guidelines for access to public records that are dated November 3, 2016.

Commissioner Gilmore had a question: In the section on dealing with inspection of public records it specifies business hours or business days; yet, in the next section when we are talking about processing requests it just talks about generic days. Should they both talk about business days? I am assuming that nobody is going to be looking for records on weekends and state holidays and things like that.

Mr. Zeppetello replied: I think that in the inspection of public records we are saying that they are available during normal business hours, but the time period for responding is in the Public Records Act. I believe it just says, “days” meaning calendar days for providing a response.

Ms. Tiedemann added: you have to provide an initial response, not the records, within 10 or 14 calendar days. That is just a letter indicating whether you intend to provide the records and when you think they will be available. And that is calendar days.

Commissioner Gilmore continued: I understand that we were not expected to provide the records within the 10 days; but sometimes depending on the requests it might take a while to even formulate an answer.

Ms. Tiedemann stated: There is a provision for an extension of the initial 10 or 14 day period. The agency must provide some sort of response.

Acting Chair Halsted announced: Let’s open the public hearing. (No public comment was received) Is there a motion to close the public hearing?

MOTION: Commissioner Nelson moved to close the public hearing, seconded by Commissioner Peskin.

VOTE: The motion carried with a vote of 14-0-0 with Commissioners Bates, Gilmore, DeLaRosa, Gorin, Peskin, McGrath, Nelson, Randolph, McElhinney, Sears, Vasquez, Wagenknecht, Zwissler and Vice Chair Halsted voting, “YES”, no “NO”, votes and no abstentions.

MOTION: Commissioner Gilmore moved to adopt the staff recommendation, seconded by Commissioner Wagenknecht.

VOTE: The motion carried with a vote of 14-0-0 with Commissioners Bates, Gilmore, DeLaRosa, Gorin, Peskin, McGrath, Nelson, Randolph, McElhinney, Sears, Vasquez, Wagenknecht, Zwissler and Vice Chair Halsted voting, “YES”, no “NO”, votes and no abstentions.

11. Briefing on Alameda Point Redevelopment. Acting Chair Halsted announced: Item 11 is a briefing on the proposed redevelopment at Alameda Point. Ethan Lavine will introduce the topic and Jennifer Ott from the city of Alameda will make the presentation.

Principal Permit Analyst Lavine: I am introducing Jennifer Ott from the city of Alameda who will provide you with a briefing on the planned redevelopment of the former Naval Air Station on the western edge of the city of Alameda which is the area known as Alameda Point.

In 1997 the Naval Air Station in Alameda was closed. A process was begun to transfer portions of the lands of the Station to the city of Alameda with the intent that the City would develop a community reuse plan.

Other portions of the Station have been transferred to the Department of Veterans Affairs for the purposes of developing an outpatient clinic, a columbarium and a nature preserve for the endangered California least tern.

In 1999 the Commission issued a Letter of Agreement with the determination from the Department of the Navy that the transference of lands to other federal and non-federal entities is consistent with your management program for the San Francisco Bay.

At that time the details of the reuse plan were not yet fully developed. The agreement was issued with the understanding that all reuse activities occurring after the property transfer would be subject to BCDC permitting requirements.

Subsequently in 2013 you considered and concurred with the Department of Veterans' Affairs acquisition and reuse of a portion of this land for the project expansion.

Ms. Ott is here to brief you on the results of the City's master planning process for the Alameda Point site and how the site would be redeveloped in the coming years.

Included in these considerations are the City's approach to shoreline protection in future sea level rise as well as the provision of public access to the shoreline and public access amenities for this new large community and for the public at large.

Your Design Review Board has already reviewed the pre-application designs for the initial phases of the redevelopment. These include a 68-acre mixed-use development presently being called Site A and a new ferry terminal both of which are located along the historic Seaplane Lagoon.

These projects are anticipated to be making their way to you in the very near future. We welcome your thoughts and feedback.

Ms. Ott addressed the Commission: I am the Base Reuse Director for the city of Alameda. We appreciate all of your staff's help and cooperation on this project.

This is a 900-acre site that the city of Alameda controls at the former Naval Air Station. We do have a no-cost conveyance agreement for the 900 acres that we entered into with the Navy in 2000. The City does advance planning all the time and we will do this for the Base property. We prepared site-wide master planning documents that include parks and infrastructure. We created sub-districts in these 900 acres and created phases for different areas that have different purposes. There is a historic district that we inherited from the Navy; about a third of the Base is in a national registered historic district.

We allowed for a lot of flexibility in our planning. We want to be opportunistic in how we attract commercial development. When we lost the thousands of jobs with the Base closure we became a bedroom community overnight. Traffic is a major concern. Bringing back jobs to balance the housing is very important to the city of Alameda.

We are looking at specialty developers to come in and do this in phases. These master planning documents tie all of this together so that we can move forward with smaller phases in a cohesive way that meets the community's vision for the Base.

We took our first conveyance from the Navy in June 2013 and then a large package of entitlements. In took us about six months to do a DDA for the first phase of development of 68 acres. We are now in design and improvement approval. We have done a Phase 2 conveyance with the Navy and we are getting ready to start construction at the end of November on our first phase of development. The development of the parks and open spaces is very important to our community. We have over 800 acres of parks that are planned on the Base. We had to have a specific plan for developing the parks and the waterfront because we know that is of crucial importance to our community and to the region.

We took a look at sea level rise in our master infrastructure plan. This was the second most important issue in our City. We know that we will be subject to flooding. We used all the tools available to us to plan for this. In some of our open space areas we have retreated and let the community know that we will not be protecting for sea level rise in these areas. Adaptive measures are built into our entire infrastructure. This will allow us to adapt over time as sea level rises.

We have seen 19 percent growth almost every year and our ferry terminals are at capacity. There is significant demand for ferry service in Alameda. The development of additional ferry capacity is hugely important to developers. One of the key pieces of our development strategy is to have fast and reliable transit infrastructure because the people who move to Alameda Point are people who take transit. BCDC has permitted a seal haul-out for us. These are now under construction and they have been successful.

Commissioner Nelson commented: We expect that at some point in the coming year the State is going to come out with new guidance regarding sea level rise for all state agencies. I noticed that the map you put up showed a 100-year storm plus 24 inches. I wanted to make sure that this revised state guidance is on your radar screen. This number is going to be an importance issue for the city of Alameda.

Ms. Ott replied: We will absolutely be keeping our eye on that. We have tried to build in multiple protections to deal with sea level rise. We are trying to be forward-thinking on this. This is something that the entire region is going to have to grapple with.

Commissioner Zwissler commented: When we were looking at Treasure Island a couple of weeks ago we were really impressed with the fact that they contemplated some of those unknowns but also that there was also a funding mechanism for them.

Ms. Ott responded: We have what is called the Master Infrastructure Plan and then we assigned costs to that which is about 600 million dollars for the parks and the infrastructure. We created a financing mechanism through our impacts fees. We established an impacts fee ordinance that says no development here can move forward without paying its fair share of this entire infrastructure.

12. Adjournment. Acting Chair Halsted adjourned the meeting at 3:53 p.m.

Respectfully submitted,

LAWRENCE J. GOLDZBAND
Executive Director

Approved with no corrections, at the
San Francisco Bay Conservation and
Development Commission Meeting
of November 17, 2016

R. ZACHARY WASSERMAN, Chair