

San Francisco Bay Conservation and Development Commission

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May 15, 2020

TO: All Commissioners and Alternates

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

SUBJECT: Approved Minutes of May 7, 2020 Virtual Commission Meeting

1. **Call to Order.** The virtual meeting was called to order by Chair Wasserman at 1:05 p.m. The meeting was held online via Zoom. Chair Wasserman announced: Good afternoon all and welcome to our second, virtual, BCDC meeting. My name is Zach Wasserman and I am the Chair of BCDC. Our first order of business is to call the roll. Commissioners please unmute yourselves to respond and then mute yourselves again after responding. Peggy, please call the roll.

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

Chair Wasserman announced that a quorum was present.

Not present were Commissioners: Department of Finance (Finn), San Mateo County (Pine), Department of Business Transportation & Housing (Tavares), represented by El-Tawasay, U.S. Environmental Protection Agency (Ziegler)

3. **Public Comment Period.** Chair Wasserman gave the following instructions:

Before I open the public comment period for items not on today's agenda I want to announce that we will hear Agenda Item 11 on legislation immediately after Agenda Item 7 because we are trying, if we determine to submit a comment letter to do it before two o'clock to the State Assembly Natural Resources Committee.

Now I want to quickly share some instructions on how we can best participate in this meeting so that it runs as smoothly as possible. First, everyone, please make sure that your phones are muted to avoid background noise. For Commissioners, if you have a webcam please make sure that it is on so that you can be seen during the proceedings. For members of the public, if you would like to speak either during our open public comment period or on an



agenda item you will need to do so in one of two ways. First, if you are attending on the Zoom platform please raise your hand which is either in the top or the bottom where there are three, little dots. If you are attending by phone you must press “star 9” (*9) your keypad to raise your hand to make a comment. Peggy will call on individuals who have raised their hands in the order that are raised. After you are called on you will be unmuted so that you can share your comments. Remember, you have a limit of three minutes to speak on an item. Please keep your comments respectful and focused; we will mute anyone who fails to follow those guidelines or, at worst, dismiss them from the meeting. Every now and then you will hear me refer to this meeting "host" — our BCDC staff are acting as hosts for the meeting behind the scenes to ensure that the technology moves the meeting forward smoothly and consistently.

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

Our next order of business is public comment period. If anyone wants to address the Commission on matters not on today’s agenda you will have three minutes to do so. Please raise your hand and Peggy will call on the first who would like to make a public comment.

Pastor Peter Romanowsky addressed the Commission: I am the longest, surviving resident of San Francisco Bay Anchored-Out to my knowledge. I am also the CEO of the New Covenant Evangelistic Association and Chaplain representing the 85 anchor-outs that wish to be represented here on the Bay.

What I would like to talk about is what happened about the removal of the Galilee Harbor Dock. That leaves us only one dock on the entire San Francisco Bay for the live-aboard community which is concentrated in Sausalito. It is concentrated because BCDC has kicked out all of the live-aboards from marina and all of the live-aboards in the Sacramento Delta have been kicked out. And we’ve all been concentrated now in Sausalito off Richardson’s Bay.

As spiritual leader and CEO of a non-profit 501(c)(3) I plan on filing grant money for relief for the anchor-outs and I’d like to ask you in prayer and I am not condemning anyone but I am saying that taking out the Galilee Harbor Dock without adequate representation from the live-aboard, anchor-out, historical community was terrible.

We have half a dock left on the entire Bay for the major, anchor-out, live-aboard community which has been here for hundreds of years going back to the Miwoks who were called the “Water People” and also Sir Francis Drake landed here when he discovered the Bay according to the local Miwoks.

People don’t seem to understand that this has been a historical anchorage. And Mr. Goldzbar (sic) nobody should be living on the Bay which this has been a live-aboard Bay for millennia.

I just feel good in my heart to be able to share that with you and I pray that you all take this to heart with me that we need our dock back at Galilee Harbor.

And we have to have it back. There are going to be demonstrations and protests and lawsuits galore. I will get a grant from the San Francisco Foundation, no doubt, because this billion-dollar, trust fund for the poor and church is little left for us in Marin County.

And we have the largest concentration of homeless people anchored out in the entire state of California.

Ms. Atwell interjected: Thank you very much. You've reached three minutes but thank you very much. We appreciate it.

Pastor Romanowsky replied: Thank you, God bless you.

Mr. Peter Blackmore commented: I am co-founder of The Alliance. The issue I want to bring to your attention today is support for a critical issue facing BCDC and our community.

We believe it is time for a major review and overhaul of BCDC's permitting process. The BCDC leadership has known this is a major issue for many years but so far little has been done to reform permitting.

Commissioners, we need you to act on this. As a reference the Bay Planning Coalition issued well-sought-out report on BCDC permitting in November of 2018. To date we are unaware that this has had hearings or discussions of the thoughtful findings and recommendations they proposed.

Further, BCDC enforcement staff is quoted in their workshops on enforcement practices that permits are often poorly written and difficult to enforce.

This has a knock-on effect that many violations are often the result of language that could be better drafted and requirements cannot be resolved easily without costly, protracted enforcement or legal proceedings.

Further, BCDC insists it must be the last agency to review any projects where they claim jurisdiction. This causes complications that staff can often be re-writing permits which were well structured by agencies that are well qualified.

So it's inefficiency and immediate problems and frankly delays and costs money.

There is a much better model to permit issuance and interestingly some Commissioners are participating in a better practice already in another San Francisco Bay agency.

In fact, Brad McCrea and his staff are already supporting that process. They have agreed to work jointly with the S.F. Bay Restoration Authority using a process where all the agencies sit in the same room from day one to work collaboratively on permitting issuance.

So why not use this model for projects at BCDC is our question? We in California and BCDC face massive budget challenges because of the pandemic and any improvements to simply permitting processes and reduce costs can only be welcomed.

And I emphasize this is not a trade-off against environmental needs or public access – just the opposite.

Thank you Commissioners for your consideration.

Mr. Robert Powelson was recognized: This is Robert Powelson. I am coming here to talk about the situation on the Richardson's Bay and the impending displacement of the anchor-out community.

Right now BCDC needs to look introspectively about their role in this current crisis. Right now peoples' homes or community are being jeopardized. One thing that BCDC is not considering in this situation is the idea of equity and environmental justice.

We need to frame the issue at the anchor-outs in terms of the larger communities that are around including Belvedere and Tiburon which have been some of the primary, municipal stakeholders in the process. Think about Sausalito and Belvedere that they are some of the most exclusionary zone and structurally racist communities in California and perhaps the United States.

In a recent analysis of impediments by HUD Belvedere was shown to be one of the most exclusive and whitest communities in California. Sausalito had the first desegregation order put on them for the way that they were segregating their school district. There is an incredible amount of inequity and structural racism.

The anchor-out community has come out in response to the resilience of people who live in the face of the structural inequities. And the idea that they are bad neighbors and that is the reason that they need be evicted – it is missing that bigger picture; that, in fact, the cities surrounding the anchor-out community are responsible if not more so than otherwise.

Ms. Atwell announced: Sir, could you wrap it up? Your three minutes are up.

Mr. Powelson responded: Thank you.

Mr. Alden Bevington commented: My name is Alden Bevington. I have a comment about the anchorage situation.

Though I do not live on the anchorage I am one of the co-founders of the Richardson's Bay Regional Association and for a number of years was the primary communication point between the state, county agencies, cities and the anchor-outs.

I have worked personally with every single person. And a lot of RBRA policy has come out of the work that I have been doing with the anchorage community and the mariners.

I want to comment on the Galilee Dock closure. It was very difficult to watch that because I know the people that live on the anchorage and in that community. I pay attention to national and global news and it was the only instance of a vulnerable community having resources taken away that I saw in any news anywhere in the country. I felt like it was completely tone deaf.

I realize due to state funding issues and other things that you cannot formally participate in a coalition or collaboration with RBRA and the cities. But at the same time I want to encourage you to consider that if you are going to be making decisions that are going to be impacting the lives of people that you familiarize yourself with what are the impacts of those decisions on peoples' lives and not as an abstract.

I have watched again and again these docks being closed for reasons that we all agree with but I can assure you that enforcement of removing just the few bad actors which is the reason why these places are closed has crammed a lot of people into very small places and has really increased hardship on them in the middle of the pandemic.

So I really encourage you to get more familiar with the real-life impacts of the decisions that you are making. Thank you.

Chair Wasserman moved to Approval of the Minutes.

4. **Approval of Minutes of the April 16, 2020 Meeting.** Chair Wasserman asked for a motion and a second to adopt the Minutes of April 16, 2020.

MOTION: Commissioner Nelson moved approval of the April 16, 2020 Minutes, seconded by Commissioner McGrath. The motion carried by a voice vote with no abstentions or opposition.

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

a. **Public Service Employee Recognition Week.** This week is Public Service Employee Recognition Week and I do want to take this moment to recognize the very hard and effective work being done by all our BCDC employees to keep this meeting scheduled and working, to keep our other committees working, to keep our enforcement efforts working and they have been seen as a shining example of how to run these public meetings that have a feeling of not quite being public but running very efficiently and effectively.

There was an Environmental Justice Working Group meeting this morning and I would like Commissioner Ahn to report on that meeting.

Commissioner Ahn reported the following: This is Eddie Ahn Chair of the E.J. Working Group. We had a review of planning to date around the Environmental Justice and Social Equity Amendment that we passed in the Bay Plan last year.

And just to prepare the Commission for an upcoming presentation that will happen on May 21st – it should be about 30 minutes and will delve into everything from the community relationships involved as well as to how it is going to affect our permitting processes. That concludes my report.

Chair Wasserman asked: Any questions for Commissioner Ahn? (No questions were raised) Larry is going to talk about the budget impact of the pandemic of the corona virus.

I was on a Zoom call earlier today organized by the Oakland Chamber of Commerce with some state representatives on housing and homelessness. The drastic impact that Larry is going to discuss will have very wide effects for a very significant time. And it's going to make our cooperative efforts with our partners and ourselves even more important as we try to struggle with the consequences of the pandemic and the economic roll-out that will take certainly months and potentially years to feel it.

We must keep going in preparing to address adapting to rising sea level but we also recognize this is going to have an impact on our efforts.

b. **Next BCDC Meeting.** Our next meeting will be in two weeks, on May 21st. That meeting also will be held virtually and we expect to have:

- (1) A public hearing and possible vote on a proposed amendment to the new Bay Bridge permit regarding shorebird roosting habitat.
- (2) A briefing on a potential Bay Plan amendment regarding mitigation.
- (3) A briefing on implementation of the Commission's new Environmental Justice policies.

c. **Ex-Parte Communications.** Chair Wasserman stated: This is the time to report any ex-parte communications if you have not done so in writing. These concern adjudicatory matters and note that you have to do it in writing even if you do it verbally now. If there are any, please raise your Zoom hand. (No virtual hands were raised) I think we have none. And that will bring us to the Executive Director's Report.

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

I'll be short today. We have all thought a great deal about this being BCDC's second, virtual, Commission meeting in three weeks after we had never considered such a meeting before a couple months ago – and how quickly our lives have changed. While we keep getting hit daily with bad news, I want you to know that 196 years ago today on May 7, 1824, the greatest piece of music in western history premiered in Vienna, Austria – that being Beethoven's Ninth Symphony. It's final choral movement which sets to music Schiller's poem "Ode to Joy," reminds us that all people are brothers and sisters, that our highest honor is to be a "friend's friend," and that "all creatures drink of joy at nature's breast" – a fitting line to remember as BCDC Commissioners and staff.

a. **Budget and Staffing.** I'll say again this week that our senior staff's primary mission as we all work from home is to ensure that our staff members are all safe and healthy. I'm pleased to report that all are.

You probably read this morning that the state Department of Finance released its budget forecast a week early today and it projects a \$54.3 billion deficit through the remainder of this fiscal year and through the next – the largest deficit the state has ever faced in gross terms. Last week, as it developed the forecast, Finance instructed all state organizations to freeze all non-essential hiring, to not enter into new contracts that are not related to COVID-19 and to expect cuts in various revenue streams. We are fulfilling those orders and we're preparing budget scenarios to implement whatever comes our way. While it is very difficult not to be stunned and frustrated by the state's reversal of fortunes, we need to remember that the Newsom Administration fully understands the need to gain traction on resilience in the face of climate change and fully supports our regulatory efforts to speed up permitting and improve our enforcement program. BCDC will need to be creative as we work with the Natural Resources Agency, the Administration, and the State Legislature to ensure that we continue to foster environmental progress and economic growth.

That being said, I cannot tell you with any certainty what this portends for BCDC's programs. We shall continue to move forward with BayAdapt, our regional voluntary rising sea level adaptation planning program, but we all know that the capacity of local and regional governments and community-based organizations are both diminished and aimed elsewhere. I expect that our working groups will continue to move forward – Environmental Justice which met today, Bay Fill which is meeting tomorrow, and Financing looking forward to a July workshop; but I am unsure at what pace. With regard to the regulatory program, working with Secretary Crowfoot's "Cutting the Green Tape" Initiative will continue I am sure – you will remember that project as a way for the Resources Agency's permitting programs such as BCDC's to become more efficient. At the same time, I had planned to announce in two weeks that BCDC would hire a consultant to help us and the public improve BCDC's permitting processes, procedures, and communications; the initiative was initially proposed by Ethan Lavine of our regulatory staff. That review would have complemented our work and that of the Department of Finance to reinvigorate our enforcement program. So we will need to be creative and devise new ways to do our jobs better and more efficiently and I'm sure we will be successful. I will attach to the Meeting Summary today a copy of the Department of Finance's Summary of the projections. And that also will include a link to all the tables et cetera.

b. **Policy Issues.** The one piece of good news that I have is that the Natural Resources Agency and the Government Operations Agency each has requested BCDC's Zoom commandos — Peggy Atwell, Reggie Abad, and Nahal Ghoghaie — to teach agencies, departments, and individuals how BCDC has managed large-scale and small-scale public meetings virtually. Perhaps it's only expected that a state agency located in the Bay Area would be considered the leader in this virtual arena. For us, however, while we expect our staff to step up when we need them to do so, it has been a pleasure to see our staff lauded by our fellow state leaders as we move forward.

That completes my report Chair Wasserman and I'm happy to answer any questions.

Chair Wasserman asked: Any questions for the Executive Director? (No questions were raised) Chair Wasserman moved on to Item 7.

7. **Consideration of Administrative Matters.** Chair Wasserman stated: We have received by mail a list of Administrative Matters. Brad McCrea is available to answer any questions. Are there any questions for him? (No questions were voiced) Chair Wasserman moved to Item 11.

11. **Briefing and Potential Vote on Pending Legislation.** Chair Wasserman stated: This is a staff briefing and potential vote on pending legislation. Due to the Legislature's 2:00 p.m. deadline to submit letters Steve Goldbeck our Chief Deputy will start with one bill and we will entertain a motion on that one and then discuss the others after we have taken a vote. Steve, take it away.

Chief Deputy Director Goldbeck addressed the Commission: Thank you Chair Wasserman and Commissioners. You have a staff report recommendation on pending legislation dated May 1st. And I am going to focus on the bills for which we are recommending positions.

The first bill is AB 2809 by Assembly Member Kevin Mullins. This bill would implement the legislative recommendations of the State Audit regarding the Commission's Enforcement Program.

While staff is continuing to talk with Assembly Member Mullin's staff regarding the bill. As you heard, the bill is going to be in committee on May 13t.

Staff's greatest concern is that the bill would prohibit the Commission from using for its enforcement staff the Bay Fill Clean-Up and Abatement funds appropriated as part of the state budget process.

And while the Assembly Member has stated his intention to provide alternative funds through the budget process – the budget has to be ratified by the entire Legislature and signed by the governor.

During the current emergency there will be incredible pressure on state funds. If the bill were to become law the Bay Fill Clean-Up and Abatement Fund would be prohibited to fund staff whether or not replacement funds are provided through the Budget.

Staff recommends that the Commission oppose the bill unless it is amended to remove this threat to the Commission's enforcement funding.

We also have several other clarifying amendments; one to broaden the bill's current provisions to allow the Commission to put notice-of-enforcement action on property titles and the second regarding the Commission's enforcement process and timeline.

And given the time stress I am going to stop now, and I'd be happy to answer any questions on this bill.

Chair Wasserman stated: Before entertaining questions from the Commission I would ask for public comment. Peggy, will you call on any people who wish to comment on this item?

Mr. Bob Wilson spoke: As a co-founder of the Alliance we welcome the opportunity to comment on Agenda Item 11. We strongly support Assembly Bill 2809 which was introduced by Speaker Pro Tem Kevin Mullin. And we urge Commissioners to join us and a bi-partisan group of legislatures who also support passage of this bill.

AB 2809 includes most of the recommendation for legislative action from last year's California State Auditor's Report.

Unfortunately, BCDC senior staff has consistently questioned the findings and some recommendations of the State Auditor's Report. That staff prepared a lengthy rebuttal of the initial report which was reputed by the Audit Committee as a waste of valuable resources fighting its findings.

The executive staff continues to resist any oversight as well as numerous suggestions for process improvements. The current staff recommendation to oppose AB 2809 shows that BCDC leadership remains entrenched in its inefficient practices and has little interest in reforming the BCDC too.

The Alliance requests that you, the Commissioners, send a strong rebuke and message to the BCDC staff in support of AB 2809. As the BCDC staff notes Speaker Pro Tem Mullins and his staff have made assurances that the bill is not designed to reduce BCDC resources.

The Auditor has called out the abuse of using the Bay Fund's fill funds and this is one of the items in the legislation.

The Legislature is simply rectifying a wrong that the executive staff has forced on the public in the Bay.

As to the staff's concerns about budget pressures the costs and pressures are formidable and inevitable. The state of California is facing a massive, budget shortfall as you just noted. BCDC staff cannot continue to justify business-as-usual.

An enlightened leadership would be looking now for ways to carry out its mission through better efficiency and cease the practice of continued expansion of processes which have no real end.

It remains a stark contrast to that when compared apples-to-apples to the Coastal Commission which is 10 times more efficient in doing essentially the same kind of job as the BCDC.

So we encourage you Commissioners to do the right thing and support AB 2809. Thank you for your time.

Ms. Maureen O'Connor Sanders gave public comment: My name is Maureen O'Connor Sanders and I joined this meeting; thank you for the opportunity to urge the BCDC Commissioners and staff to support full passage and implementation of Assembly Bill 2809.

In response to the California State Auditor's Report a bipartisan group of legislatures proposed these recommendations and changes to begin fixing processes within BCDC that are broken; for example, transparency regarding ongoing permitting and enforcement actions.

Finally, implementing a Citizen's Advisory Committee and no longer using Bay Fill Clean-Up and Abatement funds for staff costs. Regarding the latter, the State Auditor and California Coastal Commission have called redirection, sometimes called misappropriations, of these funds and quote, abuse, close quote.

It creates a for-profit business. This practice was called abuse by Mr. Goldzband himself before he became BCDC Executive Director.

The fixes that are proposed in Assembly Bill 2809 are a reasonable beginning, if anything Commissioners and staff, a conservative beginning to much-needed reform if BCDC is ever to return to its original, admirable mission.

Please support AB 2809. Thank you.

Reverend Peter Romanowsky commented: I have been a missionary on the San Francisco Bay since 1984. And I have been in Sausalito and on the Bay since 1964. So I have a long history here.

As the longest, surviving, anchor-out on San Francisco Bay, the longest, surviving resident to my knowledge I urge that part of the money be used to help the displaced people off Richardson's Bay in San Francisco Bay into based housing because we are like 85 floating – we are landless peasants.

My father in law was Supervisor of Marin County, Ernest Niles Kettenhofen and super rich but I chose to become a Christian and live with the poor.

I want to urge you to use part of the budget to help Marin County and RBRA to help find housing for displaced people off the anchorage. They should be given an opportunity to find some type of residence on shore and not just a welfare cracker box with no view.

And God bless you all and I hope you see what I am trying to share and be blessed in your decision making in Jesus' name. But help us, those that want to — to get on shore. Nobody has helped me, and I am the longest, surviving anchor-out. Nobody has helped me get on shore. If I can't get help – who in the world is going to get help out here? We are a floating concentration camp. We've been gathered together like sitting ducks and getting picked off. God bless you and thank you.

Chair Wasserman announced: We will now entertain questions from Commissioners.

Commissioner Nelson was recognized: I have two questions for staff. Our first, public speaker today spoke about the recommendations of the Audit. On the Staff Report you talk about the extent to which BCDC is implementing and in some cases already has implemented the Audit recommendations that are included in Mr. Mullin's bill. So first could you walk us through the relationship between the Audit recommendations in the Bill and what BCDC is already implementing?

Mr. Goldbeck replied: You will actually hear a whole presentation right after this that talks about the Commission's Enforcement Program and what we are doing. And many of those are implementing the recommendations of the State Enforcement Audit.

We have embraced most all of the recommendations of the Audit and are working on them. And our objection to the Bill is not based on any of those aspects. It is solely on the impact to the funding which would impede the Commission's ability to make those improvements that are in the recommendations of the State Audit.

Commissioner Nelson continued: Thank you. That actually sets up my second question which is about that funding provision. Has the staff taken a look at other agencies, other enforcement programs that are funded – I don't see anything inappropriate about the Bay Fund helping fund our enforcement program. If we didn't have cases to enforce we wouldn't need that staff. But I think it would be helpful to the Commission in thinking about Mr. Mullin's Bill to have a sense of how other state agencies fund their enforcement programs.

Mr. Goldbeck responded: I do not have information right on hand about that. I know that at this point the Coastal Commission does not use those funds but I am not sure about other agencies. It certainly is not unheard of to use enforcement funds to run the program.

Commissioner Nelson added: In the current, budget climate I have to say I am more than a little bit concerned that giving up these funds, walling off these funds and asking for a budget augmentation could basically mean the elimination of our enforcement program. And we can save that for discussion later.

Commissioner Addiego commented: I just wanted to share with my colleagues that I've known Speaker Pro Tem Mullin for all of his elected life. And simply put, I know that we can trust him when it comes to the commitment to our funding, our budget. And I am afraid that opposing this legislation is in the long-term not in the best interest of BCDC so it is quite a political decision.

Commissioner McGrath chimed in: First of all to Barry Nelson's question – the San Francisco Bay Regional Water Quality Control Board has administrative, civil-liabilities capability and that captures the true cost of staff.

I would like to see us support the Staff Recommendation. With all due respect to Commissioner Addiego what we know in the past from our look at this was first, what the Audit Report said is that we weren't moving fast enough. And I know at least one of the violations in Jack London Square where that was very much the case. So we were urged to move more quickly but without the resources that can't happen.

The second thing is that we know that the funding system currently which does use some portion of the funds for staffing costs to track the violations does not capture all of the costs. So we are already subsidizing people who are found later to be in violation of their permit. And this would transfer more of the cost to the public sector.

So I really strenuously object to the idea of being able to not pay the costs that it takes to make sure that a violation is resolved. And I think that is what the Staff Recommendation is looking for. So I am going to, if the Chair would allow, I am going to move.

Ms. Atwell interjected: Wait, wait – we still have more hands raised.

Commissioner Scharff was recognized: While being sensitive to what Commissioner Addiego said, I also agree with what was just said. The question I had was – how much staff would we lose immediately? How much money are we spending a year on this? What are we taking from the fund a year? And what would actually be the actual impact on staff?

Executive Director Goldzband responded: The two people who are paid out of the Bay Fill Fund are Enforcement Manager Priscilla and our Enforcement Attorney Karen. It totals approximately \$324,000 annually.

The Department of Finance, the Governor and the State Legislature all agreed two years ago to allow that as part of the Budget Act for three years and then relook at it after the next fiscal year, meaning starting in the fiscal year FY 2023 and it would have to be redone.

What we would have to do is somehow find \$323,000 of General Fund money in order to pay those salaries from an already stretched budget.

Commissioner Scharff continued: So that was pretty much my understanding of it Larry. What I want him to say is, I can tell you that we can't run Enforcement without Priscilla and Karen. They have made a huge difference and I would credit a huge amount of the progress being made to them.

And with all due respect to Assembly Member Mullin I am wondering – he made those assurances before the \$54 billion deficit. We basically would end our enforcement program and then we would have a bill telling us to do stuff that we wouldn't have. So we would have to pull the money from other things. Maybe we wouldn't do sea-level-rise studies anymore. Maybe we would cancel the ART. I don't know what we would do. Or maybe we would go back to not having Enforcement. I just think it is way too much of a stretch in this moment in time to support this bill and give up those funds.

Chair Wasserman commented: Number one, most cities and counties use these kinds of funds or similar funds to fund their enforcement activities. So there is nothing unusual in this at all. And I think what you have heard from staff and particularly from Commissioner Scharff demonstrates that the loss of these funds could be devastating.

I don't mistrust Assembly Member Mullin at all but in the context of the impact of this pandemic his ability to deliver on that is very questionable. We have a time frame as Larry said, previously approved by the Governor, Finance and the Legislature. I think we should follow it.

Commissioner McGrath noted the following: I would note that there is only one area of disagreement and that is funding. On the other areas of implementation of the Audit we are in agreement.

MOTION: Commissioner McGrath moved approval of the Staff Recommendation to oppose AB 2809 unless amended, seconded by Commissioner Scharff.

VOTE: The motion carried with a vote of 18-1-3 with Commissioners Ahn, Alioto-Pier, Butt, Gilmore, Scharff, Gioia, Gorin, McGrath, Peskin, Nelson, Randolph, Sears, Showalter, Vasquez, Techel, Wagenknecht, Vice Chair Halsted and Chair Wasserman voting, "YES", Commissioner Addiego voting "NO", and Commissioners Beach, Pemberton and Eckerle voting "ABSTAIN."

Chair Wasserman stated: Steve, send forth the letter; press the button. We've got six minutes to spare.

Mr. Goldbeck replied: Thank you Chair Wasserman; I just texted staff.

Chair Wasserman continued: Thank you. You may proceed with the other two matters.

Mr. Goldbeck continued: The next bill is House of Representatives Bill 1132 by Representative Jackie Speier. It has passed the U.S. House of Representatives. And the bill would provide \$25 million in federal funding annually for the restoration of the San Francisco Bay for five years resulting in a total of 125 million to revive Bay Area wetlands, improve water quality and protect coastal communities from rising sea level. Staff recommends that the Commission support HR 1132.

The last bill that we are recommending a position on is Assembly Bill 2619 by Assembly Member Mark Stone. The bill would create the Coastal Resilience Adaptation and Access Fund in the State Treasury and would authorize the California Coastal Commission, the Natural Resources Agency, the Ocean Protection Council, the Department of Parks and Recreation, the State Lands Commission and the State Coastal Conservancy to expend these funds to take actions to address and adapt to sea level rise and coastal climate change.

We believe that BCDC should be able to use these funds for adaptation planning work for the San Francisco Bay and shoreline. Therefore, staff recommends that the Commission support AB 2619 if it is amended to include BCDC.

I would be happy to answer any questions.

Chair Wasserman asked: Are there any questions for Steve?

Commissioner McGrath sought clarification: Steve, I understand the desirability of having BCDC recognized as part of their planning process particularly with ART. You are not suggesting we oppose the bill; we would be neutral. Is that correct?

Mr. Goldbeck replied: Yes, that is correct. We would have a position of support if amended to include that language. If not we would not have a position.

Commissioner McGrath reiterated: We would have no position at all.

Mr. Goldbeck answered: That is correct.

Commissioner McGrath continued: It does seem like this piece of legislation is beneficial and our sister agencies would be working on it. It would improve communication. I understand and support your position.

Commissioner Nelson asked: Mr. Chair, are you accepting motions?

Chair Wasserman replied: Well, unless there is an objection I am inclined to hear about the second bill and do them together.

Commissioner Nelson continued: My only comment about AB 2619 is Mr. Stone is a good member who happens to represent the coast in Santa Cruz not the Bay Area. So it makes complete sense that this was an oversight rather than a slight. So I would be hopeful that Mr. Stone would be open to this offer.

Mr. Goldbeck presented the Staff Recommendation: Staff recommends that the Commission support House of Representatives Bill 1132 and that the Commission support Assembly Bill 2619 if it is amended to include BCDC.

Ms. Atwell added: Chair Wasserman, we have Commissioner Pemberton with her hand up and we do have one member of the public with their hand up as well.

Commissioner Pemberton suggested the following: I wanted to request that we bifurcate these two bills and have separate votes.

Chair Wasserman replied: That's fine. We will do them separately.

Mr. Peter Romanowsky commented: Peter Romanowsky missionary to the anchor-out waterfront and homeless community at Sausalito.

I just urge that none of this money be used to help the Audubon Society which has been set against the anchor-outs accusing us of tearing up the eel grass which there never has been eel grass out here until the sewage was diverted from Mill Valley to the end of Tiburon.

And now the eel grass is actually a problem. It impedes navigation.

I would also urge that none of this money be used in any way to support RBRA in their campaign to destroy peoples' floating homes. All of us anchor-outs are officially homeless. So we are a target. We are a target for every horrible thing that a human being can imagine.

I just urge that none of this money be used to help Sausalito Waterfront in their campaign against the anchor-outs or RBRA and the Audubon Society especially.

God bless you for listening to me and have a beautiful day.

Chair Wasserman stated: The federal representatives can, if they chose to, vote on this.

MOTION: Commissioner Nelson moved approval of the staff recommendation to support AB 2619 if amended, seconded by Vice Chair Halsted.

VOTE: The motion carried with a vote of 19-0-3 with Commissioners Addiego, Ahn, Alioto-Pier, Butt, Gilmore, Scharff, Gioia, Gorin, McGrath, Peskin, Nelson, Randolph, Sears, Showalter, Vasquez, Techel, Wagenknecht, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO" votes, and Commissioners Beach, Pemberton and Eckerle voting "ABSTAIN."

Mr. Goldbeck continued: The other bill is House of Representatives Bill 1132, the San Francisco Bay Restoration Act. And the staff is recommending support of that bill.

Commissioner Nelson stated: This initiative is something that Congressman Speier has been championing for some time.

MOTION: Commissioner Nelson moved approval of the Staff Recommendation to support HR 1132, seconded by Commissioner Wagenknecht.

VOTE: The motion carried with a vote of 20-0-2 with Commissioners Addiego, Ahn, Alioto-Pier, Butt, Gilmore, Scharff, Gioia, Gorin, Pemberton, McGrath, Peskin, Nelson, Randolph, Sears, Showalter, Vasquez, Techel, Wagenknecht, Vice Chair Halsted and Chair Wasserman voting, "YES," no "NO" votes, and Commissioners Beach and Eckerle voting "ABSTAIN."

Mr. Goldbeck informed the Commission of the following: I just wanted to let the Commission know that I was informed that we were able to upload the positions in time. So thank you.

8. Briefing on Enforcement Work Plan. Chair Wasserman announced: This brings us to Item 8 which is a briefing on the Enforcement Program Work Plan. Larry will introduce this matter and then Priscilla Njuguna our Enforcement Program Manager will provide the briefing.

Commissioner McGrath interjected informing Chair Wasserman that there were some other legislative bills that he had a question on. He asked if the Commissioners would address the bills again or if he could ask the question then.

Chair Wasserman allowed him to ask his question

Commissioner McGrath asked Chief Deputy Director Goldbeck about Assembly Bill 1992 that he characterized as interesting noting that the existing highway segments and the toll plazas are currently all at great risk of flooding. He asserted that the bill would be a good step to add resiliency for climate change into the planning process for the Transportation Plan and asked why Chief Deputy Director Goldbeck did not recommend a position.

Mr. Goldbeck explained that the bill has not been set for a hearing due to the COVID pandemic, very few bills are going to be heard this year and those to be heard are being carefully selected. He said that staff would recommend a position if the bill is scheduled for hearing.

Commissioner McGrath was thankful.

Executive Director Goldzband was recognized. He stated that the State Audit on the Enforcement Program was issued almost a year prior and informed the Commission that staff were preparing BCDC's one-year response to the Audit required by the Auditor.

He informed the Commissioners that Ms. Njuguna would provide a preview of the one-year audit response. He noted that with the funds that the state government authorized for use from the Bay Fill Fund, BCDC hired and pays two people on BCDC staff: Karen Donovan, the Enforcement Attorney, who joined staff in early 2019 and has been with BCDC for less than a year and a half, and Priscilla Njuguna who joined BCDC on October 31st 2019 and has been with BCDC just a shade over six months.

He informed the Commission that Ms. Njuguna, with Ms. Donovan's help, has reinvigorated the Enforcement Program by organizing, re-organizing and stepping up processes. He also mentioned the Enforcement Committee's work because enforcement staff have worked hand-in-hand with Commissioners Gregg Scharff, Jill Techel, Marie Gilmore, John Vasquez and Sanjay Ranchod as they have moved over the past year to implement a lot of what the Audit recommended. He then introduced Ms. Njuguna.

Enforcement Program Manager, Priscilla Njuguna, presented the following: She began with programmatic changes which she characterized as the backbone structure of the enforcement program. She then provided specifics about the responses that have been made to the State Audit recommendation. Thereafter she discussed how case resolution progressed over the past year and concluded with the next steps that the enforcement program intends to take.

Ms. Njuguna reiterated the Enforcement program goals of deterrence, fairness, transparency and consistency, as the structure staff have applied in making programmatic changes—noting key aspects within the definitions of each of these terms. She highlighted the goals of ensuring that violators don't have incentives to break the law and that there are not competitive economic advantages from non-compliance, and that the public knows what standards they are going to be held to.

She also emphasized how these goals align with several of the Audit recommendations in terms of building a sound structure, documenting how things are done and making sure that there is a level of consistency in enforcement staff's approach.

For procedural improvements she emphasized written case management procedures which include milestones so that cases progress in a very systematic way. She defined the milestones as Intake—how cases come in; Assignment—who resolves cases; Investigation—how cases are resolved; Resolution—the form used to complete a case (order or an agreement, etc.); and Closure—when a case is closed.

She noted how the milestones in the case management procedures address the timelines proposed in AB 2809 that Chief Deputy Director Goldbeck discussed

She explained the need to use “milestone” terminology instead of “timelines” because enforcement staff recognize that in reviewing different types of cases that involve varying degrees of investigation and coordination between different agencies, more flexibility is built into milestones.

Timelines, on the other hand, are less malleable and would make it difficult for staff to consistently resolve different types of cases. However, with milestones being benchmarks that we could use, we can have defined outer limits of when each of these milestones have to be met, which would be the timeframes that would meet the recommendations of the Audit while still allowing the level of flexibility that we need to resolve different types of cases within the same framework.

She also noted that the case management procedures enable staff to provide real-time tracking of how cases are progressing through the case resolution process. Staff can tell case resolution is systematic and where cases are, and how close cases are to being closed.

She then described the case review procedures that go into more detail about how cases are resolved. First defining a status code that tells you a case has been newly reported, then it is assigned a case number, is actively reviewed, moved into pending information status to obtain documents from the violator, then moved to conducting an investigation using the information received, and then staff can tell how close the case is to resolution.

She explained the “initial contact” letters as staff's first written contact with violators letting them know that we have received a report, when we received it, what we received in the report, and what our initial analysis tells us about what the violation is, so that we can begin a discussion about how to resolve the case in a timely manner.

She noted that it has been staff's experience that the sooner we contact people the better for resolving a case in a timely manner. Limited staffing prevented timely case resolution historically, as staff had to prioritize some cases over others. Initial contact letters have enabled staff to gather case information from violators in a much more systematic way.

Ms. Njuguna then described case prioritization. Noting that cases that represent the most significant harm take precedence, first those that represent most harm to the Bay, then those that significantly limit public access, then unpermitted work that is permissible, while also integrating case context.

She gave an example of the context used for prioritization, noting that for a case open since 1995, but with new property owners, the approach would be different from what staff would do if the case is a new violation and we don't have to account for site condition changes related to the passage of time. She said that the context analysis helps determine what the real issues are at present, irrespective of when the case was initially reported, and determining if what was reported historically is still a concern now given the passage of time.

She then described how grouping cases is used to prioritize them. She gave the example of one respondent with 15 cases—all related to limits on public access—being resolved together, whereas, the same respondent having 15 different types of cases relating to different harms could not efficiently be resolved as a group.

Ms. Njuguna then described pairing cases to prioritize them noting that the analysis is similar to grouping cases except it relates to less than 15 cases whereas grouping relates to 15 or more cases.

Ms. Njuguna then began discussing individual audit responses. The first was when the Enforcement Committee approved the determination of what will undergo the rulemaking process to change the current regulations. BCDC wants to group proposed enforcement regulatory changes to build efficiency rather than attempt to undertake multiple individual changes separately.

She noted that an amendment to the permit fees was completed and the changes are effective July 1, 2020.

Ms. Njuguna then noted that the Commission decided in January 2019 not to reconstitute the Citizen's Advisory Committee because it determined that there are substantially more ways now that the public can participate, including various Commissioner working groups, Bay Plan amendment processes, Commission public hearings and workshops, design and engineering advisory boards, and Enforcement Committee meetings. She noted that broader public participation has been seen as Enforcement Committee meetings are held online during the COVID-19 pandemic than BCDC witnessed previously during in-person meetings. This supports the ongoing use of virtual options for public participation to enable people to have greater access to our meetings and have their voices heard.

Ms. Njuguna then discussed development of policies and guidance, beginning with a written penalty policy. She mentioned that the Enforcement Committee has discussed revising the existing regulatory penalty provision, that lists the initial amount, economic benefit, deterrence, ability to pay, voluntary resolution, and degree of culpability. She stated that the new policy would expand on these terms to limit confusion for the regulated community and build staff consistency in how the terms are applied when assessing fines. She said that the draft policy will probably be presented to the Committee and Commission for consideration by September 2020 reiterating that, for efficiency, any necessary rulemaking would be undertaken comprehensively.

She then discussed the development of a “Supplemental Environmental Projects” policy that would allow penalties to be offset up to 50% by work done to remediate the harmful impacts of violations. She reported that the Enforcement Committee received two presentations on this matter and a draft policy will probably be presented to the Committee and Commission for consideration by December 2020.

Next, Ms. Njuguna said that the Enforcement Committee has received four briefings on a guidance or policy staff is developing on “Criteria for Delineating Violations” that will likely be part of comprehensive rulemaking.

Finally, Ms. Njuguna noted that the enforcement policy changes related to the structured, documented and consistent enforcement program changes recommended in the audit, include the defined enforcement goals that are the backbone of our program: Deterrence, Fairness, Transparency and Consistency. She reported that this changed structure has included bi-monthly Enforcement Committee meetings since July of 2019, with some exceptions at the beginning of 2020. These were actually beneficial in the long run because they gave staff time to review and resolve a lot of cases before the COVID-19 pandemic and assisted staff progress in meeting audit recommendations. She also noted the Commission updates provided every two months since December 2019 that allow enforcement staff to show progress in real time in meeting our goals and in restructuring the Enforcement Program.

Ms. Njuguna then discussed the terms enforcement staff have been using when reporting statics for case resolution. They now use the term “old cases” for all cases opened in 2016 or earlier, recognizing that the previously used terminology of “backlog” was undefined and a source of confusion. She also described the “oldest cases” as a subset of the old cases being those opened in 2000 or before, and reported that seven cases fit this definition.

She then explained how the previously mentioned case management procedures with milestones also include reports used to prevent case stagnation namely the Aged Case reports.

The Aged Case Report is a monthly report that staff pull from the database to see cases that have not progressed through the process of Intake, Assignment, Investigation, Resolution, and Closure in the way that they should. These delays have the potential to result in stagnation when a case does not progress to the next milestone within a defined time limit. The Aged Case Report is a visualization process to show staff that a case has been in a particular milestone for a longer time than it should, and thus staff can prevent further delays by determining next steps to push the case to resolution.

Ms. Njuguna then described the Closed Case Report for case resolution that prevents cases that should be closed from remaining open. The Closed Case Report is used to verify that all cases with case resolution notes and dates, have closed status codes and that a resolution note appropriately documents the basis for closure. In this way reports pulled from the database will accurately reflect closed cases. She reported that staff anticipate that the case management procedures will be fully implemented by the end of this spring.

In the context of reporting on case resolution statistics Ms. Njuguna stated that the case review procedures address prioritization, the oldest cases, and case resolution related Enforcement Committee and Commission briefings. She noted that the seven oldest cases are being worked on and require additional work and effort but are nevertheless being systematically addressed. She used these cases as an example of how the staff approach to case resolution has changed from April 2019 to April 2020.

She explained that part of the big change that came with case review procedures was streamlined status codes, that were implemented in January of 2020 and are being used and refined as part of a process of small changes over time to assure long term lasting change. These systematic changes will hopefully shape and define how we resolve cases for the foreseeable future.

Ms. Njuguna then reported on some compliance improvements beginning with a holistic approach to enforcement where we coordinate BCDC responses with other BCDC departments including Permitting and with other resource agencies such as California Department of Fish and Wildlife (CDFW) and other agencies so that we can make sure that everybody's voice is heard early and make sure that when we are resolving a case it is for the benefit of all the agencies that are affected, while also making sure that BCDC's interests are met. Enforcement has been using "Notices of Completion" which have been part of the permits process for a few years, to determine if reported cases actually represent violations. Notices of Completion can potentially be used to resolve some of the concerns that are raised when enforcement cases are reported.

She reported that enforcement has also implemented "Certifications of Term and Condition Compliance Forms" through which we ask violators to certify that, for example, all the provisions of an after-the-fact permit or enforcement order have been met and to provide BCDC with documented proof that those provisions have been met.

In addition, she reported on the staff's effort to make sure that a designated representative is named for a violator/respondent and that designation is tied to a specific job title, not an individual, so that violator/respondent staff turnover does not stagnate case resolution because staff know who can be held accountable for compliance requirements irrespective of who holds the position. She drew attention to language that Commissioners will see in Cease and Desist Orders or similar agreements, in provisions relating to compliance and that the designated position will be held accountable for compliance, irrespective of individual. Ideally, there will be a primary and an alternate designated representative so that even when particular position is eliminated, given the challenging economic times, there will still be a designated representative that BCDC can get information from.

She then described how monitoring reports are tagged electronically and linked to permits so that enforcement staff can more easily find monitoring reports linked to particular permits.

Ms. Njuguna mentioned the implementation of a centralized compliance calendar as the next anticipated step in compliance improvements. She noted that there is an Excel spreadsheet in place for permits as they are issued, but the improvement would be to integrate updates to the tracker in real time as documents are received as a living document. This process would likely improve the ability of enforcement staff to rate level of compliance for our enforcement orders and other things such as after-the-fact permits and permit amendments that impact enforcement.

Ms. Njuguna then discussed technology noting the systematic improvements to the tracking database, the streamlining of case status codes, updating the database dashboard which shows in real time where cases are within the case resolution progression, and tabbing monitoring reports in a different system for ease of retrieval when investigating enforcement cases. She also reported that BCDC has evaluated an alternative fully-integrated database that all BCDC units including Planning and Permitting would be able to find information in one place instead of the multiple databases currently in use. Nevertheless, recognizing the economic challenges we face, enforcement staff are making the most use of the resources they have on hand; we recognize that an integrated database would considerably increase efficiency. She also noted that electronic signatures have been used and have been very helpful during the pandemic to enable effective remote work. She also mentioned the use of technology for the virtual Enforcement Committee meetings that we expect to maintain after the pandemic is over to enable broader public participation.

Ms. Njuguna then discussed case resolution at length. She distinguished the previous methodology of listing active cases and inactive actives from the current refined approach of case status codes representing where cases are in the case resolution process. Under the old methodology the data seemed to indicate that 11 percent of cases were being worked on and 89 percent were stagnant. Because this external perception was inaccurate, the new case review procedure case status codes show as of April 30, 2020, the cases that are newly reported were 0%, 12% were those actively being pursued, 65% were those pending information from violators to resolve, 20% had documentation under investigation, and 3% were close to resolution. This visual representation of where cases are in the progression from a new report to resolution was a better depiction of ongoing work on all cases towards case resolution.

She explained that while the “pending case” percentage seems large it is only so because we are undertaking different actions simultaneously, while also systematically reviewing cases to get them to the investigation stage so that we can resolve and close cases. She mentioned that the new policies being developed will assist in building efficiency within the case resolution process as would an integrated database and the remaining comprehensive rule making.

Ms. Njuguna concluded the presentation by noting the significant contributions to the program's evolution that Adrienne Klein, Matthew Trujillo and Schuyler Olsson have made adapting to the different changes, continuing to resolve cases in real time and meeting other obligations.

Ms. Njuguna then asked for questions.

Chair Wasserman asked Ms. Atwell if there were any public comments.

Ms. Atwell replied in the affirmative and recognized Bob Wilson.

Mr. Wilson addressed the Commission: On behalf of The Alliance he commented on the Enforcement Work Plan and especially how it related to the responses to the Auditor's Report.

He had three action items to comment on. The first one was permit fees. He stated that the comments had been submitted in writing the previous day. He said that the Auditor suggested permit fees be reviewed, public comments asked during that process if fees increased the permit process would be improved and delays reduced. The permit increases were approved last year. In their review of documents provided to then from their Public Records Act request there were statements made by executive staff that state that the permit fees were required for increased rents as a result of the building move and The Alliance opposed that – \$ 5 million wasted in their view. This use of permit fees was never made clear to the public and others when we were challenging the move and it was being discussed. Nor was it made clear when the permit fees process was ongoing.

He asserted that the increase in rent costs only were funded because permits increased to avoid a budget shortfall. They therefore called on the Commissioners to take their own independent look at all the documents related to the move and to the permit fees again. The Alliance is questioning whether it was done correctly. And they think Commissioners ought to investigate it.

Number two, Citizens' Advisory Committee which he characterized as so clear and that BCDC keeps explaining it away. He asserted that there is a clear requirement in the Act that BCDC needs a Citizens' Advisory Committee that BCDC has resisted from the beginning. He stated that BCDC can resist oversight from just about anybody and that the Auditor was clear on this point, the public has been clear on this point, and the Act is clear on this point. However, he stated that senior staff prefers to go their own way with no real, independent oversight.

He urged Commissioners to insist the law be followed and the Citizens' Advisory Committee be put in place now. He stated that this lack of action is a major issue and dereliction of duty by Commissioners that calls into question by the public whether BCDC really is accountable.

Finally, in discussing case management – he applauded the new people being brought in. He thought it was a great example with Priscilla particularly bringing a breath of fresh air, new ways of looking at how things can be done. He stated that The Alliance could do that elsewhere at BCDC. He asked for the public to have a complete listing of all open enforcement cases including how they are classified, a description of the violations and the planned dates for resolution, noting that perhaps that was underway.

Mr. Wilson stated that while some cases are slowly being reviewed after many years, The Alliance finds it interesting that many in the backlog have been resolved with no real violations and no penalties being issued.

The executive staff on the other hand, he stated, have repeatedly used this large case backlog to justify even more resources. The Alliance, he said, are not convinced by the results thus far that a huge backlog of real violations exists. He asked BCDC to convince The Alliance otherwise.

Mr. Wilson asked for a freeze, a reduction on any other spending until the so-called backlog is reviewed in detail and cases validated. Sadly, he noted that while The Alliance applauds the Auditors' work they only looked at five cases, more cases have been added this year and some have been resolved but the backlog has gone up.

Mr. Wilson asserted that the backlog needs a complete, independent, and objective overview if it is used for any other justifications.

Mr. Wilson concluded by saying that The Alliance looks forward to continuing the overhaul of the BCDC enforcement process. He stated that The Alliance applauds the work that is going on and the focus. However, he saw the need for stronger direction from the Commissioners to clean up an admittedly broken and in the past, badly run process.

Pastor Peter Romanowsky commented: He said he was representing the residents of San Francisco Bay who are completely unrepresented. He volunteered to be on the BCDC Commission Board because he is not the only one with pre-existing conditions but other residents of San Francisco Bay, the anchor-outs and mariners, are a pre-existing condition. He described them as a floating nation that he asserted are being treated like pirates. He described himself as the chaplain of the so-called pirates who do not work with violence. He asked for a moratorium on any new permits for yacht harbors and absolutely no more filling of the Bay.

He stated that the Bay used to stretch all the way to Berkenshires in Novato where Drake registered in the Library of Congress built the first fort in North America.

He also asked for no more permits for people building houses on tidelands. He stated that in Tiburon and Belvedere they have all these houses downwind from the anchorage which should have never been put there and Galilee Harbor is out of compliance with being a 24-hour, marine-service harbor. They are nothing more than a residential community and you can find them and get some income from them because that problem will never go away.

He stated that he has run for public office over 10 times but has never gotten elected because he is a Republican and he asked what Republican cannot get elected in Marin County despite the county having the largest refugee, floating community in California if not the world. He stated that even Hong Kong has accommodated their floating residents.

Pastor Romanowsky said everyone was in his prayers, asked God to bless everyone and asked everyone to do what is good. He asked the Commissioners to remember that the sin of Sodom and Gomorrah was persecuting the poor and homeless. They did not strengthen the hands of the needy.

Chair Wasserman continued: He invited Commissioner Scharff, the Chair of the Enforcement Committee, to make any comments if he chooses to do so.

Commissioner Scharff commented: First, he thanked the Enforcement staff. He stated that Ms. Njuguna and Ms. Donovan are doing a fantastic job as are the rest of the Enforcement staff. He recognized that staff have really stepped up and are working hard to make the enforcement program successful.

He also recognized the great job Schuyler Olsson has done in enforcement as he moves over to Permitting.

One of the things that he asked the Commissioners to consider with Schuyler's transition into Permitting was the insight on enforcement that Schuyler will take, which will be helpful for him and also helpful for Permitting to have that perspective of someone who has actually worked on enforcement cases.

He stated that in writing permits they should be easy to enforce. He anticipated some lessons that BCDC can learn from having some integration between permitting and enforcement while keeping the departments completely separate.

Commissioner Scharff also stated that the reinvigorated enforcement committee schedule of meeting twice a month has really worked. He noted that it has allowed the Committee to focus on program improvements while still moving cases forward and with the Committee's oversight staff is tackling the situation in Richardson's Bay which is a decades-old issue as well as several other thorny and longstanding cases. We really are making progress on some of the oldest cases.

And as Priscilla just noted staff has initiated procedures to further proactive enforcement and to ensure that cases do not linger.

He also noted that staff have been looking at how to improve BCDC's tracking systems and case management tools recognizing those as a real weakness. He expressed gratitude that that staff are making good progress on that.

Finally, Commissioner Scharff states that Committee has been working to improve BCDC's policies and ensure greater transparency in the program. This includes developing a definition of significant harm which was lacking, defining the elements of a penalty policy, and developing written guidance regarding how penalties are assessed.

He stated that these efforts are all with a recognition of the program's primary goal which was Deterrence, Fairness, Consistency, and Transparency. He noted the importance of having settled on and outlined what the enforcement program primary goals are so that everyone knows them and they are transparent.

Commissioner Scharff also noted that staff is working really hard to resolve cases. While case numbers may or may not go up over time staff are spending tremendous amounts of time reinventing the program. And that, he stated, takes away from time from resolving cases.

He informed Commissioners that if they see case numbers going up it is not because staff are not resolving cases and doing their job — it is because they are spending tremendous amounts of time in reinventing the enforcement program and making it more efficient over the long term.

He also stated that staff are looking at the oldest cases and seeking to remedy situations underlying those cases. That is while engaging in proactive measures to address the newer reports of violations that continue to come in each week. From what the Committee is hearing for some cases they are already on their way to resolution and can likely result in some instances in resolution without significant fines or penalties. That does not mean that we are not robustly enforcing the program or enforcing our rules. It just means the opposite. It means that our efforts at proactive and robust enforcement are working and furthering BCDC's primary mission, which is to protect the Bay and ensure maximum, feasible, public access.

Commissioner Scharff stated that in furtherance of this mission the Enforcement staff focuses on deterring violations and resolving them when they do occur. With the Committee's oversight staff has been working on the improvements and will enhance their ability to do this.

He stated that he felt very positive and confident that with the great progress that we are making we will continue to see further improvements in the process.

Commissioner Gioia commented: He thanked staff for the presentation and for their work with the Enforcement Committee which is working very hard to correct issues that were identified on particular enforcement cases.

He stated that his comments were to address broad statements heard from a couple of the speakers who painted the agency with a broad-brush as out of control and not meeting its goals. He reminded that speaker and the public that the agency, founded over 50 years ago, has had three main areas of work: Permitting, Enforcement, and Planning functions. He stated that the criticisms that have been levelled against the organization on the enforcement side are being addressed very aggressively. Commissioner Gioia stated that BCDC in its over 50 years under its permitting function has been responsible for creating more public access around San Francisco Bay than any other entity including in lower income communities like the community he represents in Richmond. He informed Commissioners that BCDC has been responsible for keeping the Bay from being filled and turned into a river which is what was predicted was going to happen by the strong, environmental women that helped found Save the Bay that led to the creation of BCDC.

He then stated that that in its planning function BCDC has been the lead in comprehensively working with local governments and the private sector to address sea level rise around the Bay. He noted that the enforcement issues that have come up are enforcement of conditions in permits that this agency issued throughout the 50 years. The agency has tried to do all these things with a relatively limited budget.

Commissioner Gioia mentioned that he just wanted to put in perspective what he considered to be the inaccurate accusations levelled at this agency by some speakers because he likes to think the proof of the agency meeting its goals is in the work BCDC has done and is doing.

He noted that during this pandemic hundreds of people he has encountered are walking the Bay Trail in his part of the Bay in Richmond and this is happening all over the Bay on public access that was actually created by BCDC. The public access was not created by the private sector or cities or counties. It was created under BCDC permit conditions.

Commissioner Gioia concluded his comments by stating that he just wanted to put all of the information the Commissioners heard in perspective, and he acknowledged that he knows and appreciates the hard work of the Enforcement Committee trying to correct the issues that existed in particular enforcement cases.

Commissioner McGrath commented: He stated that he rode his bicycle on the Bay Trail out into Commissioner Gioia's neighborhood that morning along a segment of the Bay Trail where a good friend of his, Roy Gorman, took a citizen's enforcement action to make sure that the public access was provided. He states that as someone who rides his bicycle and enjoys it, Commissioner Gioia was spot-on about the access that BCDC has provided.

Commissioner McGrath really appreciate the briefing and the efforts on the essence of the Audit Report which he agreed with BCDC was not doing enough and was not resolving cases fast enough.

Commissioner McGrath had one question for Ms. Njuguna that had to do with due process. He observed that one of the commenters had suggested that they should get a list of all violations. He states that while he is pretty adamant that somebody who has been found to be in violation should correct the violation and pay a significant amount to cover the staff costs for that; he was not aware that due process requirements would say — don't assume that somebody that is accused of a violation is, in fact, in violation of their permits.

He states that he thought it would be inappropriate for unsubstantiated complaints about violations to become public documents. He stated that he thought the staff has made a significant improvement and reform here in making sure that those accused of violations are fairly, quickly informed about that and brought into the process. Then, at the end of that process whatever resolution occurs, that information becomes a public document. He states that he was not sure that it is appropriate at all to have unsubstantiated accusations or accusations still under investigation in the public.

Ms. Njuguna, Enforcement Program Manager commented: She stated that BCDC's attorneys will look into what can be released because they may share due process concerns. She noted that enforcement gets reports from so many different areas and some of them cannot be substantiated. Rather than just listing people because somebody made a report, we have to have a more nuanced approach as to what can be released and what can't because we don't want to falsely accuse people based solely on reports from third parties.

Commissioner McGrath continued: He said that he thought BCDC enforcement has made a significant improvement in due process which is fairness to people accused and giving them the opportunity to respond. He did not think that disclosing violations reported should extend to the entire public until those matters are closed.

Commissioner Wagenknecht commented: He stated that he rides the ferry back and forth with one of the Enforcement Committee members and gets to hear about their actions. He stated that he appreciates that the Committee members are asking the tough questions, opening up the process, improving the timeliness of the enforcement actions and he appreciates what they are doing and that the staff is now very engaged at solving the enforcement issues that were pointed out in the Audit.

Commissioner Showalter was recognized: She echoed the comments of her colleagues who thanked the Enforcement Committee and the staff working on this.

She stated that this really represents a tremendous amount of effort. She recognized that the Enforcement Committee meeting every other week for months and months is a tremendous amount of work and sharing a summary of their work with the other Commissioners was great.

Chair Wasserman continued: He echoed the comments of several Commissioners and rebutted one point that one of the public speakers made.

He clarified that when the Commission increased permit fees after a good deal of public engagement and discussions with those affected in other forums the Commission made two things quite clear. First was that those permit fees do not come to BCDC – they go to the state of California. Second, the Department of Finance (DoF) had asked the Commission to consider increasing the fees. DoF did not tie it to anything but there certainly were comments made in public that one should recognize that the move also needed to be approved by the Department of Finance. He stated that the Commission did not hide the move. The move was not a direct quid pro quo. The move was discussed publicly.

He stated that, as was also discussed publicly, the Commission believes the move, in the long run, creates more efficiency and saves money and particularly overall saves money for the state given that the Department of Justice took BCDC's space in the State Building for significantly less than they would have had to pay on the open market.

Chair Wasserman stated that this agenda item was for information only. He informed the Commissioners that there are elements that will come back to them and they would certainly get a copy of the formal report issued to the State Auditors.

9. Public Hearing and Possible Vote on Issuing a Brief Descriptive Notice to Initiate an Amendment to the San Francisco Waterfront Special Area Plan, Bay Plan Amendment

No. 1-20. Chair Wasserman announced: We now will turn to Item 9 which is a public hearing and possible vote to initiate an amendment to the San Francisco Waterfront Special Area Plan, Bay Plan Amendment No. 1-20 regarding the docking of the Klamath. Commissioner Randolph has informed us that he is recusing himself so the host will turn off his video and microphone for the duration of this item only. Shannon Fiala will provide the Staff Recommendation. Take it away.

Planning Manager Fiala presented the following: Thank you Chair Wasserman and Commissioners. So today I will be presenting the Staff Recommendation to initiate an amendment for the San Francisco Waterfront Special Area Plan.

Bay Area Council, a local, non-profit organization focused on business and civic leadership has requested a project-related amendment to the San Francisco Waterfront Special Area Plan (SAP) in order to allow for the permanent mooring of the Klamath, a historic ferry boat, on the San Francisco Waterfront.

Bay Area Council (BAC) proposes to use the Klamath as its office space. The Klamath would be partially open to the public with additional public access improvements along the adjacent pier apron. The Klamath is proposed to be moored on the south side of Pier 9. In addition to an amendment to the SAP, BAC will also apply for a BCDC permit for the proposed project.

The McAteer-Petris Act provides for the Bay Plan to incorporate by reference the Special Area Plans. The Commission adopts Special Area Plans to apply Bay Plan policies in greater detail to specific shoreline and water areas in recognition of the unique characteristics of a given area.

The last major amendment to the SAP, adopted in 2000, was based on findings that the public benefits that the Port of San Francisco would provide would exceed what the Commission could obtain on a permit-by-permit basis. The Commission relied on its seldom used authority to protect the health, safety or welfare of the entire Bay Area to approve the amendment that was otherwise inconsistent with the McAteer-Petris Act.

One of the public benefits of the amendment was the creation of four open-water basins that would serve as focal points of public use and enjoyment along the Northeastern Waterfront.

Open-water basins are intended to provide opportunities for physical access between the Bay and piers and provide substantial Bay views from the boundary piers framing open-water basins.

Three open-water basins have been created, to date, one of which, the Broadway Open-Water Basin shown here is located between Piers 3 and 9. The other two are located near Rincon Park and Brandon Street Wharf and the fourth was proposed to be located adjacent to the Pier 27 Cruise Ship Terminal but has not yet been implemented.

I will now walk you through the current SAP policies that are relevant to the proposed amendment. SAP General Policy 10 addresses the mooring of historic ships and states that up to four new historic ships may be permitted in open-water areas, which are different from open-water basins, in addition to ships authorized as of 2000.

In addition to General Policies, the SAP includes geographic-specific policies for three areas: Fisherman's Wharf, the Northeastern Waterfront and the Southern Waterfront.

And for the Northeastern Waterfront, which includes Pier 9, Open-Water Basin Policy 3 states that in the Broadway Open-Water Basin, existing berthing facilities for the historic ferry boat, the Santa Rosa, and Bar Pilot vessels should continue to be allowed. Limited lay berthing of public transportation and excursion vessels and temporary berthing of ceremonial and visiting ships should be allowed as long as the berthing of moored vessels is balanced with the preservation of views and the need to provide pier frontage to transient berthing. SAP Open Water Basin policies also limit new fill to historic ships that were permitted as in July 20th 2000.

Finally, plan implementation requirements state that future amendments of the SAP as adopted on July 20th 2000 affecting the Northeastern Waterfront Area may only be approved if the Commission finds that the revised public benefits and the revised development entitlement would be in balance and the public benefits would be sufficient to warrant the Commission finding that the revised balance of public and private benefits would be necessary for the health, safety and welfare of the public and the entire Bay Area.

In order for Bay Area Council to permanently moor the Klamath, which was not permitted as of July 20th 2000, in the Broadway Open-Water Basin, the SAP would need to be amended. Specifically, BAC has requested that the SAP be amended to modify General Policies to allow one additional, historic ship in the Broadway Open Water Basin at Pier 9 in addition to historic ships that were permitted as of July 20th 2000.

BAC also requests modification to Open-Water Basin Policy 3 regarding berthing facilities and historic ships to allow one historic ship at Pier 9.

If the Commission initiates the amendment today staff will analyze the consistency of the requested policy changes with the McAteer-Petris Act as well as the potential for significant adverse environmental impacts that the proposed amendment may have, any public benefits of the proposed amendment, any feasible mitigation measures that would lessen any significant adverse environmental impacts and any feasible alternatives.

Circulating a descriptive notice is the first step in the process of amending the SAP. Adopting a descriptive notice does not commit the Commission to approving or denying the proposed amendment. If the Commission votes to initiate the amendment today a public hearing will be scheduled for July 16, 2020 and staff will analyze the proposal and distribute a report on the proposed amendment with staff's preliminary recommendations. Upon conclusion of the public hearing and after publishing the final recommendation the Commission can vote upon the propose SAP changes. And once it is adopted staff will submit the amendment to the State Office of Administrative Law. And once we receive notice of approval from OAL, regulatory staff will move forward with the public hearing and vote for the BCDC permit.

That concludes staff's presentation. And now I would like to introduce John Grubb, Bay Area Council's Chief Operating Officer, to give you an overview of the proposed project.

Mr. Grubb presented the following: Commissioners thank you very much for having me again. My name is John Grubb, Chief Operating Officer of the Bay Area Council.

Between 1850 and 1939 there were 120 ferry boats that operated on San Francisco Bay. They came in many shapes and sizes and carried all sorts of things including passengers and cars but also trains and horses and livestock. They really connected the Bay.

They also included human activities. They had marathon card games. There was live music and dining halls. They also had running and exercise rooms and barber shops.

The bridges that were built, the Golden Gate and the San Francisco/Oakland Bay Bridge, and later the Richmond/San Rafael Bridge, initiated the demise of the ferry boats on the Bay.

One by one these stately boats were scrapped and destroyed or otherwise lost. In 1979 only 14 of these ferry boats were still in existence. And since then until now nine more have been destroyed or lost leaving just five historic ferry boats that exist.

Three of them are in San Francisco already. One of them is the Santa Rosa and the other is the Eureka. And this one that is rather dilapidated is in Antioch and is not moving because it is stuck in the mud there. And of the other two, one is in San Diego, which is a venue and a tourist shop. The final one is the Klamath.

The Bay Area Council is proposing to save the Klamath Ferry Boat. The Klamath was built in San Francisco at the Bethlehem Steel Shipyards and opened service in 1924. It carried about 1,000 people and 78 cars. It initially ran between San Francisco and Oakland and was probably one of the last of its kind to operate on the Bay. It operated between Richmond and San Rafael for 18 years and ironically was put out of business by the Bay Area Council.

The Bay Area Council got the Richmond/San Rafael Bridge built. Perhaps there is some poetic justice here in that we are trying to bring her back.

After the Klamath stopped being a passenger ferry boat she was purchased by a gentleman named Walter Landor who had his branding firm launched and operated on the Klamath at Pier 5 in San Francisco.

The boat was also famous for hosting parties. It had Andy Warhol and Tom Wolfe and actors and actresses and it really was a cultural gathering spot. Eventually Landor sold it to Duraflame.

Duraflame is a company that makes fire logs. They actually make pencils and the sawdust from the manufacturing of those pencils is turned into the fire logs. They make almost all of the pencils that we use in the United States.

The Klamath was a cultural gathering spot in Stockton where Duraflame had a pencil manufacturing facility. But they changed their plans and are now moving to Nevada by Las Vegas and they are selling all of their assets in California including the Klamath. They have been trying to find a buyer for a long time and haven't been able to.

We are proposing to bring the Klamath to Pier 9 and use it as the Bay Area Council's headquarters. It would also have a significant conference center on it as well as a lot of public access.

There is a fair amount of public movement in the area where we are proposing to moor the Klamath. The apron of Pier 9 is not open. We would propose to open that and welcome people onto the Klamath.

We are not giving short shrift to public access. The Bay Area Council has a lot of public access in our daily operations. Here you see some views of proposed lay-outs for the interior of the Klamath.

We also would have a museum on the Klamath. We would have interactive displays that we would change from time to time. We would include history of the Klamath. We would add a roof deck to the Klamath with public access with opportunities for the public to experience the Bay with some fantastic views.

We also would have a conference center down below and it would be accessible to anyone. This would also bring the public to the boat and the Bay.

We would improve some of the physical features of Pier 9 including the current gate as well as adding railing along the apron of the Pier for aesthetic and safety reasons.

We are prepared for sea level rise because we are on a floating boat.

We've already done a fair amount of outreach and stakeholder engagement with the neighbors as well as some groups and what would make it great for them to be able to use the Klamath.

With the Port of San Francisco we are in negotiations with the final stages for a lease. We have basically agreed on everything except for a number of years and we will get there on that one very shortly. We are working with the San Francisco Planning Department on CEQA. We also are working with the DMMO for dredging, which is very minor, about 5,000 cubic yards of dredging that we would require. And we have also been working with BCDC permitting staff.

And that wraps my presentation and I'm available for questions.

Chair Wasserman announced: We will now open the public hearing.

Pastor Peter Romanowsky commented: This is Pastor Peter Romanowsky speaking. I am the only representative of the anchor-out nation. I want to take this opportunity to remind you that even the writer of the McAteer-Petris Act said it did not include boats.

We in the anchor-out nation here are saying that we are not boat fill. The McAteer-Petris Act never meant to call boats with human beings living on them fill. And now we are called boat debris.

As far as this boat – I'm for it. Anything that will enhance the maritime thing. I want to quote Alexander the Great who said, don't fear a great army led by sheep, fear a small army led by wolves.

And we are a small army here. And we are protecting our Bay from development. You may be talking about conservation but you are also developers.

The way that we are going to deal with it because we have no political power except one thing; we have political snipers. And politically speaking one-by-one your leaders can be taken out like I took out the District Attorney of Marin County because she violated a friend of mine's civil rights and she is gone. Now if I can take out a DA I can take out any of you leaders in Jesus' name non-violently if I want to. But I don't want to have to. I just want to warn you that we are a small army led by wolves and we are going to protect our Bay.

And don't fill it in. And if you want to get rid of us tell the marinas that they can take 30 percent of their boats live-aboards and you won't have an anchor-out problem. All you will have is fishermen and salvagers out there.

And I'm not threatening. I'm not violent. I have a long history in Marin County. God bless you all and thank you for listening in Jesus' Amen.

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

MOTION: Commissioner Alioto-Pier moved to close the public hearing, seconded by Vice Chair Halsted. The motion carried by a voice vote with no abstentions or objections.

Commissioner Alioto-Pier was recognized: I was curious about two things. The first, obviously this is great and it would be nice to see the Klamath opened up to people in this fashion. I'm curious about access particularly to the disabled population. Is there going to be an elevator onboard? How are you planning on going about making it accessible to everyone?

Mr. Grubb replied: Yes it will be accessible to the disabled community. The ramps will be accessible to get onto the boat and there is an elevator on the Klamath today. And we are actually going to push the elevator through the roof up onto the roof deck.

Commissioner Alioto-Pier continued: And then my second question was that at the very beginning of your presentation you talked about where the different boats were in California. There are five of them that are still around? And one of them is in San Diego right now and it is being used as a gift shop. Is that correct?

Mr. Grubb explained: Yes that is right. From what I have seen on the Internet people use it as a venue for events and then I think they have a tourism shop on it.

Commissioner Alioto-Pier asked: So my question is – where are the other ones?

Mr. Grubb answered: One of them is the Eureka which is in the Maritime National Park. And then the other one in San Francisco is the Santa Rosa which is used by Hornblower which is tied up at Pier 3. And then the third is in Antioch and it is actually sitting in the mud and not doing so great. I think it is like a Rotary Club or some kind of club like that.

Commissioner Pemberton was recognized: I think it is wonderful to restore the Klamath and this sounds incredible. I have a couple of questions because of the private office space that is proposed. And thank you for the slides depicting the contrast between the public area and the private space. Typically, private office space isn't something that the State Lands Commission usually supports on public trust lands over the water.

I was just curious in terms of the square footage about what percent of that overall would be for the private office space and is it purely private or can you kind of also elaborate on what amount of office space for the Bay Area Council it will be?

Mr. Grubb explained: Some of these numbers are a little bit rough. My understanding is that for us to be able to pay to restore this and operate it we need to be able to not spend the money on other office space which would be for us or otherwise generate income. That is the legal principle of it or policy principle of it.

In terms of the amount of space; it is about a third maybe a little bit more that is for public access. I would add a caveat that the Bay Area Council is a public entity in a way in that we have senators and supervisors and all sorts of folks all the time in different meetings as sort of a public engagement process that we do.

Commissioner Pemberton ascertained information: You said about a third of the area would be for public access and you also mentioned that to fund the restoration that it was necessary to occupy the office space.

Mr. Grubb agreed: Right. The Bay Area Council does not have independent funds to be able to do this. So, the way we are able to finance this is that is a savings for us not renting somewhere else.

Commissioner Nelson was recognized: I have three quick comments. The first one is a general note that it would be terrific to have the Klamath back in the Bay Area and prominently displayed in a prominent spot. My family used ferries on the Bay for probably over a century and they are such a part of family lore that I have memories of riding the Richmond Ferry which may well have been the Klamath Ferry as a child which is curious because one of the slides said that the Klamath at the Richmond Ferry stopped operating three years before I was born. So, I think that is more family lore than a memory but it is an indication of the prominent role those ferries played in Bay Area life for a century.

Two subsequent comments: one is with regard to following up on Commissioner Pemberton's comments. She is certainly right and I certainly agree that the State Lands Commission and BCDC have been hesitant to allow office space. We don't need to have a discussion about that now I just wanted to make sure that as we go through this process the staff and the applicant take care to analyze all the different uses in this proposed project both private office space, public space and the event space. Different rules may apply to those three uses and balancing those uses as the applicant suggests is something we need to look at.

So, I just wanted to make sure I flagged that for the staff and the applicant to make sure that we are tracking all of these uses carefully because some of them may be trickier than others.

The second comment is more for the staff and the Port than for the applicant. My memory suggests that we have accepted many amendments to the San Francisco Waterfront Special Area Plan over the years to the point that it has at times caused me to question why we have a plan if we just keep offering amendments. I'm not suggesting anything with regard to this proposed application other than a note to the Port and to the staff that special area plans have value because they really do represent integrative plans for a uniquely important and a uniquely challenging piece of waterfront. I just wanted to offer that as a note for the City and the Port and the staff to make sure that we pursue these amendments in a way to preserve the integrity of this special area plan and the special area planning process.

Commissioner McGrath commented: I am certainly going to support opening up the public hearing on this. And I am certainly intrigued about the aspects of this that involve historic preservation. I think it is legitimate. And I think it allows us to distinguish between the preservation of historic structures that actually have a function on the San Francisco Waterfront. It is important to caution that this is not automatic. There has to be a clear understanding of benefits.

One of the things that I found missing in the staff presentation was a clear articulation of the Commission's reasoning when it adopted language that allowed for historic ships and how that works with the concept of public trust and how that works with the other uses on the waterfront.

This is in an area where at least arguably it could open up a wharf that is not now open. So, there are some benefits. But it is also something where eventually I am going to want to have a fairly deep look at what the precedents are in terms of the Plan as Commissioner Nelson has indicated and in terms of public trust. There are a lot of people who try to shoehorn different things, such as for cooling computers, on the Bay into the public trust. So, I think this is going to be an interesting public hearing process.

Commissioner Scharff commented: The office space component jumped out at me as well. I am definitely going to support opening this up to a public hearing. I think bringing the Klamath in is great. I think the concept behind it is fantastic.

I just think that we really need to be shown that the public really will benefit and it's not really just a place to put the Bay Area Council Headquarters.

I think it has to pass that smell test in a way that is clear that the public will get lots of access, that this will be a great positive for the Bay Area. Without seeing the details it is really hard at this point and that is why I will support opening it up for the public hearing.

I did want to encourage you as much as possible to show us how the public will benefit and how the public will have maximum feasible access to the Bay.

Chair Wasserman chimed in: Thank you all. I too look forward to the discussions that will ensue before us and other agencies over the complicated balance of these uses and ways to fund expansion of public access, restoration of historic features and I think that is a precedent for starting to think about one of the ways that we are going to fund adapting to rising sea level.

I think it is going to be a very interesting and vigorous discussion.

If there are no more comments I would entertain a motion to support the commencement of the process and the issuance of the notice.

Ms. Fiala presented the Staff Recommendation: Staff recommends that the Commission adopt the attached descriptive notice to initiate the process of considering a possible amendment to the San Francisco Waterfront Special Area Plan; that the Commission schedule a public hearing for July 16, 2020 to consider the proposed amendment; and that the Commission authorize the Executive Director to enter into a contract not to exceed \$30,000 to recover the Commission's costs for reviewing and acting on the proposed amendment application.

MOTION: Commissioner Scharff moved approval of the Staff Recommendation, seconded by Commissioner Showalter.

VOTE: The motion carried with a vote of 19-0-1 with Commissioners Addiego, Ahn, Alioto-Pier, Butt, Gilmore, Scharff, Gioia, Gorin, Eckerle, McGrath, Peskin, Nelson, Sears, Showalter, Vasquez, Techel, Wagenknecht, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO" votes, and Commissioner Pemberton voting "ABSTAIN."

10. Briefing on Suisun Marsh Protection Plan and Local Protection Program Review. Chair Wasserman announced: That brings us to Item 10 which is a briefing on the Suisun Marsh Protection Plan and Local Protection Program. The presentation will be made by Rachel Wigginton.

Planner Wigginton presented the following: Good afternoon Chair Wasserman and Commissioners. I'm excited to update you about the work staff has been doing to review the Commission's Suisun Marsh Protection Plan and Local Protection Program. Last March the Commission instructed staff to begin a review of the Suisun Marsh Protection Plan and asked that this review be done in collaboration with stakeholders in the Marsh. I was hired in August of 2019 to team up with Planning Manager, Shannon Fiala, on this review.

We have been busy over the past eight months and I'm going to do my best to summarize our efforts to you. I want to start by bringing us all onto the same page about the way in which the Suisun Marsh is a unique part of the Commission's jurisdiction in its ecology and in how the Commission's authority is structured there.

Next I will update you on the results of staff's review of the Suisun Marsh Local Protection Program and the outcomes from our kick-off meeting for the review of the Suisun Marsh Protection Plan.

Let's start by discussing the unique value of Suisun Marsh and the Commission's authority there.

In this map you can see the San Francisco/San Joaquin Delta Estuary with the San Francisco Bay on the west and the Sacramento/San Joaquin Delta on the right.

The extent of BCDC's jurisdiction is indicated by the yellow markers and this red circle indicates the Suisun Marsh right in between the Bay and the Delta.

For BCDC the McAteer-Petris Act gave the Commission jurisdiction over the Bay and a 100-foot, shoreline band. This jurisdiction did and does apply in the Suisun Marsh. But in the early 1970s there was concern about the potential detrimental impacts of development around the Marsh and folks began to wonder if the McAteer-Petris Act was sufficient to protect this valuable natural resource.

In response to this concern, the Suisun Marsh Preservation Act was passed.

The Marsh Act lays out definitions of key terms as well as the role and responsibilities of BCDC in Suisun Marsh.

The Marsh Act also lays out several general provisions which provide an excellent overview of why Suisun Marsh is an asset that is really worthy of our preservation.

The Marsh Act states the Suisun Marsh is critical habitat for birds travelling the Pacific Flyway and that the Suisun Marsh provisions habitat for many other resident species some of which are endangered, scarce or endemic.

In fact, Suisun Marsh provides habitat for over 20 species of plants, over 180 species of birds, more than 50 species of fish and many other organisms.

Several of these species were already listed as endangered when our current policies were written like the Salt Marsh Harvest Mouse in the top left. But many others have been listed more recently like the Delta Smelt shown in the top right.

Suisun is also a highly invaded habitat and these invasive species come with their own unique management concerns and challenges. And finally the Marsh is also home to endemic species, species of special concern and species that have recovered from the brink of extinction.

The Marsh Act further states that this diversity of organisms is the result of the large, unbroken areas of habitat in Suisun Marsh and the variable ecological conditions found across the landscape.

Much of this ecological variability is driven by Suisun Marsh's location in the San Francisco/San Joaquin Delta Estuary.

In this map you see San Pablo Bay on the left and the Delta on the right with Suisun in the middle. The reds and oranges over the Bay represent areas of higher salinity while the greens and blues over the Delta and Suisun Marsh show areas with decreasing salinity.

Suisun Marsh receives riverine inputs from the Delta and oceanic influences from the Bay creating brackish, salinity conditions. In fact, this is the largest brackish marsh on the West Coast of the United States.

This salinity gradient, both north to south and east to west in the Marsh, is the result of Suisun's unique, ecological characteristics.

The Marsh Act continues that humans are a key part of the Marsh ecosystem. An important feature of human influence in Suisun Marsh is the large number of managed wetlands spread across the landscape.

This map was jointly developed by BCDC staff and the Suisun Resource Conservation District and shows the boundaries of the various privately-owned, managed wetlands in Suisun Marsh.

These marshes are managed for wildlife habitat, mostly waterfowl, and that management is supported by infrastructure such as levees and water-control structures.

Here you see such a water-control structure being used to flood a managed wetland.

It is important to recognize that the hunting heritage of Suisun Marsh has directly contributed to its preservation and will certainly play a key role in its continued protection.

The Marsh Act concludes that Suisun Marsh is an irreplaceable resource which can be threatened by future development and it is the policy of the state of California to preserve and protect such resources for current and future generations.

In order to meet the goal of preserving the Suisun Marsh the Suisun Marsh Protection Plan was finished in 1976 and brought into force by the Marsh Act. We call this the Protection Plan.

The stated goal of the Protection Plan is to preserve and enhance the quality and diversity of the Suisun Marsh aquatic and wildlife habitats and to assure retention of upland areas adjacent to the Marsh in uses compatible with its protection.

Protecting Suisun Marsh is critical because it represents a rare habitat type. California has lost almost 90 percent of its wetland habitat and of the remaining wetlands almost 10 percent exist within Suisun Marsh.

However, the protection of this area is no simple task, due in part, to the complex landscape within and surrounding Suisun Marsh.

This is a drone view of the west end of Rush Ranch Reserve. The buildings in the lower right are the Rush Ranch facilities and Suisun City is in the background.

Within Suisun Marsh tidal sloughs and tidal marshes exist adjacent to the managed wetlands.

Additionally, some of the most well-preserved, upland transition, zones in the entire Estuary occur in Suisun Marsh allowing a shift from aquatic to terrestrial habitat types.

The Local Protection Program is a response to some of this complexity. When the Marsh Act was written it was recognized that the local agencies and governments were already doing an excellent job of protecting the Marsh and we wanted to maintain that land-stewardship structure.

The Local Protection Program, or the LPP, is divided into seven components. These were prepared by the cities of Fairfield, Suisun City, Benicia, Solano County, the Solano County Local Agency Formation Commission, the Suisun Resource Conservation District and the Solano County Mosquito Abatement District.

We refer to these as the LPP components. The LPP components describe the relevant policies of the preparing entity and were found consistent with the Protection Plan and Marsh Act when the LPP components were certified in the 1980s.

Unlike the Bay Plan the findings and policies of the Protection Plan and the content of the Local Protection Program have never been comprehensively reviewed.

It is important to note that just because something was written more than 40 years ago does not mean that by default it needs to be updated. However, in the face of climate change, rising sea level and the rapid advances in best available science for wetland management the time is ripe to take a careful look and make sure our plan is serving its intended purpose which is to protect the Suisun Marsh.

We will start by discussing staff's review of the Suisun Marsh Local Protection Program.

The Marsh Act in Section 29422 (a) states that the Commission should review the Local Protection Program at least every five years. Unfortunately, such a review had never been completed in the over 40 years since the program was certified by the Commission. Between October and December of 2019 Shannon Fiala, Commissioner Vasquez and I met with all seven entities that are a part of the Local Protection Program. And we want to thank Commissioner Vasquez for lending his insight and his support for this work. During these meetings we

discussed how these entities were issuing Marsh, development permits, their various abilities to enforce permit conditions and if they felt their LPP components could be strengthened in any particular ways. It was extremely useful to hear about how the program was currently working for those entities as we began to prepare for our review of the Protection Plan.

The LPP review which was completed at the end of January 2020 was composed of a cover letter and seven individual letters to the agencies with LPP components summarizing our review findings and making suggestions for improvement. Looking across the entire LPP we identified five key findings.

First, we found the LPP components for Solano County, the Suisun Resource Conservation District, the Solano County Local Agency Formation Commission and the Solano County Mosquito Abatement District were all in conformity with the Marsh Act and the Protection Plan.

The city of Benicia's LPP component was never completed and certified by the Commission. I, Shannon and Chief Deputy Director Steve Goldbeck met with staff from the city of Benicia and we have developed options to move forward and address this issue.

Additionally, the cities of Fairfield and Suisun City have updated their general plans and city ordinances but not their LPP components. We have been in communication with staff from the cities about the need to update their LPP components to reflect the most current policy language.

All the LPP components contain dated or obsolete references that need to be updated or deleted.

Finally, the Protection Plan, and thus the Local Protection Program, lacks references to best available science on climate change, rising sea level and several other important issues.

This last finding was an excellent springboard into our review of the Suisun Marsh Protection Plan.

The Commission instructed staff in March 2019 to begin a review of the Protection Plan and we kicked off that effort in February with a workshop in Fairfield generously hosted by Solano County via Commissioner Vasquez.

It's important to note that we are reviewing the Protection Plan and that the LPP and all its components must be consistent with the Protection Plan; meaning if we did amend the Protection Plan, the LPP would likely require amendments. Staff has been proactively communicating with all the entities involved in the LPP about how we can address the findings of the LPP review and the Protection Plan review in the most efficient manner possible.

Suisun Marsh has always had a complicated regulatory landscape and at our kick-off workshop for the Protection Plan review we attempted to engage as many of the relevant stakeholders as possible.

We started by bringing the local agencies involved in the LPP to the table. We also contacted our sister, state agencies, several federal agencies with interests in the Suisun Marsh as well as scientific experts and our non-regulatory partners.

Finally, several key players were unable to attend the workshop but we have been in contact with these groups and will continue to engage them in the process.

In the end the kick-off workshop was attended by 35 stakeholders from 17 different groups.

We spent the first part of our meeting with presentations from Steve Chappell, the Executive Director of the Suisun Resource Conservation District, about Suisun Marsh history and I presented about BCDC's law and policies as well as the many changes that have taken place in and around the Marsh over the past 40 years.

The latter half of the workshop was spent in a series of small group conversations facilitated by BCDC staff structured around a central, strategic question.

How do we continue to preserve and protect a functional Marsh?

We came to this question because of the many different functions the Marsh provides. Ecological functions, cultural, economic and recreational functions. All these things are valuable and we want to try and consider the most important topics that pertain to these questions as we possibly could.

More specifically, we asked the stakeholders to consider this question as it applies to ecology, public access and the built environment.

I am pleased that we received such consistent feedback from stakeholders. While I will not be able to cover every important nuance, I'll spend the next few minutes covering the summary of our most important conversations and findings from this discussion.

When considering how to preserve and protect an ecologically-functional Marsh four main themes were expressed.

Stakeholders were concerned about conflicts between wildlife management and public access within the Marsh.

Concerns about rising sea levels and climate change also came up. As you can see in the map to the right from the Bay Shoreline Flood Explorer even 12 inches of flooding greatly impact the area.

Stakeholders felt understanding the unique values of tidal marshes, managed wetlands and restored wetlands respectively were of key importance.

And finally, there was concern that permitting and conflicting, policy interpretations could result in ecological harm to the Suisun Marsh.

When considering how to maintain a functional, built environment in and around the Marsh a few key themes emerged.

Levee maintenance was a key concern for stakeholders.

The salinity gates, pictured to the right, were also discussed. These salinity gates are major features of the built environment that were constructed after the Protection Plan was written.

General maintenance of the built environment within the Marsh was another concern.

And finally, addressing the impacts of new technologies such as the wind turbines seen in the background of this image was a key topic of conversation for stakeholders.

Finally, when considering how public access fits into the picture of a functional Marsh there was clear consensus among the stakeholders.

Again, concern was expressed about conflicts between public access and wildlife though wildlife-oriented, public access was generally viewed favorably by the stakeholders.

There was discussion of how existing public access within the Marsh was not well advertised.

Last, stakeholders were worried about funding the long-term maintenance of public-access facilities.

A final thread running through all these conversations at the kick-off workshop was the concern that a misalignment among the missions of the various entities making decisions in Suisun Marsh was making it more difficult to preserve and protect the Suisun Marsh.

Stakeholders called for BCDC to clarify the interactions between the Bay Plan and the Marsh Plan.

Additionally, stakeholders encouraged staff to explore how the Protection Plan interfaces with various other policies, plans and agreements across the Suisun Marsh.

Where does all of this leave us?

Here I present a very general, work plan.

The initial review and scoping phase which was informed by the kickoff meeting we held in February has been completed.

We are continuing to use the information gathered at the kickoff workshop, our own research and follow-up meetings with stakeholders to identify the key problems facing the Suisun Marsh and outline how they relate to the Protection Plan. In our second, stakeholder workshop we will gather feedback on the problems we have identified and ask for help prioritizing the problems that need to be addressed first.

Based on this prioritization of issues we will begin targeted-policy analysis to understand what amendments to the Protection Plan could help us address these key problems. This will be done in collaboration with a topic-specific, working group composed of stakeholders, experts and potential permit applicants. We will present the results of this targeted-policy analysis in Stakeholder Workshop #3.

With consensus on the path forward we can initiate the process for any needed amendments and continue to work with the working group, the stakeholders and other interested parties to develop policy, amendment language.

Once that amendment is passed we can return to our list of prioritized problems and begin to address the next one.

We held Stakeholder Workshop #1 three months ago today and in spite of all the recent changes in our working environment we are making good progress in our research. Over the past few weeks we have focused on a review of the other policies and management documents that I mentioned before and have been in follow-up discussions with our sister agencies to deepen our understanding of how our policies work together to protect the Suisun Marsh.

Thank you so much for your attention. I will now take any questions that you might have.

Chair Wasserman asked: Peggy, do we have any questions from the public?

Ms. Atwell answered: Pastor Peter would like to talk.

Chair Wasserman stated: Welcome back Pastor Peter.

Pastor Peter Romanowsky commented: Thank you so much. You know I've been on my boat out here for like 30 years. I enjoy this online stuff. I'm sorry that most of the 80 to 100 residents of San Francisco Bay, if not more, can't get through because they are so poor and their cell phones die and they don't all have smart phones. I have to speak on behalf of them.

I got here in 1964 and I remember when we had marshes here. I remember the marsh in San Rafael. I remember the Corte Madera Marsh and they are gone.

In Sausalito we have one tiny, little marsh next to Galilee Harbor. It is the only marsh left in Sausalito and marshes are the lungs of the Bay. I miss the marshes.

William Bagley and my father-in-law bought up all the marshes behind the Rod and Gun Club and they sold it out to private enterprise and all you got out there now is it became a city dump and then it became a target and there ain't no marsh left.

Of course, my father-in-law bought a nice, beautiful ranch which is now a bat house, a bat sanctuary. I know I sound a little crazy you know.

I've been around a long time. I could have been the richest son-in-law in the world from the richest county in the world here, Marin County. I was born-again and I became a Christian and I lost all my ambition to rule the world. (Laughter) But I just thank you for the privilege of listening to me and the Bible says, respect people in government and respectfully I just support saving all marsh lands and no marsh land should ever be developed on San Francisco Bay. God bless you all and have a good night and I hope you don't get the Corona Virus. God bless you.

Chair Wasserman continued: I want to start off by thanking Rachel for an excellent presentation. I know you've been very patient because we have had to postpone this several times. I'm glad you finally got to make it and it was very well done.

I'd like to start off by recognizing Commissioner Vasquez for any comments he would like to make.

Commissioner Vasquez commented: Thank you Zack. I too want to thank Rachel and Shannon. As you can tell from her personality she is an easy person to work with. Given the diversity of the group of people who have an interest in the Marsh, 17 different groups – 35 people, I have yet to hear one negative comment back from any of them.

So I think the process is moving forward with a great deal of interest. And if we can all come in, all those entities that have responsibility in the Marsh, can come up with one, single language that says – here is how we are going to do it; I think it is an important thing at the end of the day. Thanks to BCDC for taking the time.

Commissioner Nelson commented: I have a question for Rachel. The landscape regarding the Marsh has changed a bit in the last decade. You mentioned in your comments your work with sister agencies. I wanted to dive into that a little bit.

As you mentioned, the management of the Marsh has traditionally been focused on waterfowl but our sister agency, our parent agency at Resources is running the Eco-Restore Program which is looking at the Delta but also the Suisun Marsh for opportunities to integrate those areas back into contributing to the health of ecosystem habitats especially for endangered fish. And that is a different focus than we have traditionally had.

So can you talk about, as we go through this process, what you are doing to integrate resources work and how you are working to make sure that we are aligning the waterfowl interests we traditionally focused on and this new focus on restoration of terrestrial habitats?

Ms. Wigginton replied: Thank you Commissioner Nelson. I think this is an insightful question because there has been a lot of historic waterfowl hunting in Suisun Marsh and those managed wetlands that still exist on the landscape are where that waterfowl hunting is occurring for the most part. And those managed wetlands are specifically managed for waterfowl.

So bringing the flooding up and down and actually managing for food that waterfowl like to eat is also taking place. What you are talking about is increased interest in and efforts to restore tidal wetlands within the Suisun Marsh. That is something that we have been talking about with our sister agencies.

We have had a lot of conversation with the Delta Stewardship Council. The biggest landowner out in the Marsh is the California Department of Fish and Wildlife. They manage a really big managed-wetland complex out there that is also used for waterfowl hunting for the public.

So there has been a lot of coordination amongst a lot of the different groups to balance this idea of the type of wetland restoration with the inherent, habitat value that already exists in these managed wetlands.

So there is a management document out in the Suisun Marsh called, the Suisun Marsh Habitat Management Plan that is one of several different documents that has tidal, wetland, restoration goals for large areas that occur within the Suisun Marsh.

And so the Suisun Resource Conservation District has really taken the lead on coordinating with the private landowners in thinking about how we can work with willing sellers that might be interested in restoring their areas to tidal wetlands.

So I think we are moving forward with a whole lot of coordination with these private landowners to make sure they understand the value of the tidal, wetland restoration that could occur but then also understanding that those managed wetlands actually do provide a lot ecosystem value already.

So just really trying to incorporate those two ideas into our long-term, management plans I feel like is a really big effort that has been going on with the Delta Stewardship Council and others for a long time. We are trying to integrate ourselves into that and make sure that we are thinking in the same way about these long-term, restoration management and goals.

Commissioner Pemberton was recognized: I wanted to thank Rachel for a really informative, energetic and comprehensive presentation. And it was really informative and fascinating. State Lands staff participated in the first, kick-off meeting and we are really looking forward to our continued involvement so thank you.

Executive Director Goldzband chimed in: When I first joined the Commission back in October of 1995 and first heard about the Suisun Marsh I had no clue where it was. I am going to say that for most people in the Bay Area who don't live in Solano County or who don't travel up Highway 680 it seems like it is a way far-away place but there is reason why BCDC has jurisdiction and authority over the Suisun Marsh and Rachel went over that right at the beginning.

Whether you are talking about the Central Valley, the Delta, the Suisun Marsh and the Bay it is all one system. And it is incredibly important that BCDC do a full-scale review of how we view the Suisun Marsh and how the stakeholders view the Suisun Marsh because we haven't done it in such a long time – things have changed dramatically over the past 40 years much less the last five.

And Rachel and Shannon with the help of Commissioner Vasquez are really on top of this. The next steps are really going to be hard because you have an awful lot of competing interests or at least people and organizations who think they have competing interests. And it's going to be Rachel's job to try to convince them that it's not really competition as much as it is coordination and as much as it is maybe giving up a little to get a whole lot.

And it is not going to be easy but we are going count on Commissioner Vasquez to help us and you will see Rachel again with another update. We have moved successfully from looking at the Suisun Marsh as sort of this adjunct thing at BCDC to really being part of the fabric.

And I want to thank Rachel and the gang for that.

12. Adjournment. Upon motion by Commissioner Vasquez, seconded by Commissioner Nelson, the Commission meeting was adjourned at 4:09 p.m.