

San Francisco Bay Conservation and Development Commission

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January 26, 2018

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 January 18, 2018 Commission Meeting

1. **Call to Order.** The meeting was called to order by Chair Wasserman at the Bay Area Metro Center, 375 Beale Street, Yerba Buena Room, First Floor, San Francisco, California at 1:13 p.m.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted (represented by Alternate Chappell), Commissioners Addiego, Chan (Represented by Alternate Gilmore), Cortese (represented by Alternate Scharff – arrived at 1:20 p.m.), Gioia (arrived at 1:52 p.m.), Jahns, Lucchesi (reported by Alternate Pemberton), McGrath, Nelson, Peskin, Ranchod, Randolph, Sartipi (represented by Alternate McElhinney), Sears, Spering (represented by Alternate Vasquez), Techel, Wagenknecht, and Zwissler.

Chair Wasserman announced that a quorum was present.

Not present were Commissioners: Association of Bay Area Governments (Butt, Showalter), U.S. Army Corps of Engineers (Bottoms), Department of Finance (Finn), Speaker of the Assembly (Gibbs), Sonoma County (Gorin), San Mateo County (Pine) and U.S. Environmental Protection Agency (Ziegler).

3. **Public Comment Period.**

Chair Wasserman called for public comment on subjects that were not on the agenda.

Mr. Bob Wilson was recognized: West Point Harbor is not on your agenda today. We just finished a very contentious meeting across the way.

I have three simple things I would like to bring to your attention. First of all, this has been a matter that has been going on for quite some time. Unfortunately, while most of us support the great work of BCDC; there is a lot of polarization around this issue.

The problem that we have is that it has become polarized – we need some independent review of what is happening and of the facts. This issue is one where BCDC is going to want to get some independent verification of facts before you act.

Please come to West Point Harbor. It is the epitome of what you are trying to do here in the Bay. We can do it in a way that is not ex-parte.

Number three, we have a lot community activity going on around this issue that you should be aware of. In the last five days we have started a petition; we are over 3300 signatures as of this morning. We are asking you to take a close look at this and an independent look at the facts before anything further occurs.

I thank you for your time.

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Ms. Brenda Hattery addressed the Commission: We were just across the hall with the Enforcement Committee. I came here to ask you two things. I have been very disturbed by the fact that the permittee in the case that was been seen at West Point Harbor has been misrepresented in terms of their existing public access, environmental stewardship and when I hear environmental groups standing up speaking about the matters I realize that the information to the public is not complete. I would like to see that changed.

In lieu of that I would like to ask that the enforcement activities of BCDC be considered, I'm sure you do internal reviews all the time, that you look at how you are doing your enforcement activities and how you are documenting things and how that information is communicated so that it won't be surprising and polarizing for us and the public when we hear of things.

Thanks for your time. I hope that you have a very productive meeting today but that you take this matter seriously.

David Hattery commented: I would like to make the point that there is a huge outcry with the petitions that seem to be resonating with the public and it indicates a disconnect between BCDC enforcement actions and BCDC's mission.

There is a clear support for BCDC's mission in the Bay but it is increasingly becoming suspect that the enforcement actions are actually supporting BCDC's great mission.

In the last meeting that we had the Commission stated that they have limitations on what they can do to do self-assessments there. It appears that an independent review of the interactions between staff and the public versus staff and the Committee is warranted. And perhaps this Committee is the place that needs to be enacted by.

I encourage to do something to try to rectify this disconnect and to be able to continue BCDC's great mission. Thank you.

Chair Wasserman stated: As you know, for matters not on the agenda we can't really respond but it does not mean we are not listening and we know that it will come up in a number of ways at future meetings.

Second, if anyone does wish to take up the invitation to go to West Point Harbor, and I am neither encouraging or discouraging that, that is a disclosable issue and any communication that occurs there is ex-parte communication about assuming that it is anything related to the enforcement matter that will come before us.

I do want to note that we are changing the order of items this afternoon. We are going to start with Item 10, the Briefing and Discussion of Governance and then go back to Item 8 and then move forward from there.

We are going to look at each agenda. In the balance between our regulatory and our planning responsibilities one can sometimes overshadow the other in terms of time. I am trying to balance that.

This morning we are doing one that is more aimed at our planning side first before we go into the hearing.

Chair Wasserman moved to Approval of the Minutes.

4. Approval of Minutes of the January 4, 2018 Meeting. Chair Wasserman asked for a motion and a second to adopt the minutes of January 4, 2018.

MOTION: Commissioner Zwissler moved approval of the Minutes, seconded by Commissioner Peskin.

VOTE: The motion carried with a vote of 14-0-3 with Commissioners Addiego, Pemberton, McGrath, Nelson, Peskin, Randolph, McElhinney, Sears, Vasquez, Techel, Wagenknecht, Zwissler, Vice Chair Chappell and Chair Wasserman voting, "YES", no "NO", votes and Commissioners Gilmore, Jahns and Ranchod abstaining.

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

a. I am now going to talk about the time of things. Over the last couple of years we have been running very efficiently and our meetings have tended to run in the neighborhood of two hours. We are blocked for the full three hours and it may be that we may block a little more because there may well be some contentious enforcement issues or other permit issues. But there are most certainly going to be some very significant planning issues as we start to bring our other working groups before the Commission.

Check with us but please plan to stay through 4:00. If we are efficient you get out early and it is a gift of time.

b. **Next BCDC Meeting.** Our next meeting will be held on February 1st, where we may:

Hold a public hearing and vote on whether to begin a regulatory process to change BCDC's permit fees which have not been changed in 10 years, in a long time.

Hold a public hearing and vote on the West Point Harbor enforcement matters.

Have a staff briefing on the Governmental Alliance on Race and Equity (GARE) program, in preparation for a workshop later in the year during the consideration of the social equity Bay Plan Amendment.

c. **Ex-Parte Communications.** If anybody wishes to make an ex-parte communication on the record at this meeting, now is the time to do so. I remind you to you actually need to do it in writing. You don't need to do it here.

Commissioner McGrath reported: I have received comments about West Point Harbor through email and I have sent them on to Larry so all of the Commissioners could be aware of them.

Chair Wasserman noted: I have one last item before we turn to the Executive Director's Report. We have all been given a small gift from MTC. It is sitting before you. It is a T-shirt with, "Be Regionable" on it. This is in anticipation of our actually joining our sister agencies in this building.

It is under the reporting amount and it does raise an interesting issue which I am not purporting to answer as to whether gifts from government agencies are, in fact, reportable.

6. Executive Director's Report. Executive Director Goldzband reported:

Given how successful your last meeting was after I mentioned that absence makes the heart grow fonder, I hope that meeting two weeks later doesn't prove that familiarity breeds contempt. Today's meeting includes a wide variety of issues. I hope that you will remain engaged throughout its duration. I remember the pioneering rock music critic Lester Bangs – from my home turf of San Diego's east county. He was fond of saying that "the ultimate sin for any performer is contempt for the audience" – please be assured that none of our regulatory or planning artists with whom you'll talk today will ever be guilty of such contempt.

a. **Budget and staff.** I do want to start out with some good news. I want to explain why we are meeting here today as opposed to across the way. Last year we had planned, and we were pretty successful in ensuring that the Commission held a series of workshops during the second scheduled meeting Thursday; meaning the third Thursday of the month here and we tried to shove votes, briefings et cetera into the first meeting of the month which we held over in the Board Room. We are going to continue that practice this year and we will start having the first series of workshops in this spring. That is why we reserve the Board Room for the first meeting of the month and this room for the second meeting of the month.

I have some great news to report on our budget. After initiating a discussion of strategically well planned and bullet-proof budget proposals, BCDC staff and the Department of Finance agreed on a proposition that is now in the Governor's proposed budget that was released last week. The Administration is proposing to allow BCDC use the Bay Fill Cleanup and Abatement Fund, into which all fines from enforcement cases are deposited, to hire two new staff members. The first new staff member will be a legal counsel wholly devoted to our enforcement team. This will relieve Chief Counsel Marc Zeppetello of about 85% of his workload and allow him to concentrate on those issues for which we actually hired him, including leading a discussion of the regulatory process through which BCDC assesses permit fees. The second staff member will be a Program Manager to lead the enforcement team. He or she will ensure that its strategy is sound and fulfilled and will provide a very visible external face to our permittees. If our revenue and cost assumptions are correct, and they are rather conservative, the Bay Fill and Abatement Fund's existing balance of \$1.26 million could fund these two positions for upward of five to ten years which would put a serious dent in our enforcement backlog.

Next, you will recall that our former Chief of Permits Jaime Michaels retired last month. Instead of hiring one person to replace Jaime, we have implemented one of the recommendations that grew out of last year's regulatory reorganization effort. Beginning this month, BCDC will have two smaller permit programs, each with a program manager, instead of one large team that reports to one manager which was essentially unworkable for the manager. This is a significant change in our organizational structure and should provide better staff availability to the public, improve workflow and increase staff capacity. Therefore, last week we hired two people to

manage the permit work both of whom are stellar principal permit analysts at BCDC. First, we promoted Ethan Lavine, to replace Jaime. Ethan's role is the Chief of Bay Resources and Permits. Second, we promoted Erik Buehmann, whose role is the Chief of Federal Consistency and Permits. (Both staffers were recognized by Executive Director Goldzband as attendees to the meeting)

Now each of them will manage a smaller team with a more focused direction which should allow for a better workflow and capacity.

Also, Marc Zeppetello and John Bowers are very pleased to have two legal interns from Hastings onboard this term – each is working about half-time so it's almost like having one full-time intern. Ethan Pawson is a Golden Bear from Cal and Perry Elerts (stood and was recognized) is an Argonaut from Notre Dame de Namur University in Belmont.

Speaking of Ethan, I'd like him to spend a few minutes with you now to show you some very interesting pictures that our staff took during the King Tides earlier this month which will be really interesting for you.

Mr. Ethan Lavine presented the following: On December 3rd, 4th and 5th of 2017 and January 1st and 2nd of 2018 the Bay Area experienced its annual king tides events which are the extremely high, high tides that we get every year.

We will show you through these photos what we caught this year. The series, Lost Landscapes of San Francisco is a pictorial documentation of this area from the 1910s through the 1960s. They show it every year at the Castro Theatre.

There is no narration and the audience is encouraged to shout out any comments or observations on what they are seeing on the screen.

Mr. Lavine showed a number of photos with accompanying commentary.

King tides are caused by the gravitational pull between the Earth, the sun and the moon. The gravitational force on the ocean pulls the water in such a way that we see those extremely high and low tides during this time of the year.

Commissioner Zwissler commented: I went there last year to this exact location and it was amazing to me because the water level was literally about eight inches from the top of the roadway. Any kind of storm surge at that moment would shut down the Bay Bridge.

Mr. Lavine added: Last year as well as this year the king tides happened on pretty nice days. You can imagine during a stormy day that it would look a lot different.

Commissioner McGrath noted: It happened in 1983. Unfortunately, I didn't save photographs. We did not make a systematic record and, of course, the level of super-elevation in the Bay peaked at about three feet.

That is what happened. Sea level rise since then has been two or three inches. The sustained sea level for the whole winter of 1982 and 1983 was at least 18 inches.

For months, and months and months we had a preview of 18 inches of sea level rise. We were not quite as video-savvy then as we are now.

Mr. Lavine continued: One of the reasons that we are so focused on king tides is that they do give us that glimpse into the future. Without the storm surges the king tides are a rise in total water levels by about one foot.

The state's guidance on sea level rise tells us that by mid-century there is about 50 percent chance that we will get a .9 foot raise in sea level rise or more.

We had an all-staff retreat last year and we went to China Camp in Marin County and we talked with the folks from State Parks and from the San Francisco NR and we got an interpretive tour of the Park.

One of the issues they told about was the situation with San Pedro Road. On one side of this road is the Bay and on the other side is a really, rich marsh with sensitive habitat. As you can see the road floods now during king tides and during extreme storm events.

They are facing a really interesting question of, what are we going to do now to address this issue? And the other issue is, what are we going to do long-term?

BCDC staff has started to engage with staff from the NR, from State Parks and from Marin County to begin to talk about these challenges and what might work in the short-term with the idea that they will be looking forward towards the future and starting to think about what will be appropriate a couple of years from now.

Refugio Creek runs through Hercules and until a few years ago it was not tidally active. A restoration project was undertaken which allowed the channelized creek to have a more natural form to open it up to some tidal action and it now experiences tidal action.

I thank you for your time.

Chair Wasserman asked: Are there any questions? (No questions were voiced) Thank you very much.

b. **Policy.** Executive Director Goldzband continued: I want to let you know that you will receive a memo during the next round of mailings and postings from Chief Counsel Zeppetello concerning your FPBC Form 700. I urge you to read it carefully and they are due on April 2nd of this year. Finally, I also want to let you know that, starting last week, the garage here at the Bay Area Metro Center will charge for parking and they aren't cheap. The building will charge \$3.25/15 minutes and will max out at \$27.00 per day. There are 24 spaces available for visitor parking and they are made available on a first-come, first-serve basis. Certainly, upon your request, validation stamps may be provided by BCDC when you attend a Commission function. Please let Reggie Abad of our staff know in advance, if possible.

That concludes my report, Chair Wasserman, and I'm happy to answer any questions you may have.

Chair Wasserman asked: Any questions for our Executive Director? (No questions were voiced)

7. Consideration of Administrative Matters. Chair Wasserman announced: We have received a report of them. Brad McCrea is here to answer any questions.

Commissioner McGrath commented: I want to make sure that this has already received a permit from the Regional Water Quality Control Board. The second one is, there is a fairly small amount of fill and I wonder if there is mitigation for it?

And the third question and the more important one is soft-bottom channel habitat is valuable. I see a real distinction between changing something that is soft-bottom and changing something that is already concreted.

I'm sure that you know that this qualifies for the administrative permit but I'm sure you know that at least one Commissioner always wants to figure things out a little more.

Again: Regional Board permit already; mitigation for the fill; and is it soft-bottom now?

Mr. McCrea replied: Thank you for your question and thanks for the opportunity. For the first time in three years we have an opportunity to answer it. I am going to defer to Brenda Goeden of our staff. (Laughter)

Sediment Program Manager Brenda Goeden answered: Yes, we are aware that the Water Board has issued their permit and it does qualify for an administrative permit. We have previously authorized maintenance in the Laguna Creek Channel but the reason we have moved this to new administrative permit is because it is expanding the culvert and expanding the capacity of the channel. Rather than try to squeeze this into a maintenance project we looked at it as a realignment/expansion of the flood capacity in that area.

I don't believe we are requiring mitigation in this case but what we are doing and have asked the Alameda County Flood Control folks to do is to widen the channel to the side where there is actually room to allow some transitional habitat and shallow the slope a little bit to a 2:1 where they had not previously allowed that transition.

So while I don't believe we are calling it mitigation in the permit it is taking into account some of that fill in creating more habitat in response. My understanding of the portion of the channel that is in our jurisdiction is that it is a soft-bottom.

We conducted a site visit and much of it, except where they are putting the culvert in, will maintain soft-bottom.

10. Briefing on Governance and Rising Sea Level. Chair Wasserman announced: That brings us to Item 10 which is a briefing on government and rising sea level by Professor Mark Lubell of the University of California at Davis on his new report: the Governance Gap: Climate Adaptation and Sea-Level Rise in the San Francisco Bay Area.

Professor Lubell addressed the Commission: I am a professor at the University of California at Davis at the Department of Environmental Science and Policy. It is convenient that the report is about sea level rise and it's about moving from contentiousness to cooperation and about being regionable as well.

What this report is basically geared toward is trying to understand how to get cooperation to evolve in the context to sea level rise and climate adaptation in the San Francisco Bay Area.

This chart here looks at the interdependencies that are involved with sea level rise in the context of the Bay Area.

If you look at how different cities and counties may experience sea level rise there is a lot of similarities in how much sea level rise they might expect but also in the types of effects they might have. There is some learning that could happen across the region.

In this case if we protect or if we knock out Berkeley in terms of flooding you see regional impacts in the traffic. This is from the traffic models. What you are seeing in this case is that if you harden shoreline in Alameda County it will actually raise sea levels in other parts of the region.

These inter-dependencies require regional cooperation to solve and that is the governance issue that we are trying to deal with.

There are different agencies involved and these blue dots represent different policy and decision-making forms in which sea level rise and climate adaptation is being discussed. Phil Isenberg said that public policy is almost always a mess. Let's acknowledge the inevitable and figure out how to manage a messy situation. Trying to define a policy problem is hard enough and trying to find solutions is even harder. This is the sort of environment that we are trying to operate in.

On this slide you can see when all these projects were born. You can see that the governance system is responding fairly recently and it is a newborn governance issue and this gives us an opportunity to study what is going on.

The basis of this report was mostly qualitative and we have interviewed over 40 different people, read a bunch of documents, showed up at meetings as much as we could, did some focus groups and then wrote this report.

Some of the overall problems that we found were widespread agreement that sea level rise is a problem, widespread agreement that there is some mix of gray and green infrastructure is need, an emerging awareness of the inter-dependencies that I pointed out in the first graph but a lot of disagreement on how to do the governance side and this is the gap.

I identified seven different governance challenges; what are the new institutions, should there be an agency like BCDC in charge or a new institution that should be created, where do you go for that, who does the planning, should there be an overall plan or multiple local plans, what should the funding portfolio be in terms of actually getting the money in place to do the infrastructure development that is needed, how do you get the climate science connected to what is going on locally, information about how much sea level rise is occurring, what the different

types of infrastructure solutions are going to be, how do you deliver that across a range of stakeholders, how do you integrate the permitting and this can be a fragmented process, how do you get civic engagement and get the citizens to support it and where does the political leadership come from not only within the Bay but also from Sacramento and Washington as well.

What the report does is that for each of the challenges there is menu of possible solutions that we explored. That menu came from all of the discussions. In the full report there is a detailed discussion of each of these menu items.

You see here the big ticket recommendations that I have come up with. For building new institutions, from my perspective, it is a little bit premature. It is premature to nominate a lead agency to be in charge of the whole thing. We would rather take more of a visioning process, a multi-stakeholder visioning process perspective as an interim step which is something that has been done in the Delta but also in other regions of the country that are addressing problems of this sort.

We need a vision plan that is linked to that overall visioning process would be appropriate.

A lot people said that they would like to have it all and keep a portfolio approach. To some extent I agree with that except that the funding situation at the federal level right now is going to be a bit of a heavy lift politically and this will also be the case at the state level. Inventorying all of the possible, local funding mechanisms and trying to maximize what those are is important.

Creating some sort of new, integrated permitting strategy around green infrastructure or climate adaptation infrastructure that is modelled on the dredging, permitting team currently in place is also called for.

We call for creating a climate, science service center headquartered at an NGO, university or a consortium of those types of things. This is a possible legislative target in the short term because there can be some line-item funding for this. It should have a translational capacity that takes the scientists and knits them together with the policymakers and translates that science.

One of the things that we heard here is, not another portal. We don't want another website where you can just go ahead and just download data but translate that science into the local decision-makers actual needs.

We need civic engagement in more of an integrated strategy that ranges from social media and digital strategies to public meetings in the localities.

As far as political leadership is concerned the most important thing here is to try to re-invigorate some of the legislative caucus groups that have been in place that focus on issues like this. We need to have one of these informal groups at the state and federal level to continue to have this discussion so that you have a conveyor belt to setting a legislative agenda that will bring money and other needed legislative resources to bear regionally or even statewide because that such a legislative effort probably needs to think about the climate adaptation across the entire state because it is going to be strange to build a coalition in the California State Legislature that only benefits the Bay Area.

All of these recommendations are detailed in the report and I am happy to talk about any of them or hear any feedback on them.

In the next steps we are doing more of that network analysis to get at the structure of the governance. We did a public opinion survey of the Bay Area residents to see what their perception of sea level rise was.

A big thing that we are doing soon and I would love to have your help with is we are going to roll out an online survey of Bay Area decision-makers and planners; all of the stakeholders and we have some lists and we are developing lists from the web. If you have lists of people who you think are relevant please contact me.

If you are interested in reviewing the design of it so we get the right questions I am happy to have your help in all of those matters. We hope to maximize the usefulness of this research to the community.

I will take any questions if we have time. I am finished and I thank you.

Chair Wasserman commented: Anybody doing a study of this kind faces the real-time handicap that you are studying facts as facts are moving forward. We have that in sea level rise fundamentally. It did occur in this particular study because the time of this study overlapped and concluded just before we adopted our Action Plan.

Some of the issues that are addressed here we've taken on which is not to say we've solved them. We got a long way to go.

It does not fully take into account some of the actions we've taken.

Commissioner Vasquez asked: Under political leadership where does political will come into play with that?

Professor Lubell replied: It is a combination of the civic engagement part in terms of citizens in local areas speaking up and talking about and contacting their elected officials so that the elected officials feel like they have political backing for approaching this issue.

Once that is there then you are going to see more elected officials that are willing to pay attention to this issue.

Within the Bay Area my impression is that there is a lot of local elected official leadership although it is not uniform across every city or every county or even within every county commission and that sort of thing. There is not as much of attention at the state legislature level or the Governor's Office. It is changing somewhat. This is an issue in motion. In the Governor's Office within the last five or six years there has been an emphasis on water supply and drought. The broader climate adaptation issues are beginning to get a little bit more play there.

At the federal you know what the story is there.

Commissioner Vasquez continued: At the local level this would never happen and BCDC is a good example. Taking up this issue at the state and federal level would never happen because it is too partisan. Here we don't care what party we are. We care about the issue.

They are going to come to us to ask what needs to be done. Empowering the locals early on, taking it back to our counties and our cities is important. We will end up driving this not the state or the feds.

Commissioner Zwissler had a question: Can you say a little bit more about what a climate adaptation vision or commission thing is as distinct from an agency?

Professor Lubell replied: BCDC is engaged in a lot of planning efforts, adapting to rising tides and other things that are headquartered out of the agency. Those things may serve very well in trying to get this cooperation to happen. A visioning process would have to go beyond BCDC and involve a lot of the other regional agencies as leading players and probably be set up by the Governor or the Legislature.

Commissioner Nelson commented: You put Delta Vision up there and Governor Schwarzenegger appointed the Delta Vision Task Force with some prodding by the Legislature. That process lasted for a couple of years and eventually led to the creation of the Delta Stewardship Council in 2009 with a package of a number of inter-related bills. That was certainly a very ambitious effort that led to significant legislative action and the creation of a new agency.

I don't think that process would play out in exactly the same way. I think it is important for us to recognize that a similar action was taken, not so much to deal with sea level rise, but a very complex set of challenges in the Delta and that path was a modestly, successful one. I don't think the Delta Stewardship Council has changed the world. It is our sister agency managing the other half of the estuary.

The regulatory, the physical environment, the governance systems in the Delta are dramatically different from our part of the estuary. That is an important lesson for us to learn from.

You said briefly that you know what the challenges are at the federal level. We have right now an administration led by a president who won't acknowledge that climate change is real and human-caused. The Administration is defunding climate-related programs, scrubbing climate information from websites and making life extraordinarily difficult for staff working on these issues. That plays out here in a couple of really important ways.

We are going to see one of them later today where we discuss the South Bay Salt Pond Project. This is a letter from last November where the Corps points out that the President's budget does not include funding for the South Bay Salt Shoreline Flood Risk Management Project. The lack of federal funding for some of these projects is going to have very real consequences for us.

That is pretty clear and your report makes that clear. But the challenges are deeper than that. In order for us to engage in collaborative planning, the sort of collaborative planning that is essential in that complex web of governance that you have laid out in your graphic.

That is going to be a real challenge in an environment where we don't have a federal partner. The federal government plays an enormous number of roles. One of those roles is funding but there are a number of others in terms of planning and permitting.

As we think through our recommendations the simple recognition is pretty clear that the state of California and locals are going to have to step up and provide leadership. We also need to look carefully at where the federal government's current position is going to create governance challenges for us and think about how we plug those gaps.

Professor Lubell replied: I think your point about the Delta Vision is a great one because it is something that did happen in California. We know the mechanisms are in place for that to occur. It was a pathway to more permanent institutional change in the governance structure in the Delta which is why I pointed it out.

That is probably the first place I would look as a model for setting up a visioning process in this region or possibly multi-regions. There is some idea to do this across multiple-regions and it could be useful.

California has been a leader in environmental policy ahead of the federal government for decades. I don't see why California should wait for the federal government. We should figure out a way to do this despite those barriers.

It is going to be harder but this state has led in the past and I don't see why it shouldn't continue to do it.

Commissioner McElhinney commented: This is a fantastic report and it fills in the governance gap on some of the other things. BCDC, the Bay Area Regional Collaborative and this is perfect timing so thank you for that.

Last meeting we talked about Caltrans released its statewide first Climate Change Vulnerability Assessment. We started with the Bay Area just earlier this month and we had that as a handout here at the meeting. It is really the vulnerability of state highway systems. Last year at this time we had tremendous storms here in the Bay Area and we invested over \$350 million in emergency contracts, mostly in the North Bay but quite a bit in the South Bay.

Things have changed over the last few decades significantly and we've got to be ready for that. So this vulnerability assessment is online. It is the summary we passed out last meeting. It was a technical report and there is an interactive map in it looking at the vulnerability of all of our state routes here in the Bay Area not just to sea level rise but temperature changes, climate changes overall and last fall we saw the huge impacts of all that coming together and firestorms in the North Bay.

This is great timing professor and thank you for that. I wanted to refer you back to that vulnerability assessment which will be completed statewide by the end of the year for each of the Caltrans 12 districts.

Commissioner McGrath commented: I am an old, retired, civil engineer that tries to get infrastructure funded. The movie comment is appropriate – show me the money. In Berkeley where we raised a \$100 million bond; if you just look at the existing problems with parks, roads and flood-control facilities it is about a \$400 million problem. That does not include the other aspects of resiliency which are fire, flood and earthquakes. All of them are going to happen. We are not going to be ready for any one of them.

To actually deal with fire you are going to have to cut vegetation or thin – it is not being done.

Even if the federal government was a bigger player trying to raise the kind of funds that are necessary to actually manage the shoreline, retreat in some areas and figure out how to make the equity issue that we are having work; I mean, it is just a staggering problem in its scope. It is bigger than anything we have seen and we haven't brought NASA-kind of determination to it.

Even with \$100 million we are kind of doomed in Berkeley.

Commissioner Ranchod commented: I want to thank the professor for laying out the recommendations in its many formats. It is very helpful.

I am curious as to your assessment of the status quo. It seems like it is between the shared-governance model and a lead-agency model. The lead-agency model involves a designation and some formal agreement by other entities to defer or have an agency lead. Is there a model of a successful lead agency elsewhere?

Professor Lubell responded: A good project that had a lead-agency model that has worked well is Spartina eradication in the Bay Area. That had the California Coastal Commission, a contractor and a very strong central agency that coordinated everybody.

There was a large amount of agreement on what to do and it was a simpler solution but that is a model that you could look at. I'm sorry, it was the Coastal Conservancy.

When the question was asked, if there is going to be a lead agency – the most frequently nominated agency was BCDC. There was a fairly strong distaste among stakeholders for creating a new agency which may have additional processes associated with it and additional permitting authority.

BCDC has constraints to it as far as being a lead-agency in terms of the physical jurisdiction, the regulatory and planning processes functions being in the same agency, history of conflict over other issues that are constraints on it. Whether or not BCDC can get over those constitutes a lot of the discussion that is happening among your group right now.

Commissioner Ranchod had a follow-up comment: The one aspect to the successful, lead-agency model involving BCDC's jurisdiction goes to state law. I would note that we have two members of this Commission that are state legislative appointees. There was a select committee at the state legislature which could be revived.

There is already some connection there to make more progress with that sort of model in cooperation with members of the Legislature from the Bay Area who appreciates the challenge.

Professor Lubell added: So the Bay Area Caucus and that select committee are good places to start on the legislative discussion.

Commissioner Gioia commented: This is a great report but I want to get to the nutshell of all of this. Having been on this Commission now for 20 years – the model that we are looking at is right here in this room.

Back in the 1960s there were people from all over the Bay Area who were worried about a diminishing Bay. They got together, citizen activism, went to the Legislature; the obstacles are all fixable if we can work to address the authority issues.

There was no agency that focused on regional issues for the Bay. When the Legislature passed the establishment of this agency as the first agency in the United States to have regional, land use authority – there were the same discussions then that have been occurring now.

Looking back 50 years everyone agrees that it was the creation of this agency that saved San Francisco Bay from becoming a river. That it was this agency that developed regional, land use authority to permit anything on the Bay or within the 100-foot shoreline band that saved the Bay from being filled.

We are just dealing with the flip side of this issue now; a rising Bay. So the structure is in place. This agency was created for the purpose of protecting the Bay.

The only issue now is the expansion of jurisdiction to include some broader areas, within reason, that work, that are needed for addressing a rising Bay. This agency has proven over the last 50 years that it hasn't stepped on the authority of local cities and counties. I've been in local office now for 30 years and I think this agency has worked very well with local, land use agencies and has developed a reputation of being cooperative.

It is easier to go to the Legislature now because we have a history – a history of showing that we've worked rather than always being at conflict with our other agencies. Ultimately, you are going to need one regional agency that is going to have to be involved with permitting because what happens if it is city-by-city or county-by-county; what one city does could harm or hurt a neighboring city on sea level rise.

There is no way we are going to get a handle on this. The science is there and the engineering solutions are being developed. The issue is the political will to get the governance to implement all those great engineering ideas.

So every time we start talking about what the engineering solutions are, I am less worried. We spend a lot of time talking about that and it's how do we have the political will to implement those solutions? The only way is with some regional authority.

Commissioner Nelson commented: The governance models are laid out on page 31 of this report; shared governance, consolidation, BCDC as lead agency, new climate agency, new adaptation agency; I wanted to point out that in the case of the Delta Stewardship Council – we created a new agency. We created a pretty, weak new agency.

The pressure is coming from every other institution to limit the infringements on their current jurisdiction was very, very powerful. I completely agree with Commissioner Gioia about BCDC playing an obvious role there and the obvious role that BCDC played in facing a similar challenge in the 60s. I just wanted to observe that the lines are blurred between those sound-like-different choices of shared governance, lead agency and/or new agency. In practice, when you are going to the Legislature to try to create a new authority somewhere the lines start to blur pretty quickly between those different choices.

Commissioner Pemberton commented: There is also the State Lands Commission which provides a statewide perspective.

Chair Wasserman added a couple of thoughts: BCDC is focused on and this study is focused on rising sea level. If you change the focus to climate adaptation and sustainability writ broad; we have a very different discussion. We are not talking about that. Perhaps it should be talked about in a different form.

I believe that we are ultimately going to have to go to the Legislature for additional changes to the McAteer-Petris Act. I do not think we know what those changes are yet. I do not think they are at all today expanding jurisdiction either geographically or in terms of what we can do.

I think our Action Plan and the region-wide, ART Project and the workshops that we have had are all steps to creating the vision that is called for here about rising sea level in the Bay Area which is different than the rest of the state.

What we face here is different. It is different because we are in this immense inlet and it is different because of the proportion of built environment as well as the very precious natural environment.

We are moving on these fronts. It doesn't mean we have it all understood correctly, we don't. We are very far from the ultimate solution.

I think we are absolutely on the right path. One of the great problems of talking about a new agency is that is going to get everybody focusing on that instead of focusing on the building blocks that we need so that we can, in fact, be in a position to start the many, many new projects and figure out the funding for the many new projects that we are going to have to do to protect the natural and built environment here.

This is a very good analysis. In some ways we are moving beyond it. We are on a path that answers many of these questions.

Executive Director Goldzband added: When you receive your meeting summary from me which goes out to all Commissioners, all alternates, members of the DRB, members of the ECRB and a list of about 40 or so folks who are interested in what BCDC is doing; I will be including Professor Lubell's email address and contact information.

I would urge you all to take that meeting summary and cut and paste it into your own email lists and send it out to everybody you want to make sure are participating in Mark's study. That will mushroom and will benefit all of us.

In addition, at some point in February or March we are going to have Mark Stacey come in and provide the other portion of this NSF study which is the hydrology portion.

We will probably ask Professor Lubell to come in as well as sort of a backup because I know that Mark Stacey will want to have the ability to link what he is doing to what Professor Lubell is doing. When we get that settled you will see Professor Lubell once again.

Chair Wasserman announced: That brings us back to Item 8.

8. Public Hearing and Possible Vote on the South Bay Shoreline Project, Construction of Reach 1 of the Shoreline Levee, BCDC Phased Consistency Determination No.C2015.006.00, Amendment No. One

Chair Wasserman stated: Item 8 is a public hearing and vote on the proposed phased construction of Reach 1, of the South Bay Shoreline Project by the U.S. Army Corps of Engineers. Brenda Goeden will introduce the project.

Ms. Goeden addressed the Commission: I am happy to be here today with an example of a project that addresses climate change in a responsive way and a pretty good inter-agency coordination process during the permitting.

You have before you today a public hearing and possible vote on construction of the first reach of levee and ecotone of the South Bay Shoreline Project. It is in the deep South Bay. This is a multi-benefit project that combines a flood risk reduction levee with the restoration of eight former salt ponds located in the far South Bay, adjacent to the town of Alviso, New Chicago Marsh and the San Jose Pollution Prevention Plant in Santa Clara County.

As you may recall, at the end of 2015 and just before Bob Batha's retirement from BCDC, he presented to you the conceptual design of this project based on the US Army Corps of Engineers' feasibility study conducted with the project partners, the US Fish and Wildlife Service, the California Coastal Conservancy and the Santa Clara Valley Water District.

At that Commission meeting you voted to concur with the US Army Corps of Engineers' consistency determination for the conceptual plan for the Shoreline Project. In that concurrence you required the project sponsors to return to the Commission at significant decision points in the project, consistent with the Coastal Zone Management Act's federal regulations governing phased, consistency determinations. Phased consistency determinations allow the Commission to concur with the federal agency's determination that a portion of the project is consistent with the Commission's laws and policies while additional portions of the project are being further developed or designed.

In addition to the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service has joined the Corps in the consistency determination because as the project moves into construction phase it will be built in the large part on federal lands. Projects built on federal lands or with federal funds require federal, consistency determinations under the Coastal Zone Management Act (CZMA).

In addition, as the project is being reviewed under the CZMA, the analysis required is based on potential effects to the Coastal Zone which can extend outside of the Commission's McAteer-Petris Act jurisdiction, allowing for the review of the entire project rather than the portions that are within state jurisdiction. That said, the Commission uses the McAteer-Petris Act and the San Francisco Bay Plan as the policy and legal basis for this review.

The South Bay Shoreline Project in its entirety consists of an approximately 3.8-mile levee, generally aligned along the landward side of the existing salt ponds, between Alviso Marina County Park and Coyote Creek, raising it to a constructed height of 15.7 feet and a final "settled" height of 15.2 feet NAVD88. The levee will be approximately 110 feet wide at its base and will have transitional habitat ecotone bayward of the levee. This ecotone will gently slope bayward into the former salt ponds approximately 345 feet. Over the next several years, facilitated by the levee and ecotone construction, eight former salt ponds will be breached to tidal action restoring 2,900 acres over time to tidal marsh.

However, today you have before you only a portion of the project, part of the first phase of construction for Reach 1. The authorization, should you choose to concur today, will allow the Army Corps to begin construction of the levee and ecotone, import and stockpile soils to the site within the salt ponds, reconstruct the first portion of the Bay Trail atop the levee and set up staging areas adjacent to the project. This portion of the project would be 0.81 miles of levee and ecotone and would require approximately one million cubic yards of fill.

I wanted to note that the policies that guide fill in the Bay are in limited use in this consistency determination because most of the fill would occur in the former salt ponds where the Bay Plan directs the Commission to authorize restoration, and analyze using soil and dredged sediment as part of the project. The tidal marsh policies and tidal flats policies direct the Commission to include transitional habitat, where possible, to facilitate habitat diversity which requires fill. Finally, it is important to note that while the quantity of fill is quite large, nearly a million cubic yards; it represents a small fraction of the area that will be restored to tidal action, approximately 54.71 acres of the 1,100 acres of the project, which is approximately 0.05 percent of these two ponds. The Commission should determine if this volume of fill is consistent with its laws and policies particularly the Salt Pond and Tidal Marsh and Tidal Flats policies.

It is also important to note that the Army Corps of Engineers will be constructing the project. Once constructed and the levee certified, the project will be turned over to different entities. The U.S. Fish and Wildlife Service will manage the ponds as a part of the Don Edwards Wildlife Refuge and the Santa Clara Valley Water District would take over maintenance of the levee. Monitoring of the project would initially be conducted by the Army Corps of Engineers and over time would be taken on by the local project sponsors who have applied for an administrative permit for future maintenance and monitoring of the project.

I also wanted to mention that in the staff summary I mistakenly referred to the project as being part of the Army Corps' Continuing Authorities Program; it is not. The project was authorized by Congress as part of the 2016 Water Resources Development Act. With that I will turn the microphone over to Lieutenant Colonel Kaulfers of the U.S. Army Corps of Engineers who will be joined by Anne Morkill of the U.S. Fish and Wildlife Service, Melanie Richardson of the Santa Clara Valley Water District, Ken Davies with the City of San Jose and Amy Hutzler and Brenda Buxton of the California Coastal Conservancy.

Lieutenant Colonel David Kaulfers of the U.S. Army Corps of Engineers addressed the Commission: I am the Project Manager for the South San Francisco Bay Shoreline Project. I am fortunate to have been in this role since January of last year. Members of our team will highlight portions of the project that are important to them. Before we move forward it is important to look back on where we have been with this project. It really began in 2006 and this slide shows some of the project team at that time. The other picture shows the project team in 2015. Receiving the Chief's Report of 2015 did not come without much consternation. This report was generated on time with the help of BCDC and the California Regional Water Quality Control Board.

Since January of last year BCDC and the Water Board had met on a reoccurring basis in a collaborative effort. This team of dedicated professionals has worked to find that common ground upon which to move forward and figure out how to operate within the constraints of each organization's current policies, laws and procedures, to thread the needle.

A key staff member from BCDC was Brenda because she single-handedly put together the draft document that we reviewed, updated it, arm wrestled and debated. From the Water Board we had a number of staff that were significant in moving this project along.

The entire project is about a four-mile levee with a closure structure that crosses the wastewater facility's discharge, restoration of up to 2,900 acres of salt ponds and recreational facilities. The flood risk, management features need to be in place before restoration occurs. The flood risk management features will be more resilient by installing those ecosystem components. The total project cost is about \$174 million. The federal government is a cost-share partner and plays a significant role in funding and leading this project. Implementation of the project will enhance the San Francisco Bay by reducing flood risks for the Community of Alviso, and infrastructure that supports Silicon Valley, by creating a closed levee system connecting two existing FEMA-certified levees at the Guadalupe River and Coyote Creek. It will also create the tidal wetlands from eight, former, commercial salt ponds shown in blue on the screen. Ponds A9 through A15 are federal lands managed by the U.S. Fish and Wildlife Service and Pond A18 is owned by the city of San Jose. The conversion of these ponds to tidal wetlands and the creation of a natural shoreline is predicated on the construction of a reliable, flood-risk mitigation levee shown in red. Resilience of this levee is achieved through the construction of ecotone shown in green. The ecotone is the transition habitat feature that will connect sub-tidal and upland habitat and will buffer the levee against waves and high water during floods.

The three components of the project are: flood protection, ecosystem restoration and the recreation component. We talked about the ecotone and not all of the levee will have an ecotone component. Reach 1 is the one component of the project that we are trying to get the consistency determination for this afternoon. Normally we would just have a levee with a 3:1 side slope. If we extend the levee into the bayside and create some transitional habitat; as the sea level rises that habitat will move up the ecotone. It accommodates sea level rise.

We are now into the phasing of the project. We are working to construct Reach 1. Phase I is the construction of the flood-risk, management portion of the project. Phase II goes over to the restoration component. We are breaching the outer berms that are serving as de-facto levees. If they were to come down now it would be bad for the town of Alviso. As we breach the outer levees we will assess how the tide and the salt ponds are returning to their natural habitat and determine how to move forward. This project is more performance-based than time-driven.

And finally, Reach 1 levee is a little over 4,000 feet long. We have also asked for the ability to stockpile fill in the areas that we are going to place ecotone in the project. This will be along Reach 1 and Reaches 4 and 5. Fill is at a premium and if we can place fill from other projects as it becomes available that supports the project construction as well as reduces costs. That concludes my introduction of the project. I will be followed by Ms. Melanie Richardson with the Water District.

Ms. Richardson presented the following: I am Melanie Richardson, the Chief Operating Officer of Watersheds for the Santa Clara Valley Water District. We are one of the partners of this project. This is a true partnership of two federal agencies, a state agency and a local agency who have worked over the past many years to complete planning and are now wrapping up design and have obtained all permits with the exception of the BCDC permit which we hope to obtain today. We have put together all of the funding necessary; local funding through special parcel taxes and we've gotten the WRDA 2106 Authorization. We are ready to go and we are at the finish line. This is a very important project to the District. We are proud to be a sponsor because it responsibly manages for sea level rise, provides important flood protection to an area of Santa Clara County that has had historical flooding, the Alviso area, and provides environmental benefits for thousands of acres. We need BCDC to issue its approvals today so that we can keep this project on target and receive the very highly-competitive, new-start funding from the federal government's process to move forward with this project. That federal, new-start funding is expected to be unveiled next month in February. So this is a very important step in the project. We sincerely appreciate you listening to us and hope that you will keep this project moving for us.

Ms. Anne Morkill addressed the Commission: I am the Manger for the San Francisco Bay National Wildlife Refuge Complex for the U.S. Fish and Wildlife Service. I want to express our support for, and agreement with the Consistency Determination Amendment No. 1 and its special conditions for the South Bay Shoreline Project that is before you today. As described, the project elements involving construction of the flood-risk management along Reaches 1 through 3 as well as the restoration of Ponds A9 through A15 and associated recreation features are located on [Fish and Wildlife] Service lands managed as part of the Don Edwards San Francisco Bay National Wildlife Refuge.

The Refuge was created by Congress in 1972 and later expanded for the purpose of preserving and enhancing highly- significant wetland habitats and protecting migratory water fowl and other wildlife including threatened and endangered species. Also, in recognition of its location within a highly-urbanized area; the Refuge was given a special purpose of providing the opportunity for nature study and wildlife-oriented recreation which includes waterfowl hunting, fishing, wildlife observation and photography.

We have made a formal determination that the Shoreline Project is compatible with the purpose for which the Refuge was established and this is consistent with the National Wildlife Refuge System Improvement Act of 1997 as well as the Refuge's Comprehensive Conservation Plan which is a 15-year, management plan that guides our management practices and priorities. The Service's Endangered Species Office has also issued a biological opinion that is referenced in the CD for the project that recognizes the long-term benefits that will be realized from this project for federally-threatened and endangered species. We have therefore signed a Memorandum of Understanding (MOU) with the project team partners that are before you today memorializing the Service's commitment to provide the land necessary for this project. This will include issuing a right-of-way permit to the Santa Clara Valley Water District for its operation and maintenance of the flood-risk, management levee for the life of the project as well as continuing our responsibilities in managing the recreational features and implementing the goals and objectives of the South Bay Salt Pond Restoration Project which are integrally tied to the restoration of Ponds A9 through A15.

The Shoreline Project's integrated approach addresses a longstanding and urgent need to ensure tidal-flood protection for the community of Alviso and the other infrastructure while also recognizing the important role that restored wetlands serve to reduce impacts of storms and floods and adapting to sea level rise on coastal communities in addition to restoring these important fish and wildlife habitats. The project will also benefit the community by providing enhanced, recreational features such as new viewpoints, interpreting the wildlife and the landscapes around them as well as new Bay Trail connections to ensure the public's continued use and enjoyment of this urban, wildlife refuge. These features will complement our existing programs, education and interpretation that we currently offer at our Environmental Education Center in Alviso that is along Reach 3 reaching tens-of-thousands of students and visitors annually.

Lastly, I want to thank BCDC staff, and in particular, Brenda Goeden for working closely and collaboratively with our project team over the last year to develop the Consistency Determination Amendment No. 1 that is before you.

We look forward to continuing our collaborative effort with BCDC, the Regional Water Board and our partners in implementing this multi-objective project in South San Francisco Bay. Thank you for the opportunity to speak and next up is Ken Davies from the City of San Jose.

Mr. Ken Davies addressed the Commission: I am the Sustainability and Compliance Manager with the city of San Jose's Environmental Services Department here representing the San Jose/Santa Clara Regional Wastewater Facility. The City of San Jose and the Regional Wastewater Facility would like to express our heartfelt support for the construction of the shoreline levee because of the protection it will provide for critical pieces of public infrastructure, as well as the town of Alviso and surrounding areas that are already below sea level.

Every day, 365 days a year, the Regional Wastewater Facility cleans Silicon Valley's wastewater to very high, national standards and protects public health and the environment and supports the local economy. Using a process that simulates the way nature cleans water, the facility treats an average of 110 million gallons a day of wastewater. We operate the largest, tertiary treatment plant in the western United States serving over 1.4 million residents and over 17,000 businesses within Santa Clara County. Highly-trained facility staff ensures that all treated wastewater meets strict regulations. There is never a day off in this business. A major disruption of our operations due to tidal flooding or otherwise would have some very serious consequences for the health of the population in our service area as well as that of the South Bay. The Regional Wastewater Facility also produces all of the tertiary-treated water for the South Bay water, recycling system that consists of over 130 miles of pipeline, five pump stations and 10 million gallons of storage and reservoirs combined with the product water from the Water District's Advanced Purification Center located right across the street from us. We provide an average of 14 million gallons a day of reliable, high-quality, non-potable water to the cities of San Jose, Milpitas and Santa Clara. The ability to deliver this critical water supply would also be protected by the shoreline levee.

We have also committed to the contribution of the former Salt Pond A18 which would provide approximately 850 acres of salt marsh once restored through this project. Additionally, we have indicated our support for the contribution of additional property should the project partners arrive at an agreed-upon alignment in Reaches 4 and 5 of the project that would prove more optimal from an environmental perspective. I thank you for your time and consideration today in support of this project. And with that I will pass it over to Amy Hutzler with the State Coastal Conservancy.

Ms. Amy Hutzler was recognized: I am the Deputy Executive Officer with the California State Coastal Conservancy. The Coastal Conservancy supports the CD and thanks the BCDC staff who has gotten us to this point. Brenda, Brad, Steve and Larry have been very helpful. The Shoreline Project is part of the overall South Bay Salt Pond Restoration Project and helps us to implement the programmatic plan for more than 15,000 acres of salt ponds in the South San Francisco Bay.

The project also implements the recommendations of multiple planning efforts in San Francisco Bay; the original Baylands Ecosystem Habitat Goals from 1999, the 2014 Climate Change Update of those goals, the Fish and Wildlife Service Tidal Marsh Recovery Plan and the Comprehensive Conservation and Management Plan as well as BCDC's Bay Plan.

The passage of Measure AA in June of 2016 demonstrated the significant public support for restoration in San Francisco Bay. Over the next 20 years Measure AA funds will help accelerate the pace and scale of wetlands restoration. This project is one large example of what we hope to be seeing more of in the coming years. In conclusion, thank you for considering this CD and we look forward to constructing a successful, multi-purpose project. I am going to turn it over to Brenda Buxton.

Ms. Brenda Buxton, Project Manager with the California State Coastal Conservancy presented the following: I wanted to say a few words about public access as a member of a fellow, coastal-zone, management agency. This is very much a priority for the Conservancy as well. This has not been discussed as much in the presentations because Reach 1 is not going to change the existing public access. It is going to raise it up higher on a levee, make it wider and put some gravel on it so it is easier to get out there. It is not fundamentally changing public access at this time.

Where you are going to start to see changing public access landscape is going to be towards the end of the project when we are starting to restore tidal wetlands. There are currently two, isolated trail, systems here. One is accessed most easily through the Alviso Marina and it is about a nine-mile loop around the ponds. This other loop around the right is accessed through the Environmental Education Center also on the Refuge lands. The trail system on the right is only connected with the trail system on the left with non-official, railroad crossing that is not safe for pedestrians. Right now it is a mile and a half out and back. It is a very inconvenient, not-safe connection between these two lift systems.

The Shoreline Study will change the trails out on the ponds because as we breach we are going to put very wide gaps in the existing berm network. We are also going to borrow from those berms and use that material elsewhere. We are going to bring the levees down to tidal-marsh, colonization levels. Because of these changes we are going to be taking away some public access. To make up for that we are focusing on improving connections. One of the things that is going to happen is a pedestrian and bicycle bridge that would be built over the railroad, connect these two sides of the Refuge ponds and make a much more convenient connection. So, you will be able to go from the Marina all the way over to the Environmental Education Center and now instead of it being three or four miles it will be about one mile. Also, we will open new trails on Pond A18 that goes all the way up to Coyote Creek Trail which is the Bay Trail in this area.

We also received extensive feedback from the public that they really wanted to see high-speed, bicycle commuters directed away from Refuge lands and that this was not really a consistent use for wildlife, viewing activities and try to have the commuters give them a better path by extending the bike trail that currently parallels 237 extending that on to the Guadalupe River Trail and improve connections in the Alviso area by taking these extra actions. These are the changes that you will see towards the end of the project, although we are starting to work on the highway 237 adjacent trail now. I wanted you to know that we have not forgotten about public access. The Coastal Conservancy and our partners take this very seriously. Thank you.

Lieutenant Colonel Kaulfers continued: In closing, I would like to highlight how competitive federal funds are at the national level. Every impediment to project progress puts those funds at risk. In order for us to best compete for those limited funds I would like to be able to raise my right hand at the end of January and say, yes, we have the required environmental documentation to construct Reach 1. Yes, we have a 100 percent plan complete to construct Reach 1 – please, appropriate us our asked-for dollars in the FY 18 Federal Work Plan. If we can say that we have done everything possible to position this project. It has taken us a lot of time and a lot of effort. If it were easy it would have already been done. (Laughter) Thanks to your team and the Water Board we have figured out how to get us to this point now. Now it is other people’s hands, but we are too early to declare victory on the CDs. We still haven’t gotten that yet. In summary, this shows our progress and how we would like to move forward. Hopefully, on the 29th we have the CD issued, and then we have positioned the project with our plans complete and we will see how the federal appropriations go.

Last year there was only one new start construction appropriation and that was a one-year appropriation for a dredging project on the East Coast. New starts last year were not given much consideration by the Administration. This year some of the indicators leave me to believe that we may have an opportunity. The enemy of excellence is perfection and if we get to excellence here today I think we have done the best we can. Ladies and gentlemen, thank you very much for your time. USACE does concur with the consistency determination as written.

Chair Wasserman announced: We are going to open the public hearing formally although we have no public speakers. Commissioner Nelson had a procedural question: I note in looking at the staff recommendation that the staff has completed 90 percent of review of the levee and that the ecotone design is not complete. Normally those things would be complete before they came to us. Do I have that right?

Ms. Goeden replied: Yes. We have received 90 percent design for the levee, but not the ecotone. Commissioner Nelson asked: Could you explain the timing? Ms. Goeden continued: The levee design has been reviewed and we will see 100 percent before they go into construction. Our plan review process will ensure the construction plans are consistent with the authorization, and get the final sign-off by our engineer. We do not have designs in-hand yet for the ecotone. What we would anticipate is that before the Army Corps of Engineers gets started building the ecotone they would come forward with, probably 65 percent design, and we would review that as an early draft, and they would bring it back to us – their final design, incorporating any comments we provided at the staff level. One thing that maybe will help you rest assured, is that they have to stockpile the soils before they can even begin construction and it’s a lot of material to stockpile, so what they are hoping to do first is build the levee and then as they get enough material, move into construction of the ecotone. I think there is plenty of time to get those designs developed for the ecotone. The timing would be related to the end of the construction for the levee. They will come through staff in plan review as conditioned.

Commissioner Nelson noted the following: I had expressed some concerns about our current federal leadership in D.C. I want to make sure that this is not seen as reflecting on the Colonel and his staff and on the Refuge staff. I want to thank them for their work on this project.

Chair Wasserman continued: I would appreciate a motion to close the public hearing.

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

Ms. Goeden: Thank you Commissioners for the questions and discussion. As there are no further questions the staff recommends that the Commission concur with the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service that the proposed construction of the first Reach of the South Bay Shoreline levee and ecotone as described and conditioned in the staff recommendation be approved.

MOTION: Commissioner McGrath moved approval of the staff recommendation, seconded by Commissioner Scharff.

Commissioner McGrath commented: I first started working on this project about 15 years ago before I retired. I convinced the Port of Oakland that there might eventually be some mitigation opportunities so they would let me follow it. It has been an example of the best application of science to problems. It is outstanding work. I did follow the science they did regarding where to put trails, mercury methylation and the like. This project is essential because it provides flood control. And without flood control they cannot open more of the salt ponds. There is a lot of fill associated with it but there is a huge habitat benefit. It all makes sense. There is less access on this element but there is a very large increase on the whole project in public access. It is put in places where it will minimize impacts. I hope you all support this project.

Chair Wasserman continued: If the two applicants step forward and indicate on the record that you agree with the staff recommendation and accept them.

Lieutenant Colonel Kaulfers replied: Chair Wasserman, the U.S. Army Corps of Engineers agrees with staff recommendations.

Ms. Anne Morkill replied: And on behalf of the U.S. Fish and Wildlife Service the Refuge also agrees with the staff recommendations. Thank you.

VOTE: The motion carried with a vote of 19-0-0 with Commissioners Addiego, Gilmore, Scharff, Gioia, Jahns, Pemberton, McGrath, Nelson, Peskin, Ranchod, Randolph, McElhinney, Sears, Vasquez, Techel, Wagenknecht, Zwissler, Vice Chair Chappell and Chair Wasserman voting, "YES", no "NO", votes and no abstentions.

Chair Wasserman added: I want to add my congratulations to those that have already been stated for a very important project and I know that it has been in process for a long time. I also want to note that the kind of cooperation that has occurred on this project is the kind of cooperation we are aiming towards in our prior discussion over governance. Things can be done. Thank you very much.

9. **Consideration of 2016 Annual Report.** Chair Wasserman stated: Item 9 is a proposed adoption of the 2016 Annual Report. Steve Goldbeck will introduce the matter.

Chief Deputy Director Goldbeck presented the following: You have before you a staff report dated January 12, 2018 on the 2016 Annual Report summarizing the activities of the Commission during the 2016 calendar year.

The updated information graphics and the new formatting make this a much more readable and attractive report.

The staff recommends that the Commission adopt the attached, draft text and authorize the staff to make any editorial revisions needed for accuracy, clarity and improved presentation and direct the staff to submit the 2016 Annual Report to the Governor, the Legislature and to the public.

Executive Director Goldzband commented: I really want you to look at this report and give Steve your congratulations because this is the first report in my tenure here which I actually like to look at. That is because BCDC now has a great contract with SFEI. Steve worked with the Estuary Institute that has great staff to really look at things visually and so this is a fundamentally different looking kind of report.

I am going to encourage you all to keep it around, look at it and give Steve your comments on anything that you think is really good or anything that you really think should be changed.

This report is late for a number of reasons. The report for 2017 will not be late. Steve is going to get started on that pretty quickly.

MOTION: Commissioner Ranchod moved approval of the staff recommendation, seconded by Commissioner Vasquez.

VOTE: The motion carried with a vote of 19-0-0 with Commissioners Addiego, Gilmore, Scharff, Gioia, Jahns, Pemberton, McGrath, Nelson, Peskin, Ranchod, Randolph, McElhinney, Sears, Vasquez, Techel, Wagenknecht, Zwissler, Vice Chair Chappell and Chair Wasserman voting, "YES", no "NO", votes and no abstentions.

Chair Wasserman announced: That brings us to the closed session and we ask everybody to leave the room other than senior staff, our lawyers and the Commissioners. (Non-authorized attendees exited the room)

11. **Closed Session on Pending Litigation; Point Buckler Club, LLC and John Donnelly Sweeney v. San Francisco Bay Conservation and Development Commission et. al., Solano County Superior Court, Case No. FCS048136.** After returning from closed session Chair Wasserman announced: We are back out of closed session. We have completed our closed session discussion regarding John Sweeney's lawsuit against BCDC regarding Point Buckler and we did not take a reportable action.

12. Adjournment. Upon motion by Commissioner Wagenknecht, seconded by Commissioner Nelson, the Commission meeting was adjourned at 3:58 p.m.

Respectfully submitted,

LAWRENCE J. GOLDZBAND
Executive Director

Approved, with no corrections, at the
San Francisco Bay Conservation and
Development Commission Meeting
of February 1, 2018

R. ZACHARY WASSERMAN, Chair