

# San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600  
State of California | Gavin Newsom – Governor | [info@bcdc.ca.gov](mailto:info@bcdc.ca.gov) | [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

## MINUTES

**TO:** All Commissioners and Alternates

**FROM:** Lawrence J. Goldzband, Executive Director (415/352-3653; [larry.goldzband@bcdc.ca.gov](mailto:larry.goldzband@bcdc.ca.gov))  
Sierra Peterson, Executive & Commissioner Liaison (415/352-3608;  
[sierra.peterson@bcdc.ca.gov](mailto:sierra.peterson@bcdc.ca.gov))

**SUBJECT: Approved Minutes of September 5, 2024 hybrid Commission Meeting**

**1. Call to Order.** The hybrid meeting was called to order by Chair Wasserman at 1:05 p.m. The meeting was held with a principal physical location of 375 Beale Street, San Francisco, California, and online via Zoom and teleconference.

Chair Wasserman stated: Good afternoon, all, and welcome to our hybrid BCDC meeting. My name is Zack Wasserman and I am the Chair of BCDC. I want to thank the Commissioners who are here at Metro Center for attending in person and acknowledge those who are participating virtually.

Chair Wasserman asked Ms. Peterson to proceed with Agenda Item 2, Roll Call.

**2. Roll Call.** Present were: Chair Wasserman, Vice Chair Eisen, Commissioners Addiego, Ahn, Burt (joined after Roll Call), Eklund, El-Tawansy (represented by Alternate Ambuehl), Gioia, Gunther, Hasz, Lee (represented by Alternate Kishimoto), Lucchesi (represented by Alternate Pemberton), Mashburn (represented by Alternate Vasquez), Moulton-Peters (joined after Roll Call), Pine, Ramos, Ranchod (represented by Alternate Nelson), Randolph, Showalter (joined after Roll Call), Tam (represented by Alternate Gilmore) and Zepeda (joined after Roll Call). Assembly Representative Ting (represented by Alternate John-Baptiste) was also present.

Chair Wasserman announced that a quorum was present.

Not present were Commissioners: USACE (Beach), Department of Finance (Benson), U.S. Environmental Protection Agency (Blake), Department of Natural Resources (Eckerle), Sonoma County (Gorin), City and County of San Francisco (Peskin)

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

Lauren Goode commented: Hello, my name is Lauren Goode. My name is Lauren Goode and I am speaking today here personally as a lifelong Richmond resident. I have witnessed firsthand the negative effects of closing the third lane on the Richmond-San Rafael Bridge, impacting over 80,000 daily users in terms of commute times and safety.

It is disheartening to see yet another delay in addressing this critical issue. The ongoing inaction is not only frustrating, it exacerbates the daily struggles we face during our commute times to jobs across the Bridge and bridge traffic that permeates into our local communities, affecting those not even utilizing the Bridge. Each delay in decision-making translates to lost time and an increased burden on our community.

I appreciate your attention to this critical issue and your commitment to centering equity considerations and environmental justice in your decision-making. Thank you for your time.

Chair Wasserman continued to the Report of the Chair.

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

**A. Commission Schedule.** We are going to have a busy Commission calendar during this fall. While we will not hold our next meeting until mid-October, October 3 being Rosh Hashanah, we will have meetings from then through the end of the year.

We expect to have discussions and votes on both permits and the beginning of our Regional Shoreline Adaptation Plan, commonly known as the RSAP. On October 17 we expect to hold a public hearing on the draft RSAP guidance. At the first Commission meeting in December, on the 5th of December, the Commission will vote on those guidelines. I also want to remind the Commission that because the draft guidance is in the form of a Bay Plan Amendment, approval of that guidance will require 18 affirmative votes. So, I urge everybody to be here on the 5th.

At the meeting on December 19, we plan to schedule consideration of the Cargill Operations and Maintenance Permit, which we will talk about later today and have a public hearing on the Environmental Assessment concerning the operation and maintenance proposal.

To give you all a slight break, we do not plan to hold a meeting on Thursday, January 2, in 2025.

**B. Temporary Commissioner Working Group on the Sand Mining Issue.** I want to take a couple of minutes to give thanks to Commissioners Showalter, Gunther and Nelson. They have held three meetings of the Temporary Commissioner Working Group on the sand mining issue. I understand from staff that this method of discovery, as General Counsel Greg sharp describes

it, has been very helpful. We expect there will be at least one more meeting of that group, and of course, all Commissioners are invited to participate virtually.

Greg and Brenda Goeden of our staff have been working diligently behind the scenes to put together these discussions and I am very grateful for their work; and I am sure the Commission will be when we take up the issue next year.

**C. Commission Calendar on Website.** I want to remind all Commissioners and the public that our calendar of meetings is readily available and better accessible on our new BCDC website, so, you may want to bookmark that page on your electronic devices.

**D. Next Meeting.** As noted, Rosh Hashanah will preempt our October 3 meeting. However, in two weeks in place of our regularly scheduled meeting, staff will hold a webinar to describe the contents of the draft RSAP guidelines that will be published on Friday, September 13. Staff has assured me that they do not believe in superstition. The webinar will be recorded and made available to the public. Then on October 17, as I have noted, we shall hold a public hearing on those draft guidelines.

**E. Ex Parte Disclosures.** That brings me to ex parte disclosures. As we always discuss, this is a time to verbally report any communications you have had regarding adjudicatory matters that the Commission may consider. You need to file a written report in any regard, even making an oral one. And I would note, having just filed an ex parte written one, it is a little bit of a pain, we will improve it. You cannot do it simply on the computer. You need to fill out the form, copy it and scan it and send it in. Or I suppose you could fax it in, I think people still do that on occasion.

My disclosure was a conversation I had with Jim Wunderman, the Chair of the Bay Area Council, regarding the Richmond-San Rafael Bridge, urging that the Commission take action to approve the MTC and Caltrans request to change the hours of operation. This will be heard by us. Do we know a date? Anybody have a guess?

Executive Director Goldzband stated: Chair Wasserman, we know it will be this fall; I am working on the assumption it will be in November.

Chair Wasserman acknowledged: Thank you.

Commissioner Kishimoto stated: I would like to report that I participated in a Zoom meeting that included Warren Wells, Policy and Planning Director of the Marin County Bicycle Coalition, on the same topic. I will file online as well or attempt to.

Commissioner John-Baptiste reported: I also had a meeting with Warren Wells on the same topic. And I do have a question about this, which is, I assume that many of us have also been on the receiving end of many emails on the same topic? Are those also for disclosure?

Mr. Scharff answered: Yes, depending. If it is sent to all Commissioners and staff is copied on it, you obviously do not need to. If it is sent to you individually, yes, you should.

Commissioner John-Baptiste replied: So, I have received about a thousand emails.

Mr. Scharff asked: Just to you or to everyone?

Commissioner John-Baptiste stated: As far as I can tell it is just to me, but it could be blind-copied to the entire Commission.

Mr. Scharff asked for further discussion: Let's talk about it. Is everyone? We are not considering the spam emails to be ex partes. If you respond, they are.

Commissioner John-Baptiste stated: I have not been responding. I do not know how know they are spam. They all say the same thing, but they all come from individual senders.

Mr. Scharff acknowledged: Correct.

Chair Wasserman continued: We will probe that a little bit and get some information out. I have received, I do not know if I would say a thousand, but certainly many of those. But I have assumed they have been sent sort of universally and therefore they are part of the public record. Sierra is agreeing with me, thank you.

Commissioner Gilmore stated: Thank you, Chair Wasserman. I had a discussion with Jennifer Williams, who is the Board President of the Alameda Unified School District regarding a planned renovation of Encinal High School's baseball field and the required public access. I have already filled out my form. Thank you.

Commissioner Gioia reported: I have had meetings with representatives of Bike East Bay, Trails for Richmond Action Committee and MTC staff, all on issues related to the Richmond-San Rafael Bridge bike lane and have likewise received hundreds of what I would call form emails from residents on this issue.

Commissioner Ramos spoke: I did already file my ex parte communication. I will go ahead and say it but then I would also like clarification from counsel. I did have an ex parte communication with Warren Wells of the Marin Bicycle Coalition. And my question to counsel is, at what point before we consider the adjudicatory matter, we have to provide the disclosure in-person orally and in writing?

These communications started rolling in months ago. How do we account for that? Is there a moment in time that it gets called upon and we are asked to deliver the ex parte communication or is it just on a rolling basis?

Mr. Scharff explained: You should do it on a rolling basis, otherwise it becomes unmanageable. Every time you meet with someone you should fill out the form. I know it is difficult, but you should. That is pretty clear that the law requires that.

I just want to clarify on the form emails. Do not send those to us. No, really do not. That is where we are on that.

I would encourage you not to respond to the form emails, because for every one that you respond to then you do need to file an ex parte form. And even if it is a short response like, I am forwarding this to BCDc, any response really is an ex parte communication between you and whoever sent that to you.

I am just encouraging you to only do that if you really want to have that ex parte communication. And remember, ex parte communications are disfavored.

Commissioner John-Baptiste commented: I have a question about the disfavoring of ex parte communications, because I think in some cases there is valuable information that can be provided by people who are closer to the actual subject matter.

Mr. Scharff replied: I do not disagree with you but think about it like this. The law says you are not allowed to do it.

There is no penalty for doing it if you disclose it properly, because that is viewed as curing when you violated the law. That is why I use the term disfavored, because I am not telling you you cannot do it. I am telling you to do it judiciously and that it is disfavored and that is why. It is really your decision, but then you have to go through the process to make sure the public is aware of what you said.

And that is why the disclosures you just gave up on the dais, for instance, is fine as long as you actually state what the substance of your meeting was. You cannot just say I met with so, and so. You have to say I met with so and so, we discussed this, they advocated for that, so that the public has a clear understanding and that the record reflects what you discussed.

The purpose is to make sure that there are no backdoor meetings and that everyone has the same information when they vote and there is the same record and the public knows what is happening.

Commissioner John-Baptiste continued: I do not want to take us down a rabbit hole because maybe this should be a separate topic.

Mr. Scharff responded: I am happy to talk to you offline too if you would like.

Commissioner John-Baptiste continued: If I could just finish. But I find it both confusing and also somewhat punitive to be in a position where the practice of the organization, as I have witnessed in my time, is to engage in ex parte, but then the explanation is, oh, actually, that is not legal. That seems very, very odd to me.

Perhaps somebody could illuminate for me how we are intended to interpret that, because I obviously do not want to do something that is illegal, and I am also following what I understand to be the norms of this body.

Mr. Scharff explained: That is why I used the term disfavored. Certain Commissioners never do ex partes under any circumstances and just tell people they do not do it, and that is a perfectly acceptable solution. Other Commissioners feel that there is value in it, and they understand the concept behind it, and they comply with the ex parte rules when they do, which cures the violation. And violation may be too strong a word.

Chair Wasserman interjected: It is.

Mr. Scharff continued: That is why I prefer to use disfavor. And that is really the state of the law.

As I said, there is no penalty for it if you disclose it and you follow the procedures on that. It is not what I like or do not like, it is what the law of California is, and it is complicated. I did not set the law. This is the state of the law and you have to make your own decision about how you wish to proceed.

Chair Wasserman added: I would make a couple of comments, and I think the word disfavored is a very important and valuable one. Obviously, the ex parte rules do not simply apply to BCDC, they apply to any government agency in California, and sometimes local jurisdictions have different rules.

Part of the difficulty is there is a balance of interests here. The fundamental purpose of the ex parte rule is to ensure that when we are making a judgment, this is not on setting policy, you actually do not need to disclose communications that are purely about policy, but things like permits on the bridge, enforcement matters, where we are, the fancy word is making adjudicatory decisions, making a judgment about them on facts. That people on both sides have the opportunity, if they choose to pursue it, to know what Commissioners have heard, what they have been told. So all of the things we received from staff are public record. That is the purpose of the disclosure.

On the other side of it, particularly for those of us who are elected officials, not you and me. They have obligations to their constituents, and the constituents have certain rights to address their elected officials. That is where you get into this tension because indeed it says, thou shalt not. And then it says, but if you do, this is what you do.

So, it is disfavored. The way to cure it and to make it fair and make those facts that you have heard accessible to the public, is the disclosure. How practical any of this is, we could get into a long debate. But that is the basic thing. I know I have got hands up.

Ms. Peterson commented: Chair Wasserman, if I may, BCDC staff is also acutely aware of the situation and we are working to formalize internal processes on this, so we can come back to you with more information on this, if that would be helpful.

Chair Wasserman asked: Including making the forms easier?

Ms. Peterson replied: Yes.

Commissioner Gunther reported: Yes, I had a meeting with Muthanna Omran of Caltrans to discuss with him the possibility of an overpass of the Bay Trail associated with emergency turnouts. It was just an idea that I had, and I wanted to get an engineer's opinion of it.

Commissioner Gioia commented: I wanted to make a comment that may apply to all the elected officials here. Those of us who are elected officials who get communications from constituents, feel there is a need to acknowledge that.

So, what we are doing is we are creating a database of everybody who has written a letter who is a constituent of mine, which is a wide area of Contra Costa. And then at some appropriate point I will send a communication to that list that is appropriate about this issue at whatever appropriate time. That is how we are handling it.

Just to be clear, I do not think there is anything illegal about that, and we will have the list of the database of those individuals who get the letter. It is hundreds of people, or whatever number it ends up being at the end. But we will do a response to those individuals because I think they deserve a response, even if it is a form letter and an acknowledgement. so, that is what we are going to do.

Chair Wasserman acknowledged: Thank you.

Commissioner Gioia asked: And to our counsel, nothing illegal about that, right?

Mr. Scharff replied: Nothing illegal about that, John. We will talk about the best way to disclose something like that.

Commissioner Gioia continued: Yes, we can send you the database list of everybody who got my letter with a copy of my letter.

Mr. Scharff responded: And that is what I was thinking, that is exactly right.

Vice Chair Eisen stated: Chair, you used the word adjudicatory, which I think is really helpful in keeping it clear in our heads what is okay and not okay. If you think of a lawsuit with the plaintiff and the defendant and the judge, you cannot have the plaintiff talking to the judge without the defendant knowing about it, and vice versa, and any kind of a communication with the judge.

And in these cases about permits and regulations we are the judge. So, if people are trying to persuade us of their point of view or even educate us, it is something that the other side has to know. I think that helps me, at least, when I am thinking about it.

Chair Wasserman stated: Good addition, thank you.

Commissioner Moulton-Peters stated: Thank you Chair. In addition to serving as a BCDC Commissioner I serve as an MTC Commissioner, and this week I attended a meeting called by MTC and members of the Bay Area Council to receive an update on the permit for the Richmond-San Rafael Bridge as well as the Richmond Bridge forward plans and the long-term



upgrades that may be needed to the Richmond-San Rafael Bridge. I will fill out a form and put this all in writing. Thank you.

Commissioner Kishimoto reported: Just for disclosure, I generally try to avoid ex parte but I participated in this one. The question I asked was one that I asked actually at the open meeting when we had this meeting. It was about the completeness of the bike network on both sides of the Bridge. It does occur to me that in the interest of better information, if there is going to be a two-step process where we can make sure that there is certain information that is included in the staff reports that does come to us.

Chair Wasserman stated: I think that the issue is of enough interest and confusing enough that we will talk with staff about a guidance presentation, probably some in writing and some verbally, so that questions can be answered. All right. Well, that was a more exciting ex parte discussion we have had in a long time.

That brings us to the Report of the Executive Director, who is participating remotely. Take it away, Larry.

**5. Report of the Executive Director.** Executive Director Goldzband reported: Thank you, Chair Wasserman.

On this day in 1622, then-Bishop Richelieu was appointed a Cardinal under French King Louis XIII. I am sure that each of you has read Alexandre Dumas' *The Three Musketeers*, so you will remember that Cardinal Richelieu two years later was named Chief Minister for the king, and he held two such positions simultaneously, which likely would be deemed incompatible by the California Fair Political Practices Commission.

In any case he had extraordinary power, and he used it in a way that was relatively common. In his book describing government practices Cardinal Richelieu wrote that "Secrecy is the first essential in affairs of state."

But not at BCDC. As Chair Wasserman noted, BCDC will be meeting very transparently during the next few months as you all consider regulatory requests and planning policies.

For example, the draft Regional Shoreline Adaptation Plan guidelines to be released on September 13. That version will actually be the third draft, with the first two being reviewed by dozens of BCDC stakeholders. Perhaps Chair Wasserman's memoirs will include the phrase "transparency is the first essential in the affairs of state."

For the first time in a while I do not have any new staff members to introduce. However, you need to know that the State's 8% budget cuts across the board will hit BCDC, although we are confident they will not be severe enough to cause us to lose any people.

Our senior staff group will review our preliminary budget revisions tomorrow and I will keep you informed of the budget status. I do want to note that ordinarily I would ask Sean Williamson, head of our Financial Services Group, to present the annual budget update next month, but I am holding off on that until we get a clearer picture of how the budget will be affected by the cut.

I am incredibly proud to let you know that BCDC, along with the Coastal Commission and Coastal Conservancy, received rave reviews last week during the State's regular accreditation process that occurs every five years.

Officials from NOAA's Office of Coastal Management, combined with the Chief Resilience Officer of the State of New Jersey, spent hours talking with our staffs about the progress we have made during the past five years.

Our staff and NOAA agreed to focus on three issues at BCDC, our public access program, our adaptation to rising sea level efforts, and our permitting challenges.

It was clear during each conversation that we were getting high marks and that we would also get some good suggestions from NOAA as to how we can best move forward.

And this is really great: New Jersey's Chief Resilience Officer even noted during the summation that California "appears to be almost lapping the field," meaning that our state's Coastal Zone Management Program seems to be ahead of other states' programs. In any case, we shall receive NOAA's report later this year or early next and we will share it with you.

In addition, our staff is starting to work on the other big, regularly scheduled NOAA exercise, to develop BCDC's coastal zone management "Assessment and Strategy" document that provides NOAA with a detailed workplan of how we will implement the Coastal Zone Management Program during the next five years. More to come.

You will remember that at our last meeting we received several public comments on the placement of the Float Lab in Clipper Cove, saying that its location essentially blocks public access to the cove.

In response to those comments, BCDC discussed potential solutions with the co-applicants, the California College of the Arts and the Treasure Island Sailing Club. The applicants graciously changed the mooring system so that the Float Lab now takes up less space and has moved it closer to the shore to address the public's concerns.

Additionally, an article was published in *Latitude 38*, a magazine for the Bay Area sailing community, explaining that the Float Lab collects ecological data and was moved to Clipper Cove from the Port of Oakland to better engage with students and the public.

Finally, I do want to emphasize that staff will continue to perform active and substantial outreach activities on behalf of the RSAP guidance that will be released on Friday, September 13. Each of you will be hearing from us more than once to ask that you use your outreach channels to ensure that everyone you think should know about the proposal gets a copy and knows how to make comments on it.

Included in that outreach will be a brown bag lunch with representatives of the League of California Cities, the big webinar on September 19, and a whole lot more. We will let you know about them.

Passage of SB 272 and its attendant requirements for BCDC and our local government partners represents a seminal moment in the Bay Area's Conservation and Development history, and we want to ensure that our work is as transparent as possible as we move forward with the Regional Shoreline Adaptation Plan.

That completes my report, Chair Wasserman, happy to answer any questions.

Chair Wasserman asked: Any questions for the Executive Director?

Vice Chair Eisen was recognized: Larry, the conversation about ex parte reminded me that you were kind enough to send out a reminder about ethics training. I hope I am not the only one who has to get ethics training. But it was in June and it said you have until the end of the year so, of course, it ended up at the very back of my file. So I am hoping, if we have not done so, that you will remind us again as we get closer to the end of the year, I would very much appreciate it.

Executive Director Goldzband replied: Thank you, Vice Chair Eisen. You will get a reminder or two, I am sure. But we will ask Reggie Abad, of our staff, who is the keeper of such records, to

make sure that we get that to folks when Reggie comes back from vacation so certainly this month, to remind those folks who are affected.

Chair Wasserman offered kudos: I just want to commend Larry and staff, and the Commission, frankly, for the work we have done that resulted in this NOAA recognition that Larry talked about.

If you look at our Strategic Plan and some of our mission and goals, part of it is indeed being a leader in these areas. This evaluation demonstrates that we, all of us collectively, are achieving that goal, which is a very good thing, so I thank all of you.

## **6. Consent Calendar**

### **a) Approval of Minutes for the August 15, 2024 Meeting**

Chair Wasserman reviewed the items on the Consent Calendar and called for public comment.

(No members of the public addressed the Commission.)

Chair Wasserman asked for a motion and a second to adopt the Consent Calendar.

**MOTION:** Commissioner Eklund moved approval of the Consent Calendar, seconded by Commissioner Pine.

**VOTE:** The motion carried with a vote of 20-0-0 with Commissioners Addiego, Ahn, Ambuehl, Eklund, Gilmore, Gioia, Gunther, Hasz, Kishimoto, Moulton-Peters, Nelson, Pemberton, Pine, Ramos, Randolph, Showalter, Vasquez, Zepeda, Vice Chair Eisen and Chair Wasserman voting, “YES”, no “NO” votes, and no “ABSTAIN” votes.

**7. Consideration of Administrative Matters.** Chair Wasserman asked if there were any questions for Regulatory Director Harriet Ross regarding the Administrative Listing.

(No members of the public addressed the Commission.)

(No questions were posed to Ms. Ross.)

**8. Public Hearing on the Draft Environmental Assessment for the Cargill, Inc. Solar Salt System Maintenance and Operations Activities Project (BCDC Permit Application 2021.003.00).** Chair Wasserman stated: That brings us to Item 8, a public hearing on the Environmental Assessment concerning the upcoming Cargill Operations and Maintenance Permit application to continue

their existing activities as well as implement limited new O&M activities for its solar salt system facilities in Alameda and San Mateo counties, primarily in the cities of Newark, Fremont and Redwood City. The Solar salt system is subject to BCDC jurisdiction in the Bay, in the 100-foot shoreline band, and in salt ponds. Regulatory Director Harriet Ross will begin the presentation, and we will now open the public hearing.

Regulatory Director Ross addressed attendees: Good afternoon, Chair Wasserman and Members of the Commission. I am pleased to kick off this agenda item this afternoon.

I am going to start off with a quick background of Cargill's existing permit and the proposed permit renewal.

Then Don Brown of Cargill will take a few minutes to talk about their operations.

We will then turn it over to Susanne von Rosenberg of GAIA Consulting to review Cargill's proposed operations and maintenance activities and the major findings of the Environmental Assessment (EA) for renewal of the permit.

Then we are going to wrap up the presentation with Phoenix Armenta of BCDC, who will talk about the outreach efforts that we have undergone so far.

Then we will open up the public hearing for public comment on the Environmental Assessment.

And just wanted to note and remind everyone that the public hearing and the purpose of today's meeting is really to learn about the Environmental Assessment itself. We will obviously have to talk about the proposed maintenance activities and a little bit about the existing permit and the new permit, but really the focus in the public hearing is on the EA itself, on the Environmental Assessment itself. Just wanted to point that out.

The permit will come before the Commission hopefully by the end of this year. Obviously, a separate meeting and separate discussion and hearing at that point.

I will just acknowledge that we have a number of folks internal to BCDC from the Permitting Team as well as Cargill themselves here to help answer any questions after the presentation.

Some background for context. Cargill currently produces salt on the shores of the Bay under an existing permit issued by BCDC in 1995. Cargill's operations and maintenance activities are regulated by an existing 10-year permit.

Now, over the years, this permit has been amended and extended numerous times and is set to expire at the end of this year, 2024. Cargill is currently seeking a new 10-year permit to authorize many of the same activities and some new ones, and Susanne will describe these activities later on in the presentation.

I am sure you all are aware the Bay Plan currently contains a set of findings and policies that regulate development in salt ponds. In this particular finding I wanted to point out that salt production is acknowledged to be an economically important and productive use of the waters of the Bay and salt is an important product.

For the permit renewal, BCDC is required to evaluate the potential adverse environmental effects of the proposed activities authorized in the permit.

BCDC is serving as the lead CEQA agency for the Environmental Assessment, which is very rare, we normally do not serve in this role. The reason why we are the lead agency in this case is because there are no local discretionary permits or approvals required, so that is why we are the lead agency.

We hired GAIA Consulting to prepare the EA, which assesses the potential impacts from Cargill's O&M activities and identifies applicable mitigation measures to lessen those impacts.

The environmental review process is a certified regulatory program under CEQA. So what this means is that our permitting and planning programs under the McAteer-Petris Act have been certified by the Secretary of Natural Resources as being, quote, "functionally equivalent to CEQA."

Instead of preparing a normal CEQA document that maybe you are all used to like an EIR, for example, we have our own process and our own requirements that are in our regulations for preparation of the Environmental Assessment. If you have had a chance to look at it, it is very similar to a typical CEQA document and contains the same major pieces and components.

As some of you may remember if you were on the Commission at the time, the original Draft EA was initially published in April of 2021. But due to changes in the project description, we are now recirculating that draft EA.

The updated Draft EA describes the changes to the project description, as I mentioned.

It was published on August 22 for a 30-day public comment period. We are in the middle of that comment period right now and that is why we timed the public hearing to be at this Commission meeting today.

Just wanted to point out that the Recirculated Draft EIR is available on the BCDC website and also a hard copy is available at our offices. So, just wanted everyone to know.

With that I am going to go ahead and turn it over to Don Brown of Cargill to share a little bit about Cargill's background and operations.

Mr. Brown presented the following: Good afternoon, Chair Wasserman and Members of the Commission. My name is Don Brown; I am the Assistant Vice President and Land Resources Manager for Cargill for our operations here in the Bay. I appreciate the opportunity for me to provide a little additional information about Cargill and our broader organization and our salt business in the Bay.

Before I start, I also want to express appreciation to BCDC staff. I know we have spent considerable resources on this permit and I know they have as well. They spent a great deal of time learning Cargill's operations. They have had new staff who have had to get up to speed on how we do things and making sure that our operations and our activities are in line with BCDC policies. So again thanks to the staff for all the work that they did.

A little bit about Cargill. Obviously, we have the large salt ponds here in the Bay Area, but we are a global organization. And at Cargill everything really begins with our purpose to nourish the world in a safe, responsible and sustainable way. We connect customers with suppliers to the world by developing personal relationships with them and setting a high standard as we work with them. And we also support our customers in the world of expertise delivered locally, quickly and reliably. That creates value for them and for us.

And the way we succeed is just as important as the success itself. We approach business with a sense of respect and responsibility.

We are a large, large company, 160,000 employees across the world. We are in 70 countries, but we operate in 125 markets. Cargill is still a family-owned business started in 1865 so, the company is 159 years old, and we will be celebrating our 160 next year.

A little bit more about the broader Cargill organization. As originators and processors we partner with farmers in growing crops, originating and sourcing commodities. And then we store and process and transport these goods all around the world.

Our animal nutrition and protein businesses provide services and products to raise and feed animals and process those animals into protein products.

And then our egg supply chain and food businesses sell ingredients and solutions to food manufacturers, food service customers and retailers.

And finally, our bio-industrial business creates various products using bio-based technologies. And then a good part of what we do is also providing global insights and risk management solutions to our partners.

So, that slide there, this is Cargill Salt. This is the broad markets that Cargill Salt operates in. We are a trusted supplier in road safety, food and water quality and ag and industrial markets.

And as the only large-scale food grade sea salt producer in the US, you will find Cargill's sea salt in many of the products if you see sea salt as an ingredient.

And then we also market consumer-facing salt. If you see Diamond Crystal in the grocery stores, or Home Depot for our water softeners, that is the Cargill product.

Cargill's history of cooperating with state and federal agencies goes back a long way and it has helped launch the largest restoration project on the West Coast. We were able to do this by innovatively changing how we harvest salt so we can operate on a much smaller footprint than what we historically had.

Over the past 45 years we have transferred over 40,000 acres of salt ponds to various public wildlife agencies, and then we also operate within the Don Edwards National Wildlife Refuge, a unique operation operating within the refuge.

In addition to these property transfers that we made we also work very closely with the wildlife agencies to make sure that our operations protect wildlife habitat.

Just as to close up, our community involvement. We are very committed to being active in the community where we work and live. Whether it is supporting STEM programs in schools or volunteering for various events, we are committed to the local community, and we have donated over a \$1.5 million over the past five years and many volunteer hours to local



organizations. Some of the organizations are East Bay Regional Parks, Second Harvest Food Bank, and San Francisco Bay Bird Observatory.

Thank you for allowing me the opportunity to say a few words about Cargill and about this unique operation that we have in the Cargill portfolio. We look forward to working with BCDC and the other agencies on renewing this permit.

Ms. von Rosenberg presented the following: Good afternoon, Chair Wasserman and Members of the Commission. My name is Susanne von Rosenberg, I am with GAIA Consulting; and as Harriet said earlier, I have been the lead on preparing the EA, and my company has been supported by several subcontractors. I am going to be giving you a bit of an overview of the EA process and then the project description as well as the findings of the EA.

The first thing I wanted to mention for clarity is that the Maintenance and Operations Permit that this EA covers is a separate project from the MSS Risk Reduction, the Mixed Sea Salt Risk Reduction Project that you may also have heard about. That project will reduce the volume of mixed sea salt onsite at Cargill's property via discharge to the Bay.

That final EIR was certified by EBDA on June 15, 2023.

BCDC provided comments.

Cargill is currently working with agencies and property owners on an alternative pipeline alignment.

For the EA, this project was addressed as a cumulative project. The EA addresses the safety of the berms around the MSS ponds but does not address the MSS specifically.

Cargill operates in three locations around San Francisco Bay and each of these locations is referred to as a plant. I want to make sure that you understand that plant does not mean it is an industrial facility, it is a salt-making plant.

There are two plants on the east side of San Francisco Bay, basically north and south of Highway 84, the Newark Plants 1 and 2; and then on the west side of San Francisco Bay is the Redwood City plant.

The proposed salt pond maintenance activities in the permit include adding, replacing and repairing soil, filter fabric, and riprap on limited sections of the outboard berms and the interior berms.

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Adding soil to berms and grading the tops to address erosion, adapt to sea level rise and improve drivability.

It also includes maintaining and replacing infrastructure such as pumps, tide gates and platforms.

Removing sediment at pump intakes.

And installing fish screens on one or more pumps at Cargill's main Bay water intake on Alameda Creek. That is also referred to as the Coyote intake.

I wanted to give you a quick look at the Coyote intake. What you see on the right side of your screen at the top is a view looking south from the north side of Alameda Creek towards the intake location. On the bottom right you have a view from the intake location north towards Alameda Creek. As you can see, at low tide that small channel that delivers water to the intake is almost dry. On the left side is a pair of conical fish screens that are actually located in the North Bay. We anticipate that the fish screens that Cargill would install at the Coyote intake would look a lot like these conical fish screens.

The activities evaluated in the Draft Environmental Assessment look at the potential impacts of the maintenance and operations activities. The EA covers a broader scope than the existing Cargill Maintenance and Operation Permit and includes an analysis of not just certain maintenance activities, but also pumping water from the Bay into the ponds, truck trips in and out of the plants as they are delivering material to support the maintenance activities, and storage of highly saline brine in ponds adjacent to the Bay.

There are multiple benefits to maintaining the solar salt system. It provides habitat for numerous species of wildlife and fish.

It supports millions of wintering and migratory shorebirds, seabirds and waterfowl, in addition to various special status species.

It protects approximately 20 miles of public access trails.

The Salt plants serve as a buffer from Bay waves and tides during storms.

The solar salt plant produces food grade and industrial salt, as Don just mentioned, through a sustainable process.

And also provides several hundred jobs and other economic benefits to the region.

The EA incorporates numerous environmental protection measures as part of the project description. Prior to performing work, biological monitoring is performed where needed to determine if special status species are present.

There are 60 Best Management Practices to avoid and minimize impacts to special status wildlife species and sensitive habitat present in and around the project area.

Cargill will install fish screens for at least one of its pumps at the main Bay water intake on Alameda Creek and will conduct monitoring to assess the need for fish protection measures at other intakes to avoid potential impacts to special status fish species.

Cargill is also going to further evaluate the risk to MSS pond berms from wave overtopping and berm keying. Berm keying is a seepage protection measure that involves excavating a portion of the interior of the berm and replacing it with higher quality soil.

Cargill has performed additional studies related to the mixed sea salt ponds and specifically the stability of the berms with regard to seismic integrity and shoreline erosion.

Cargill has also evaluated potential flooding from storms and sea level rise relative to berm height and we have looked at emergency response planning. These studies that Cargill has conducted are being looked at and will be looked at in their current form by the ECRB at the meeting next week on September 11.

So, the Environmental Assessment process. GAIA is preparing the EA consistent with BCDC's process for environmental review under CEQA. As we noted, BCDC has a certified regulatory program.

The Recirculated Draft, as previously mentioned, is posted on the BCDC website.

The public comment period ends on September 21.

The comments received on the Recirculated Draft EA will be considered in the final EA.

The EA may be used by other state agencies to support their related permit approvals. One of the reasons the document looks a lot like a CEQA document that you would normally see is to enable other state agencies to rely on the document if they so choose.

The key issues in the Environmental Assessment relate to the potential effects of maintenance activities on various species and sensitive habitat within and adjacent to the Cargill ponds.

They also relate to replacement of riprap at new locations along the outboard berms facing San Francisco Bay.

Sea level rise and seismic events on berm integrity.

The effects of water intake and sediment removal on special status fish species.

The effects of maintenance activities on cultural and tribal cultural resources, also important in the EA.

In addition, the EA looks at potential effects on air quality, greenhouse gas emissions, noise, traffic and water quality. These are generally similar to current conditions.

There are some key changes from the current permit. While most of the activities are very similar in nature and extent, Cargill is making limited changes to its current operations, including:

Installing the fish screens I have already mentioned at the Coyote intake.

And Cargill is increasing its use of amphibious equipment, which substantially reduces the impact to salt marsh habitat.

In addition, we have some changed environmental conditions. There are two threatened or endangered fish species that were listed after Cargill obtained its current permit and these have the potential to be present in the project area.

In addition, environmental conditions have changed because fish passage for threatened species has been reestablished in Alameda Creek after many years of work by the interested parties in that effort.

Most potential impacts are anticipated to be less than significant. The EA identified nine potentially significant impacts, four related to Biological Resources, three related to Tribal Cultural Resources and Cultural Resources, one related to Geology, Soils and Seismicity, and one related to Hydrology and Water Quality.

The EA concluded that all potentially significant impacts can be mitigated to a less than significant level with the application of the mitigation measures included in the EA.

The proposed mitigation measures related to biological resources require minimization of the potential for brine seepage.

Avoidance, minimization and mitigation of impacts associated with use of Bay water intakes.

Minimization of potential hydroacoustic impacts due to impact pile driving, which would be required to support the fish screens.

And compensatory mitigation for loss of or unavoidable impacts to state or federally protected wetlands and waters of the state.

The mitigation measures for Cultural and Tribal Cultural Resources impacts consists of response processes for inadvertent encounter of undiscovered archeological resources, human remains, and/or tribal cultural resources.

For Geology, Soils and Seismicity the mitigation measure requires evaluation and mitigation of potential effects of MSS pond berm keying.

And for Hydrology and Water Quality the mitigation measure requires evaluation of the MSS pond berms' vulnerability due to wave runup and overtopping during storm events.

The next steps consist of BCDC receiving public comments through September 21.

Consideration of and response to the public comments.

Preparation of the Final EA.

And then as previously mentioned, Commission review of the Final EA and consideration of the new permit.

The comment review process consists of multiple steps.

We are going to transcribe verbal comments from the meeting recordings.

We are going to compile the verbal and written comments.

Identify common themes.

We are going to evaluate the need for modifications to the project description and/or mitigation measures as a result of those comments.

We are going to revise and finalize the EA with modifications as needed.

And we are going to provide a listing of comments and responses to the comments as an appendix to the EA.

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I have on here that comments provided in Spanish will be translated into English and addressed in Spanish. We will touch on this in a minute. We had a community meeting last night that was also simultaneously translated into Spanish. We did not have any comments from the Spanish community.

This is for the members of the public. We welcome your comments.

You can provide verbal comments today following the Commission discussion.

Provide written comments today in the chat if you are virtual or on comment cards if you are here in person.

You can also provide written comments by 5:00 p.m. on September 21 to Sam Fielding, or also via mail to BCDC.

We cannot accept comments by telephone.

There are additional opportunities for public comment related to the permit process.

You can provide written or verbal comments on the proposed permit to Sam Fielding at BCDC at any time until the Commission's consideration of the permit.

A BCDC Engineering Criteria Review Board meeting will be held on September 11 to discuss MSS policy issues and the public can attend and comment at that meeting.

The public can also attend and comment at the Commission meeting where the Commission will be considering the Final EA and permit, which is currently intended for December of 2024.

You can also contact Sam Fielding to get put on the Interested Party List to get electronic notices of all public meetings on the Cargill Permit.

Interpretation is available for individuals preferring to comment in a language other than English.

With that I am going to turn it over to Phoenix Armenta to talk about the environmental justice and public outreach component. Thank you.

Ms. Armenta spoke: Thank you. Outreach to adjacent communities is a component of the permitting process, in compliance with the Bay Plan's Environmental Justice and Social Equity policies.

These maps show the vulnerable communities near Cargill's salt ponds, which are filled-in in light green. The neighborhood areas highlighted in purple are communities of high social vulnerability and high contamination. This includes parts of Redwood City, East Palo Alto, which is adjacent to the pipeline, and parts of Newark, which are indicated as socially vulnerable.

We took special care to reach out to community-based organizations and tribal representatives and they are on our mailing list for the project. We have added Spanish translators to our community meetings specifically for these local communities.

Public outreach activities conducted to date in support of the permit application and the Environmental Assessment include:

Scoping notices for the first draft of the EA were posted in the newspaper and a direct mailing was sent to Cargill neighbors.

We conducted tribal outreach to the list provided by the Native American Heritage Commission in 2020 and 2024. This year four tribes responded, and we are working on setting up a meeting with one of the tribes.

In 2021, over 400 notices were sent out to get public comment on the draft EA.

ECRB meetings have been held in 2022, 2023 and a third is coming up on September 11, next week.

Virtual community meetings were held in 2023.

On August 19, over 2000 notices were sent out for the recirculated Draft EA, plus emails to an extensive interested parties list.

A virtual community meeting on the Draft EA was held last night.

And this meeting is serving as a community meeting to receive public comments.

Based on this activity, we feel that Cargill has made a robust attempt at meaningful community engagement and has satisfied our EJ and Social Equity policies. Thank you.

Ms. Ross added: I just wanted to let you know that we did receive, one person commented last night at the community meeting we held. Their comments were really seeking clarification on information within the EA, and also the more substantive comment was questioning why there

was only one fish screen proposed on Coyote Creek and analyzed in the EA. So, just wanted you all to know.

That wraps up our presentation, Chair.

Chair Wasserman acknowledged: Thank you.

Are there any public comments?

(No members of the public addressed the Commission.)

Chair Wasserman continued: It speaks well of the outreach effort.

Could I have a motion to close the public hearing?

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

Chair Wasserman asked: Questions from Commissioners?

Commissioner Eklund was recognized: Thank you very much. First of all, great presentation from staff as well as from the representatives from Cargill. Having worked for EPA, EPA was very much engaged in a lot of the original permitting as well.

I have several questions. First of all, the presentation included that there was going to be some sediment removal from the pump intakes, but there was no explanation about where that sediment is taken and how frequent is that happening and what is the impact associated with removing the sediment near the pump intakes?

Ms. von Rosenberg replied: The removal of sediment at intakes is periodic. Cargill actually takes in water at 10 locations.

Commissioner Eklund confirmed: Ten locations.

Ms. von Rosenberg added: A subset of those are pump intakes, the others are passive intakes consisting of weirs or tide gates. The estimated annual quantity of sediment removal over the life of the permit is about 300 cubic yards per year.

Commissioner Eklund repeated: Three hundred cubic yards, great. What is the length of the permit?



Ms. von Rosenberg answered: Ten years is the proposed length.

Commissioner Eklund confirmed: Ten years. What kind of reporting requirements do they have?

Ms. von Rosenberg stated: There are extensive reporting requirements, but the main reporting requirement, Cargill develops a work plan each year for the activities that are to be performed that maintenance year. It is not a calendar, May 1 to April 30 is the maintenance year. So, that work plan outlines what Cargill intends to do. And then at the end of the maintenance year Cargill provides a report on the maintenance that was done as well as the environmental protection measures that were implemented. So, that is under the current permit and that process is also written into the project description for the proposed permit.

Commissioner Eklund asked: How often does staff go out to observe the work to make sure that things are being done the way they are being portrayed in writing?

Ms. Ross responded: I am not 100% sure, but I know in the last several months we have been out once, perhaps. It looks like we have been out twice in the last two years to observe.

Also I should note that we are still working through the details on the monitoring requirements in the permit itself. We are in the beginning stages of actually drafting the permit, so we could potentially add more conditions to that.

Commissioner Eklund continued: Are we going to have an opportunity to see that draft permit?

Ms. von Rosenberg affirmed: Yes.

Commissioner Eklund acknowledged: Okay, great.

Chair Wasserman noted: Just to be clear for everybody, this is only on the Environmental Assessment.

Commissioner Eklund agreed: Right.

Chair Wasserman added: The permit itself will come back to us for consideration of its merits and the conditions.

Commissioner Eklund acknowledged: Yes, that is a separate legislative action.

Chair Wasserman replied: Yes.

Commissioner Eklund had additional questions: What other state and local agencies are involved in the permitting?

Ms. Ross replied: So many.

Commissioner Eklund continued: I know. I am just really kind of curious to see. Obviously, I am hoping that we are coordinating with a lot of them.

Ms. Ross stated: We are. We are.

Commissioner Eklund acknowledged: Good.

Ms. Ross explained: Yes. We have had a few, I forget exactly how many interagency meetings, and with Cargill as well; in fact, I think Cargill put some of them together. We have had our own individual meetings with several of the resource agencies. I could try to list them for you, but I am sure I will not be able to get them all.

Commissioner Eklund continued: I know the state and the feds. What about local? Are there very many cities or counties that are involved in this?

Ms. Ross noted: I do not think we have had very much conversation on the local side because there are no local discretionary approvals required, so that is part of the reason that we are the lead agency. Okay, they are on the Interested Parties List so, they are notified of all our actions. I do not believe we have gotten any inquiries from the local governments.

Commissioner Eklund asked: Has anybody reached out to the county, at least the counties that are involved?

Ms. Ross answered: I would have to get back to you. I do not believe so, but good point, good point.

Commissioner Eklund stated: If you could that would be great, because I know a lot of times that counties and cities that are adjacent to the salt ponds may get comments and concerns from constituents and they may not necessarily know what the process is.

The other question I had is, why are they only putting fish screens, it said on one or more, but it does not indicate that they are going to be putting fish screens on all of the pumps. Why not? I am not quite sure.

Ms. von Rosenberg stated: That is a really good question. As you heard, we got that question last night as well. At this point there is not enough information to ascertain what exactly is required for each of the intakes that Cargill has. For the intakes on Alameda Creek, we know that endangered salmonids may be present because of the re-establishment of fish passage. We also know that longfin smelt may be present, but we cannot say with certainty one way or another that they are present.

The EA includes a mitigation measure, Mitigation Measure Bio-2, that addresses Cargill's intake of Bay water.

The first portion of that mitigation measure says that either you screen the intake that you are using for intake of Bay water, or then Cargill has a series of steps that they could take to demonstrate that maybe fish screens may not be required.

So, they could demonstrate through modeling that the approach and sweep velocities are low enough that sensitive species would not be entrained. They could do physical monitoring of salinity and temperature to show that the conditions aren't suitable for certain of the species. They could also do fish monitoring to show whether the species are in fact present or not.

That monitoring program would have to be approved by the resource agencies. Assuming that Cargill implements a monitoring program for some or all of its intakes, the outcome of that monitoring program would then point to whether additional fish protection measures would be required. And those would be prioritized based on the significance of the impact from that particular intake.

And the reason I use the term fish protection measures is because it does not necessarily have to be a fish screen.

For example, Cargill could conceivably reroute some of its piping or change the time of year that it takes in water, and that could have the same effect to protect the species. So, that is why we use the term fish protection measures versus fish screens.

But the fundamental reason why we are not requiring a priori that all intakes be screened is because there is not enough information to credibly support that requirement. And so in the context of the EA it would be speculative for us to say those species would definitely be impacted and therefore mitigation is required.

Commissioner Eklund acknowledged: Thank you very much for helping me understand that. I still think that screens might be good, but anyway. So, I will be interested to see what kind of information we get back on that. So, thank you very much for answering all my questions. Great presentation all around. I can tell that there has been a lot of work done on this already and it is huge, so thank you.

Commissioner Nelson was recognized: Three questions. First is just an issue of terminology. I have been around the Cargill ponds for a long time and the presentation today talked about MSS, mixed sea salts. I just wanted to make sure I am understanding this correctly. Is that the same product that we used to refer to as bittern?

Ms. Ross answered: Yes, it is.

Commissioner Nelson continued: Okay. I just wanted to make sure I had it right.

Second, with regard to longfin smelt. I have not even had a chance to read it yet, but I believe there was either a settlement or a ruling in federal court today, maybe yesterday, about longfin smelt. The reading of the first paragraph it sounded as though it increases the likelihood of a decision on longfin smelt by Fish and Wildlife Service which is, I think, a likely listing, so it would just make sense.

Staff has been talking about some issues regarding longfin and the potential need for screening and so, forth. A listing might change that calculation, so I just wanted to flag that decision or settlement, and I believe it was yesterday or this morning, so well worth taking a look at.

We do not want to approach a decision on this issue and then find the ESA listing landscape has changed underneath us and that that changes things. So, that is just a suggestion. That is number two.

Number three is, at the start of this presentation, staff said that this was mostly renewing ongoing activities with a few changes in activities, new activities. And there was a slide in the presentation that I am hoping if it is not too much trouble you can bring up again that focused on changes in activities and changed conditions.

It seemed to me those are the two things that Commissioners should keep our eye on when we are thinking about potential challenges and new issues that this renewal might suggest. Is it possible to bring that slide back up again?

Ms. Ross replied: Yes, we are working on pulling up the slide and then I think Susanne wanted to add a couple of things.

Ms. von Rosenberg added: Yes. While that slide is being pulled up, longfin smelt were federally listed as endangered on July 30, so they are, in fact, now a federally- listed as well as a state-listed species.

Commissioner Nelson acknowledged: Okay.

Ms. Ross continued: Maybe while the slide is pulled up, can you maybe just characterize again, Susanne, the new activity that is being considered under this EA.

Ms. von Rosenberg stated: The primary new activity is the installation of the fish screens. The reason we keep harping on that is because it involves the most construction, and therefore from the EA perspective it has the most potential impact.

I also mentioned that Cargill is increasingly using amphibious equipment. The EA still allows for the use of excavators to access the salt ponds through the dredge locks, which those of you who have been around a long time may know that Cargill used to have its own dredge and would essentially dredge their way into the salt ponds to perform maintenance of the berms from inside of the salt ponds. So, with amphibious equipment, you avoid all that excavation in outboard marsh. You may have a little bit of impact as the equipment rolls over whatever vegetation may be there, but it is limited to the footprint of the equipment, and the vegetation is not actually removed.

Commissioner Nelson stated: That is really helpful. This amphibious equipment, is it wheeled equipment instead of the old dredge? What is that?

Ms. von Rosenberg stated: It is tracked equipment. Right, Matt?

Commissioner Nelson acknowledged: Okay, okay. The fish screen issue was related to the change in passage on Alameda Creek.

Ms. von Rosenberg agreed: Correct.

Commissioner Nelson asked: And the two new species listed, one is longfin, what is the other?

Ms. von Rosenberg answered: Steelhead.

Commissioner Nelson replied: Of course. Okay, thank you. Which raises that same passage issue. That is really helpful, thank you.

Commissioner Showalter sought definitions: Thank you. Yes, I appreciate the presentation as well. This is a subject that is just fascinating. I wanted to ask what might be meant by compensatory mitigation for loss of wetland habitat, in this instance?

Ms. Ross answered: Yes, I think we talked about compensatory, we still need to define the compensatory mitigation for the fish screen habitat. So, habitat loss with implementation of the fish screen itself.

Commissioner Showalter replied: So that is what it is. I just was not sure what it referred to.

Ms. von Rosenberg continued: Installation of the fish screens and providing access for maintenance of the fish screens, which is a really important element of installing fish screens, will require the removal of a combined approximately half acre of mud flat and tidal marsh habitat in Alameda Creek.

Now, for those of you who know a lot about tidal marsh, the tidal marsh in Alameda Creek is a strip marsh, so, it is considered lower quality habitat than the marsh that is outboard in the Bay.

Commissioner Showalter added: I also wanted to comment that I appreciated that you were using the term fish protections instead of fish screens. I have had a little bit of experience with fish screens, and they are very difficult to maintain often, at least the ones I was involved with. They seem to always be needing work. So, if there is another way to get adequate protection that is not as laborious it is a good idea, so I was glad to hear that.

Commissioner Kishimoto commented: Maybe just a couple of quick questions. One is, is there any overlap with the SAFER Bay Area or is it just adjacent to it or somebody else?

Ms. Ross stated: There is no overlap, my team says.

Commissioner Kishimoto asked: Okay. Or maybe coordination with OneShoreline, probably?

Ms. Ross answered: I'm sorry, I am not certain of the exact location, but it does not sound like there is any overlap, so no coordination.

Commissioner Kishimoto continued: Okay. And then I am just remembering that many years ago there were habitat goals developed for the whole Bay. Do those come into play at all in this process?

Ms. von Rosenberg explained: This permit really pertains just to maintenance and operations of the salt ponds, and so in that sense there are no habitat goals that would be included with maintenance and operations.

Obviously, we look at habitat loss as a potential concern in the EA, but the Habitat Goals Report and the Subtidal Goals Report are really separate entities that come into play when there is available land, if you will.

Vice Chair Eisen commented: Thank you. Very good presentation. I know Commissioner Nelson wants to talk about smelts; but I want to talk about birds, of course.

The berms that you said are going to be maintained, that there is going to be this berm maintenance effort. Are those the berms that I see, for example, when I am out at Coyote Hills looking at some of the species that are out there? I can see that the whole ponds are separated by what I would call berms, but is that what you are talking about as well?

Ms. von Rosenberg answered: Yes. We classify two kinds of berms in the EA. Those we call outboard berms, those that face waters of the Bay or sloughs, and then interior berms are the ones that separate the salt ponds internally. So, yes, both of those we would classify as berms.

Vice Chair Eisen acknowledged: I see. You are right that hundreds of thousands of birds show up in those ponds and on those berms, but not at all times of the year.

Ms. von Rosenberg agreed: Correct.

Vice Chair Eisen inquired further: It is only during those migratory seasons. So, I am wondering if there is any consideration being given to conducting that berm maintenance at a time when they are not populated by hundreds of thousands of birds, including one flamingo, as you may know, who lives out on those berms. An escapee from Great America, apparently.

Ms. von Rosenberg replied: More power to it. The maintenance season is predominantly in the dry season, after the birds have left or before the birds have arrived. The EA does include a mitigation measure related to nesting bird surveys, or maybe it is a BMP, sorry. But yes, we do address both sensitive species and threatened and endangered species of birds in the EA.

Vice Chair Eisen inquired about outreach: And I have one more question, maybe it is for Phoenix, but I am wondering about the community meetings that were described, Phoenix, in your report. Can you give us an idea of how many people end up attending those kinds of community meetings?

Ms. Armenta replied: Sure. I believe there were eight people in the 2023 meetings, and there were three people last night.

Vice Chair Eisen replied: Oh, wow. So, they are relatively sparsely attended.

Ms. Armenta agreed: Yes.

Vice Chair Eisen acknowledged: Okay, good to know. Thank you.

Commissioner Randolph had questions: Could you say something more about what happens with the highly saline residue? Is it moved somewhere? Does it accumulate in place? Because I think I heard that it provides beneficial habitat for birds. What happens with that?

Mr. Brown explained: Yes, it might be helpful to understand exactly what that is. The whole process of making salt is that the water eventually evaporates away and then the sodium chloride, most of it will precipitate and you can harvest the sodium chloride. So, what we are talking about as bittern or the mixed sea salt is really just these other salts that are in the Bay.

So, what we do is that we move to process those mixed sea salts, which are mostly solid. If you go out today to the two ponds which are referred to in the EA as P2-12 and P2-13, it is mostly solid. I am from Minnesota so it looks like a frozen Minnesota lake because we actually can walk out on the lake. And then when the rainy season comes and then rainwater sits on top of it, so, it sits there.

There is some wildlife that hangs out in those ponds, but that is essentially what that is. It is not toxic, it is just other salts that are just in a very concentrated form.

Chair Wasserman asked: Any other questions from Commissioners? I see none. There is no action on this. We will obviously take the matter of the permit up at a later meeting.

## **9. Commission Consideration and Possible Vote to Approve BCDC's 2023 Annual Report.**

Chair Wasserman stated:



That brings us to Item 9, discussion on BCDC's 2023 Annual Report. We have received a draft of the report and its contents are quite different from previous reports. Executive Director Goldzband will present and explain.

Executive Director Goldzband addressed attendees: Thank you, Chair Wasserman. This shouldn't take long, but I want to make sure that you see this.

I want to thank Jessica Fain and Victoria Kuehn of our staff for spending a real strong part of the last couple of months trying to figure out how we can make our Annual Report more readable and more accessible, and so this report is the first of its kind from BCDC.

A slight amendment to what the Chair said, it has a lot of the same kind of information. Indeed, you will see some of the same types of tables and the like. But we think it is being presented in a little bit of a better way for the public to actually understand what is going on.

Within, for example, the Forward, we put certain historical trends, because that is really where people might actually be interested in them as they read the Forward.

As you go down about three more pages, if I am correct, you have highlights and then you have got the year in review, again in a very visual way. And go down about five more pages, milestones. Again, we have the Strategic Plan in there. You will see the Adaptation Needs, which you have seen certainly in the findings from Bay Adapt and Regional Shoreline Adaptation Plan process, we wanted to throw that in there.

This is the regulatory section, and people's eyes tend to glaze over when you think about reading about regulatory processes. But we thought that we would make it a little bit easier to read with a little bit better graphics and how we talked about the different kinds of permits.

And then finally go about six more pages and I will end there. That that was one of the tables that you are used to. Here is a really good example of how we highlighted different parts of BCDC, including Legal. Those are now much easier read, much easier to see.

And then go down I think two more pages, Implementing Equity. Keep on going down there. We wanted to make sure that we had a really good list of how we collaborate, coordinate and partner. You can get dizzy reading all of the stuff that we do. And then go to the back, Organizational Health. That is the internal stuff. Keep going down. And that is the end.

So, you have a copy of this. I do hope that you will take a look at it. It is, I think, a really tremendous report about what BCDC has done in 2023. Candidly, I could list out every statistic

and I think I would probably lose you all. I think the most important thing to remember is that our staff has been working incredibly hard in every single facet.

We know that you are interested in rising sea level and you are totally up to date on the Regional Shoreline Adaptation Plan and Bay Adapt.

You sit through difficult permit discussions, and you understand not just the major permits, but all the stuff that goes on behind the scenes, all the permit amendments, all the region-wides, all the abbreviated region-wides. You hear about the emergency permits that happen for some reason on Saturdays and Sundays most of the time.

The legal staff, which is growing now because we certainly have the need, has been incredibly busy, not just with enforcement and compliance but also certainly with working with the Attorney General's Office, et cetera.

And then, of course, internally the organizational health. Reyline and all of her staff on Admin do a tremendous job under tremendous pressure, without any backups.

So, Mr. Chairman, I will ask that the Commission approve the 2023 Annual Report. And I would further ask that the Commissioners take a look at it over the next few months and provide us with their comments about it so that we can improve next year's as well. Thank you.

Chair Wasserman acknowledged: Thank you.

Sierra, are there any public comments?

(No members of the public addressed the Commission.)

Chair Wasserman asked: Commissioner questions?

Vice Chair Eisen commented: Well, I read the Draft Report yesterday, every word of it, and it is fantastic. It is incredibly readable, which is not true of most annual reports, which tend to sit on shelves and collect dust.

I am not sure exactly who the consumers are of this Annual Report, I would like to hear that from you, Larry. But I tell you, for any new Commissioner or any seasoned Commissioner, that is a fantastic overview of what the BCDC is about, why we exist and what we do, which I understand is also Goal 4 of our strategic objectives.

It really goes a heck of a long way to better communicating to folks what we are all about. I just wanted to commend all of the staff who worked on it, it is an incredible effort. And I was one of those English majors that edit the heck out of everything that is put in front of me and I hardly could see anything that I would have wanted to change. I thought it was really magnificent. Thank you so, much for that effort that everybody has made.

Executive Director Goldzband acknowledged: Thank you very much. Jessica, who I think is at an airport right now, just put in the Chat what I was about to say, which is that it gets sent to the Governor, it gets sent to the Legislature.

One of the really exciting things is that our new CEA Rylan Gervase, who is starting on September 17 and who will have the Communications portfolio, not that we have ever had a communications portfolio but he will be developing it, is going to be using this to work with all of the members of the Assembly and Senate and federal Congress in our jurisdiction and beyond, because we do think that it is a really, really good way to communicate.

Back in the day we used to have binders that would say BCDC, if you were on a Leg staff, and you could always pull it out and get an answer. That is where this would go. It will go in the electronic binder that they have.

And I will say, Vice Chair Eisen, that is an amazing compliment with regard to editing and the like. Jessica and Victoria did a great job as well as everybody else on staff who contributes, and we look forward to doing it even better next year.

Chair Wasserman asked: Any other comments or questions from Commissioners?

I would entertain a motion to approve the Annual Report.

**MOTION:** Commissioner Eklund moved approval of the Annual Report, seconded by Commissioner Moulton-Peters.

**VOTE:** The motion carried with a vote of 19-0-0 with Commissioners Addiego, Ahn, Ambuehl, Burt, Eklund, Gilmore, Gioia, Gunther, Kishimoto, Moulton-Peters, Nelson, Pemberton, Pine, Ramos, Randolph, Showalter, Vasquez, Vice Chair Eisen and Chair Wasserman voting, "YES", no "NO" votes, and no "ABSTAIN" votes.

Chair Wasserman announced: Thank you. Thank you all for the hard work. Let the Report go forth.

**10. Briefing on Enforcement and Compliance Programs.** Chair Wasserman stated: That brings us to Item 10, an update on the BCDC Enforcement and Compliance programs. Our General Counsel Greg Scharff and Compliance staff member John Creech will describe the semi-annual update on both programs.

I do want to recognize up front that the progress we have made on this issue during the past several years has been absolutely outstanding. Some of you will remember this was the subject, significant subject of the state audit. We listened, we heard, we have acted. Thank you.

Greg, are you starting off?

Mr. Scharff answered: I am, thank you, Chair Wasserman. Good afternoon, Chair Wasserman, Commissioners and members of the public.

I am Greg Scharff, General Counsel for BCDC. As most of you know, besides being General Counsel I also oversee Enforcement and Compliance. In Compliance we have John Creech and Tony Daysog. Compliance is a fairly new role, one that never existed before at BCDC. Both John and Tony have really stepped up to define that role and make it very effective. Compliance sits at the intersection of Permitting and Enforcement. It is actually a very complicated role and Tony and John are doing a fantastic job in defining the contours of that role.

After my presentation you will hear an update from John about Compliance. Feel free to ask him any questions you may have about the role of Compliance. In fact, feel free to grill him, he's here.

Turning to Enforcement. As you may know, Enforcement is currently comprised of Matthew Trujillo, who is the Enforcement Manager, and our two new hires, Anne Usher and Isabel Chamberlain, who have both come up to speed very quickly and are doing a great job.

Matthew has also taken on two interns in Enforcement. They are both learning a lot and making excellent contributions to the team. Matthew would normally do this presentation, but he is enjoying a well-deserved vacation.

We also have a new enforcement attorney, Bella Castrodale, who has integrated extremely well with both our Enforcement, Compliance and Legal team. In an amazingly short time Bella has

mastered our enforcement process and is already suggesting improvements. I see Bella in the audience. If you want to just wave so everyone can see you.

I wanted to briefly recap the Enforcement Program goals which are set forth on the slide. Over the last five years, we have been moving towards ensuring that these goals are being met. At this point I can say I believe we are meeting these goals and our Enforcement Program is running smoothly.

So, close coordination. Enforcement is working closely with Compliance. And Compliance, while a separate team, meets at least once a week with the Enforcement team and me, during which we discuss our enforcement matters so that Compliance is aware; and Compliance discusses compliance issues that may become enforcement matters so Enforcement is aware. We also often discuss whether something should be an enforcement or a compliance matter.

Procedures and training materials. Both Compliance and Enforcement have created and are creating detailed procedures and work instructions. This supports our goals of consistency and fairness and has provided a framework from which we can discuss improvements to our process.

Workflow efficiency. I would say Matthew is doing an excellent job focusing on workflow efficiency.

As you can see from this slide, our open cases have reached an all-time low of 53. This is a remarkable achievement. A few years ago, there were hundreds of cases that, frankly, no one was working on. Some of the cases went back 20 years.

We are now officially moving through our backlog and opening new cases and resolving them, either through the compliance process or the enforcement process. This is something I think we should be very proud of as an organization.

Now I am basically happy to take any questions you may have. See if we have any questions.

Chair Wasserman asked: Any questions for Greg from the Commission?

Commissioner Eklund was recognized: Can you help me to understand why there's two separate units, Compliance and Enforcement? I know when I was working with the US Environmental Protection Agency that was one and the same. Because then people could take it all the way through the whole process and it did not seem like there was some duplication of work over time. Help me to understand why are they separate.

Mr. Scharff explained: Sure. They are actually very different roles, and they are probably different than the compliance that you dealt with. Basically, we have an Enforcement team that enforces. We file violation reports, we bring cases before our Enforcement Committee.

Compliance, as I said, sits between that intersection of Permitting and Enforcement. Once we get a permit, a lot of times our permits have several milestones that must be completed over sometimes a five-year period or longer, frankly.

Tony and John make sure that the permits are being followed; and when they are not they actually try and get the permittee back into compliance. If for some reason the permittee is not willing to get into compliance, or John and Tony think there is a real problem out there, we then refer it to Enforcement. And then Enforcement files a violation report, which starts a formal process, at which point we go through that. They are very different in that way.

Commissioner Eklund asked: Is Enforcement primarily composed of lawyers?

Mr. Scharff replied: No.

Commissioner Eklund repeated: No.

Mr. Scharff continued: We have a lead enforcement attorney, Bella, and we have Matthew, and then we have Anne and Isabella, and they basically investigate what is going on. They write up the violation reports. And depending on, as I would say, depending on the severity of the violation and how we determine it internally, either Bella will present to the Enforcement Committee or one of the analysts, or Matthew will present.

Commissioner Eklund asked: So roughly how many permits are we managing?

Mr. Scharff answered: Thousands.

Commissioner Eklund acknowledged: Thousands.

Mr. Scharff expounded: But we obviously do not manage thousands. We would like to, but we have two people, so Tony and John really do not have the bandwidth to do that. So, what we do is we basically try to figure out what are the ones that need to be managed.

Commissioner Eklund further inquired: To what extent does Compliance and Enforcement work with other state and federal agencies?

Mr. Scharff replied: It depends. There has been a lot of coordination with the Water Board, frankly, because oftentimes when someone is violating our permits they are violating the Water Board's as well.

Commissioner Eklund acknowledged: Right.

Mr. Scharff continued: So there has been a lot of coordination there. And there are other agencies, both federal and state, that sometimes we reach out to.

Commissioner Eklund acknowledged: Okay, thank you.

Commissioner Moulton-Peters complimented staff: I would just like to compliment, no question, but Greg, thank you. I did work in compliance, regulatory compliance, and there really is a difference between the two.

I have seen the shift in the last year, and I want to thank you for the work that you and your team have done to just beef up that side of what we do, it is important.

Mr. Scharff replied: Well, thank you very much. But the credit really should go to our Executive Director who had the vision, frankly, to do this, and the vision to go ahead and get the funding for it, which is the key point.

Commissioner Moulton-Peters replied: Thank you, Larry.

Commissioner Nelson stated: Two points. First, I just wanted to congratulate staff and the Enforcement Committee for continuing to make really steady, impressive progress on enforcement issues, and particularly here with regard to the record number of outstanding cases.

I just want to make a suggestion, not for this presentation but for the next one. The progress we have been making since we really focused on the Enforcement Program and the Enforcement Audit is really steady, seen in context.

My recollection is that in past presentations we have sometimes seen bar charts that just showed us trends over time. That would be helpful for us to see in future reports, just so we can look at the progress we have made this year in the context of several years of steady progress in the Enforcement Program that I think makes that effort even more impressive. Thanks.

Mr. Scharff acknowledged: Thank you for that suggestion, Commissioner Nelson, we will definitely incorporate that into the next presentation.

Commissioner Gilmore commented: I did want to compliment staff, because in the short time that the Compliance Program has been up and running, I would say that they work as a well-oiled machine with our Enforcement Program.

I wanted to circle back to Commissioner Eklund's comments about what's the difference, and this is the way I think about it. Compliance does a lot of work with permittees.

Let's say, for instance, they may not be aware that they are out of compliance. Somebody makes a complaint to BCDC because there is no signage, or something has been worn out and needs to be replaced, maintenance issues, things like that. That will go to Compliance and they will work with the permittee, and most times the permittee is willing to do what they are supposed to do.

Sometimes it is a slightly larger infraction, or the permittee is reluctant to get on board. Then it gets referred to Enforcement. And the big difference with Enforcement is that once a formal enforcement complaint is filed, a violation is filed, fines start accruing.

So, if you stay within Compliance, as long as you are talking to the Compliance Officers and making progress, fines do not start accruing. But once you cross that line and you become a formal enforcement violation, then we start enforcing penalties.

And frankly, there are some very significant time limits involved that you have to come into compliance. So, it is a much more formal proceeding and it is a lot more expensive if you go to Enforcement.

Commissioner Pine spoke: Congratulations on the great work and the fantastic progress. Is there any mechanism, or do we report back to the state auditor in any fashion? We have a lot of good news to share.

Chair Wasserman stated: I think that was a softball to our Executive Director, who has his hand up. Thank you.

Executive Director Goldzband fielded this question: I will answer that question, Commissioner Pine. We actually do report back to the state legislature every year.



But candidly, they do not ask the right questions. All they are doing is asking whether we have implemented the recommendations. Whenever we meet with a member of the legislature we always point out the enforcement program, because many times they or their staff will Google BCDC and you still have the Legislative Audit there. So, we make sure that we tell folks what is going on.

And certainly, if you look at the Annual Report you will see that we have some really good information in there. I hope that answers your question. Because I have one more thing to say, but I want to make sure that answered your question.

Chair Wasserman stated: It does, go ahead.

Executive Director Goldzband continued: Two things, actually two things to say. First, I just want, on behalf of staff, to thank Chair Gilmore, Chair of the Enforcement Committee and the members of the Enforcement Committee, because they do really hard work. It is no fun sitting up there and wading through everything we have to give them to make sure that they can make decisions based on all the appropriate information, much less actually fine violators, so they deserve credit as well.

Now one more thing. I do not want to burst anybody's bubble and I do not want to kill a sale. Matthew and the gang have done yeoman's work going from, I do not know, I am looking at Chair Gilmore, 350 open cases, 330 open cases, something like that many years ago.

Commissioner Gilmore replied: About 270, 296 in my mind, but Greg might remember better than I do.

Executive Director Goldzband stated: It was in the hundreds, and it is now down to the fifties.

Unfortunately, in some cases if not most cases, there is a direct inverse relationship between the number of cases going down and the difficulty to resolve the remaining cases. We have made sure that there is a portfolio of cases that people work on so that they have not just shoved the hard cases back. Gosh knows they have worked really hard on them we have resolved a lot of them.

But there are an awful lot of really hard, rather old cases left. Nothing from, I think, the 20th century, thankfully, but stuff that is old. We will see that as we report back semi-annually, and I think probably Greg, we should remind Matthew to concentrate on that as well.

Commissioner Moulton-Peters was recognized: I cannot resist commenting after Director Goldzband that the hardest cases are always the ones that are left. The Enforcement Committee heard from Richardson Bay Regional Authority on our anchor outs and the hardest ones are always last. Thank you to Chair Gilmore and the whole Committee for sticking with us while we get to the last cases.

Vice Chair Eisen spoke: Others have alluded to this, but one of the really important things that goes on is, and Greg mentioned that Enforcement meets with Compliance once a week, is this iterative process between Permitting and Compliance and Enforcement. Because all of those, those are not siloed entities. They are learning from each other. So, we learn a lot in the enforcement about what goes wrong with a permit or with compliance that leads to an enforcement situation, and that helps in the drafting and the creation of permits and amending that process to make it more efficient.

It is really a kudo to everybody who is heading up those different entities that they are communicating regularly with each other so that all of the processes are improved in that process. Good work, everyone.

Chair Wasserman continued: Go ahead, John.

Mr. Creech presented the following: Thank you very much for all those kind words. Good afternoon, Commissioners. I am John Creech. I am a Compliance Officer on BCDC staff along with Tony Daysog. I am here today to continue talking about Item 10, our Compliance Program.

Here is an overview of our agenda for this briefing. I will be discussing a few high level themes, a bit of background on the Compliance Program, and I will do my best to iterate how the Compliance Program works in practice.

In 2019 an audit of BCDC's Enforcement Program resulted in the formation of the Compliance Team. That audit mentioned the first quote, which defined its vision of the program as "A systematic method of ensuring compliance with permit conditions, to lessen risks that permit violations go undetected."

Another way to think about the program is represented by the second quote, which indicates that the Compliance Team takes over after a new permit is issued, some sort of formal enforcement resolution is reached, or a report is submitted.

The point here is that prior to the implementation of our unit, permits would get issued, BCDC would address compliance or enforcement issues in a reactive manner, mostly when we would field inquiries from the public about permit violations. So now when BCDC issues a permit, the Compliance Team acts as a liaison or project manager to monitor deliverables required by the permit orders, agreements, et cetera.

One important finding in that 2019 audit was the belief that the Commission could prevent potential violations using the Compliance Program. The audit confirmed that 50% of violations were related to non-compliance with permits, such as failing to provide requisite reporting, committing paper violations including failure to submit legal instruments, et cetera, and failing to provide the requisite public access, among other things.

BCDC was able to get the ball rolling on the Compliance Program at the end of 2022 when Tony and I were hired as compliance officers. The program began in earnest, though in January of 2023 and we have been busy ever since.

In that time, we have helped update our website and are working on finalizing our internal procedures and protocols. When the internal procedures are finalized, we will have memorialized on paper the way in which Permitting Design and Enforcement interacts with the Compliance Program.

Here is a list of a few specific examples and categories of compliance work. We handle settlements or settlement agreements once they are issued, new permit compliance, the processing of submitted reports, and we do our best to return non-compliant permittees to compliance with applicable laws, policies, regulations and permit conditions.

Prior to beginning work as a compliance officer, I was an Enforcement Analyst on Priscilla's team. With this enforcement experience, I tend to handle the lion's share of resolved enforcement cases including settlement agreements, cease and desist orders and instances in which BCDC has been able to get creative to work with different parties to avoid enforcement actions.

An example of this was the Oyster Point Marina compliance matter. A year ago, September 7, 2023, I presented to this Commission about how BCDC was able to get creative with the city of South San Francisco and displace marina users to avoid an enforcement action. In that example, Oyster Cove Marina was closed suddenly, and the marina users were to be evicted with nowhere safe to go and store their boats. Some of these individuals were live-aboards and were to lose their safe place to live.

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The adjacent marina, Oyster Point Marina, had room for the displaced mariners, but accepting that number of that many live-aboards in their Marina would put them over the 10% limit set by their permit and the Bay Plan. In order to resolve this issue, the city of South San Francisco successfully entered into an agreement with us, BCDC, to stay any the enforcement proceedings to help those displaced mariners find permanent alternatives for storing their boats and finding live-aboard berths. This agreement provided the city of South San Francisco a year to reach compliance with the applicable regulations, including the live-aboard limits, and required certain milestones to be met.

It was the job of the Compliance Team to track these required deliverables and ensure that the City stayed on track to meet the year deadline. It was the Compliance Team's first major action, and we are pleased to report that it was successful.

An example of a settlement agreement the Compliance Team tracked was the resolution of BCDC Enforcement Case ER21.045.00. In this instance the Respondent had a specified timeline to remove an unauthorized staircase, otherwise he agreed to be subjected to penalties of \$100 per day. I tracked this project and his deadlines, and I am pleased to report that he provided the requisite certification that he had removed the unauthorized fill from our jurisdiction before the deadline.

Here I will discuss an example of permit implementation. Amendment 1 to BCDC Permit M1982.113.01 was issued in December of 2022. This permit involved the redevelopment of an office campus whose five-story R&D buildings were mostly outside of our shoreline band jurisdiction but had public access requirements such as pathways and green areas that would be significantly upgraded and expanded by approximately 19,000 square feet.

In this instance, the Compliance Team got notice of a new permit being issued. We created a checklist of deliverables corresponding to the special conditions in the permit. And for those deliverables that had specific deadlines and due dates we created reminders to inform us of when they were coming up. And so, with that information we do our best to maintain positive communication with permittees to remind them of due dates before they pass in attempt to prevent any enforcement actions.

Many permittees are responsible for submitting various regular reports such as annual reports, pre-construction reports, post-construction reports, habitat mitigation reports, monitoring reports, proposed maintenance reports, special event reports, the list goes on and on.

We receive, file, review, and in some instances, we are responsible for their approval, conditional approval, or denial.

Some submitted reports, though, require a specific skill set and training to respond comprehensively. In these instances, we will act as liaison or project manager to collaborate with our colleagues to ensure that a comprehensive, complete response is returned. In order to fully review these reports, we must first review and understand the associated permit and its conditions, and we also verify that the permittee does not have any other outstanding deliverables. By doing this we are able to include in the response letter a section where we remind them of any deliverables that may be out of date or late, remind them to submit them, and in doing so, again, try and avoid enforcement actions.

As we work to continue to develop and get the Compliance Program up and running, we are always seeking to implement programmatic improvements. We are currently finalizing our procedures for internal use. A draft has been circulated internally for comment and we hope that it is finalized soon.

We have also identified a need for an internal database that can be utilized across departments at BCDC for internal project and record management to improve workflow and efficiency.

That is it. So thank you very much for bearing with me. I will be happy to answer any questions.

Chair Wasserman continued: Now from the public, please.

Thank you, John.

Bruce Beyaert commented: Chair Wasserman, Members of the Commission. My name is Bruce Beyaert, I am the Chair of TRAC, the Trails for Richmond Action Committee.

Back in October 2017, BCDC sent a notice of violation to Joe and Heidi Shekou requiring an after-the-fact permit for solar panels and fencing installed without a permit on the northern shoreline of Richmond. The issue here was failure to provide public access in the terms of closing the gap in the San Francisco Bay Trail.

For more than six years the Shekous failed to submit a complete permit application, and that resulted in your Enforcement Committee acting on April 11 to vote to recommend that you issue, the Commission issue a Cease and Desist Civil Penalty Order requiring a permit application by June 30.

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June 30 has come and gone. Six months have passed since the Enforcement Committee recommended that you approve an Enforcement Cease and Desist Order.

My question is, why hasn't this been brought to the Commission, with the Commission authorizing the Cease and Desist Order for public access requirement closing a gap in the Bay Trail. We have been waiting more than seven years for. Thank you for your time.

Mr. Scharff responded: I do not normally respond to public comments because it is not really appropriate, but I will do it for the Commission. Where we are is the Shekous have actually submitted their permit, and they have received their permit. So, all of the enforcement stuff has been resolved with the exception, I believe, of paying their fine, which I believe they are in the process of doing. I am not quite sure. But I actually expect that to be wrapped up really quickly. They have done everything they are supposed to do in terms of having received a permit from BCDC, which was the important part, and they are now in compliance.

Executive Director Goldzband stated: Chair Wasserman, can I take just two seconds, please, to add one thing to John's presentation?

Chair Wasserman answered: Yes.

Executive Director Goldzband continued: As much as I am basking in the glow of what Greg said giving me credit for the compliance, I need to also very much give credit to the state's Department of Finance. Because you will remember that we asked the State Department of Finance to perform a mission-based review on our Enforcement Program, which they did to with great success. And their first recommendation had planned to be, form a Compliance Unit. This happened literally just as we were moving through the LAO Audit recommendations and starting things.

And then the pandemic hit, which is why we never received a written report from the Department of Finance. But we knew that they would support us if we asked for compliance officers, which we did the next year, and that is how we got John and Tony's positions. So, I just wanted to give credit to the Department of Finance as well. Thank you.

Chair Wasserman continued: Thank you.

I want to return to Greg's last comment. This is a question, not intended to be a pointed one. When we are dealing with enforcement matters, generally speaking, they are public and so the results of them are public. There may be some enforcement matters that get resolved at an

early stage before they really become public. So, both as to those and to compliance matters which have been caught before it really goes to enforcement but there are people who are concerned about it in the public, like the public speaker here, is there any process of informing the public when things are resolved?

Mr. Scharff opined: I do not think we really have a robust policy on that, to be honest. If people ask, we try and respond and tell them where we are.

Sometimes they ask during sensitive negotiations, frankly, where we are trying to resolve and it is too early to tell them. So, I think there could be some frustrations on the public's part.

I think we could probably do a better job on some of that. I frankly mention that because Bella was just pointing that out to me, that we could do a better job on that. I took what she said to heart when we were talking about how to do a better job on that.

Chair Wasserman acknowledged: Thank you. I think that is worth some attention. Certainly, the sensitivity of negotiations and the timing is a separate issue. But it seems to me we ought to have some process if people have contacted us to let them know what is going on. Thank you.

Commissioner Nelson commented: As in the case of Enforcement, congratulations to staff. It is great that we have stood up and are implementing a new Compliance Program. But I do have a question.

In the case of Enforcement, it is easy to track progress, and we have got numbers of outstanding cases, fines, blah, blah, pretty straightforward metrics. It is less obvious to me what the metrics are for tracking how we are doing. We have got a brand-new program we want to track how it is doing. Can staff help us with a sense of the metrics or other ways for us to track our new Compliance Program and make sure that we are improving it over time?

Mr. Scharff noted: I will say that Commissioner Gilmore asked that exact same question, I believe, at an Enforcement meeting and we have been having some discussions about the best way to do that. I am glad you said it is not obvious, because it was not obvious to me what the metrics are. In Enforcement it is really easy for us. So, me, John and Tony have been talking about it. I do not think we have a solution just yet, but I am hoping we will have something for Chair Gilmore and the Enforcement Committee fairly shortly so we could start tracking that. But it is a complicated measure.

Because you have got to remember, John touches tons of stuff. We could make up metrics, frankly, for you, that says, Compliance looked at 500 things and brought 300 people into compliance. That is not really that substantive. It might be a single call that says, fix a sign. Or John might be spending hours upon hours dealing with some settlement agreement, or frankly, some person who really just does not get it. So, I do not think that captures the depth of what people do, so that is why we are struggling with it.

Commissioner Nelson continued: Yes. Over time we might see a reduction in enforcement cases filed, and that obviously we hope is related to compliance. That is going to take a while to hit the ground, and it is kind of an indirect measure, so I look forward to the results of that conversation. Thanks.

Mr. Scharff added: Commissioner Nelson, I actually do not think it will. I think the answer is, there are so many violations out there on the Bay that we do not even get to, or do not know about. And what it does is it frees up time for us to go out after other ones and keep more people in compliance. I am not sure we will actually ever run out of cases. (Group laughter) It amazes me how much stuff in the Bay. Frankly, I do not report them, but I go jogging along the Bay Trail and I am like, I wonder what that is doing there. But if I did that every time, I would be filing cases every day. It does not seem appropriate for my job.

Chair Wasserman stated: As Larry will note, I frequently do that as I drive across the Bay Bridge.

Any other questions or comments?

Commissioner Eklund commented: I just looked at some of the suggestions that were made in the Audit. Have we had a presentation recently, because I am fairly new, I have been here maybe a year or two years, on what the Audit said and how we have dealt with it? If we have dealt with it?

For example, they suggested that we develop a penalty calculation worksheet and some of the other suggestions. Have we done an update for the Commission about the State Audit and what we have done so far? I am curious.

Executive Director Goldzband interjected: Can I answer that question?

Chair Wasserman replied: Yes.



Executive Director Goldzband noted: After about the first two years after the Audit, so during the pandemic, we started sending the report back to the Legislative Auditor in the same way we always do, which is, and I am sort of making these numbers up, but they are pretty darn close. Of the 21 recommendations by the Audit, BCDC has totally completed 19 of them and we are not doing the other 2. And of the 19, we have done them our way, all of which satisfies everything you have ever asked.

Commissioner Eklund acknowledged: Okay, good.

Executive Director Goldzband added: So, I am more than happy, Commissioner Eklund, to get you a copy of the most recent letter that says that. But because of the Audit, and candidly more important, because of the two great staffers we had at the beginning of the Enforcement Program, Priscilla and Karen, combined with Department of Finance, we got all that done within a couple years.

Commissioner Eklund stated: That is great. I would love to see a copy of that, Larry.

Executive Director Goldzband replied: You've got it.

Commissioner Eklund acknowledged: Thank you very much.

Chair Wasserman asked: Any other questions from Commissioners?

No. That concludes this item. There is no action. Thank you very much for the efforts and the progress, keep at it.

# **11. Briefing on Environmental Justice Advisors Program Organizational Development**

**Contract.** That brings us to Item 11, which is a briefing from Phoenix Armenta, our Senior Manager for Climate Equity and Community Engagement, on the results of the organizational development assessment of the Environmental Justice Advisors Program. We had requested this analysis to be conducted by MIG and Benchmarq Consulting last year. Phoenix, please present the findings.

Senior Manager for Climate Equity and Community Engagement Armenta presented the following: Thank you, Chair Wasserman. Good afternoon, Commissioners. I am here today to brief you on the final report of organizational development assessment of the EJ Advisors Program conducted by Benchmarq consulting and MIG.

The EJ Advisors Program began in 2021 in response to the development of BCDC's EJ and Social Equity Policies. BCDC has six Advisors whose role is to help us implement the EJ and Social Equity Policies into our work.

In 2023 the EJ Advisors saw the completion of two years of their program.

At the same time, we experienced some difficulties when two Advisors and an Alternate resigned, citing some issues with the program.

BCDC saw this as the perfect opportunity to do an assessment of the program, so we put out an RFP for an Organizational Development Consultant.

MIG and Benchmarq Consulting won the contract and started conducting their assessment in November 2023. They wrapped up their assessment in June 2024 and this presentation is a briefing on their final report.

First, I am going to go over the process MIG used to assess the EJ Advisors.

The scope of their assessment included:

Evaluating the EJ Advisors Program two years in.

Co-developing and facilitating an inclusive organizational development process.

Helping to clarify the roles and responsibilities of the EJ Advisors, enabling us all to work more effectively towards shared goals.

Developing recommendations to strengthen relationships among EJ Advisors, BCDC staff and Commissioners and address issues related to DEI and power balances.

And recommending how best to move the program forward, enabling us all to work more effectively towards shared goals.

They began the assessment process with a document review, which included agency guidance documents, EJ Advisors foundational documents, EJ and Permitting materials, and other recent documents related to the EJ Advisors areas of focus.

After the document review, they entered into a series of meetings, focus groups and workshops with the EJ Advisors and relevant staff. This included ten meetings with the EJ Program staff

and senior staff, five focus groups with BCDC staff members, two virtual workshops with the EJ Advisors, and a culminating in-person workshop with the EJ Advisors and BCDC staff.

Based on their research, MIG provided us with the following findings on the EJ Program.

First, MIG found the EJ Advisors Program already possessed several key elements of success, including having skilled, dedicated EJ Program staff and a full group of six EJ Advisors that bring a wealth of experience, relationships and lived experience.

In addition, there is buy-in from staff and agency leadership on the need to improve ways of working so that EJ is integrated throughout BCDC's work.

MIG noted that in their first two years the EJ Advisors put together a charter, provided input on a CBO directory, and worked on planning and programmatic elements.

Ultimately, they felt that everyone has learned lessons from the launch of this program, the first of its kind in the nation among coastal management agencies.

MIG found that early on BCDC did not want to be prescriptive on how the EJ Advisors would be structured, but this led to a lack of clarity about the group's purpose and process. While well intentioned, not wanting to be too heavy-handed and top down paved the way for the EJ Advisors to not be integrated into the agency, as evidenced by their separate work plans, lack of communication and confusion over rules.

This was exacerbated by the turnover in the EJ Program staff and the EJ Advisors group, which impeded progress over the last year. Three of the original EJ Advisors left under very challenging circumstances that took a lot of repair to move past.

It is also challenging that the EJ Advisors all have full-time jobs, and they only meet once a month, nearly always virtually. It is hard to sustain momentum with these conditions, which is part of why in-person gatherings are so valuable.

One of the challenges was that staff and EJ Advisors have differing cultural and philosophical frameworks from which they operate.

One cultural difference is that there is relatively little racial diversity amongst agency staff and leadership and limited lived experience in frontline communities.

The philosophical differences are based on the fact that the EJ Advisors work through the framework of environmental justice, which has certain norms, languages and assumptions.

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They have a certain mindset rooted in lived experience of environmental racism and their work as community organizers and advocates, as well as their science, policy and planning backgrounds. This is a good thing. BCDC can benefit from understanding how decisions made in this building impact real people's lives.

By contrast, many agency staff come from a technical background, whether planning, engineering, law or science. The agency has its own norms, language and assumptions. EJ Program staff turnover and capacity limitations, and a lack of knowledge among most BCDC staff of the EJ framework, has put the onus on the EJ Advisors to bridge this gap. That is unrealistic given their role as part-time advisors, their low compensation relative to the staff, and the equity implications of it.

The EJ Advisors are savvy and know how to code-switch and operate in bureaucratic environments. But more can be done from the staff/agency side to learn about EJ, not just issues and laws, but the language, way of thinking and way of working. This will take time and resources. It cannot be something that staff are expected to do on their own.

By the same token, the EJ Advisors will need to continue being patient. Systems change is slow at times and requires leaders who are willing to put in the work.

MIG also found that communication gaps led to a misalignment of understanding and eroded trust. Some of these issues are an issue of language differences. MIG heard from staff that there is apprehension about saying the wrong thing and using triggering language when talking to the EJ Advisors. They heard from the EJ Advisors that staff sometimes used jargon and legal language in ways that feel exclusionary. They note that the EJ Program staff can help translate and bridge these gaps, but it cannot be all on them.

BCDC is unique in many ways. It is not like city or county agencies, and it is not like many other state agencies. Its work touches elements of EJ, but it does not have jurisdiction or control over many EJ issues that are top of mind for communities. It can be hard for communities or the Advisors to hear, that is not our issue, go talk to XYZ Agency. But this is the reality of our regional governance.

We can all have grace with one another as we learn more about what BCDC does and does not do. Frustrating as it may be to have to point this out again and again, it is good practice for community and stakeholder engagement.

On a structural level, MIG also found that the legal/ regulatory nature of BCDC can mean that staff and leadership are hesitant to share ideas externally until they have been fully thought out and vetted by lawyers. This is due, no doubt, to the very real risk of litigation, but it also makes it hard to build relationships and trust and to be creative and innovative by hearing viewpoints beyond your own.

Additionally, on a structural level the EJ Advisors are not equal to the DRB and the ECRB. They serve in an advisory capacity rather than an official capacity.

Staff have some creative ideas about how to better integrate the EJ Advisors throughout the EJ Advisors' work. But it is worth mentioning that the message that is conveyed is that the EJ Advisors do not offer the same level of technical expertise as the DRB and ECRB members do, or perhaps that an environmental justice review is not as valued as design review and engineering review.

Community engagement is an area where the agency can improve, and the EJ Advisors can help. Everyone agrees on this. Staff expressed a desire for more resources, tools and best practices when it comes to community engagement. This too will require the agency to invest, but it is a worthwhile investment.

The EJ Advisors can help troubleshoot community engagement issues, recommend local organizations and community leaders for staff to connect with and vet materials for community friendliness. But all of this requires a clear process, so it is not a series of one-off requests, and it does not overtax the EJ Advisors' capacity.

With the addition of two EJ Program Managers and a NOAA Fellow the EJ Program has more capacity than before, but the EJ Program staff are pulled in different directions.

The next one to two years will be critical to get the program to where we want it to be. That may mean the EJ Program Managers stepping back on some other things, increasing staffing for the EJ Program beyond the Fellow, and trying out some new ways of working.

MIG particularly saw needs around onboarding new EJ Advisors, facilitating relationship building between EJ Advisors, staff and Commissioners, creating an annual work plan with both staff and EJ Advisors, establishing accountability metrics, raising additional funds to augment EJ Advisor stipends, and more.

Some of this is up to the EJ Program staff but we do not want to reinforce silos. Everyone has a role to play in integrating EJ into your work and exploring how the EJ Advisors can be a resource.

MIG had both near-term and long-term recommendations on how we should move forward with the EJ Advisors. First, I am going to go over the near-term recommendations.

MIG suggested we start to formalize a leadership structure within the EJ Advisors group, which we have begun during our EJ Advisors meetings.

They suggested that we work together to create an annual work plan that outlines the roles for EJ Advisors and staff and defines how we work together, seeking out points of alignment in staff's work and the work of the EJ Advisors.

We should seek out funding for the EJ Advisors to continue the program and to compensate them for more robust participation in BCDC's projects.

MIG also recommended that we invite the EJ Advisors to train BCDC staff on environmental justice principles and practices and that we host another in-person meeting for staff and EJ Advisors before the end of the year.

As I will show on a later slide, we have already begun working on several of these recommendations.

MIG also offered us some long-term recommendations for improving the EJ Advisor Program, which I will review now.

We need to enhance our communication channels and move away from an us versus them narrative by:

Recognizing that environmental justice is a shared value and goal among staff and the EJ Advisors, even though there are different ways of understanding and pursuing it.

We should provide training to both the staff and the EJ Advisors on topics like the EJ principles, conflict resolution, othering and belonging, and cross-cultural communication.

MIG suggested that we host an annual strategy, networking or social event in-person to help build relationships among staff and EJ Advisors.

And we should explore opportunities for peer learning groups to facilitate knowledge sharing, skill development and collaboration.

Finally, they suggested that we bring in trusted mediators to address issues as they come up.

We can enhance the environmental justice review of active permits by:

Collaboratively developing a better definition of what meaningful community engagement looks like.

And exploring ways to formalize an EJ review as part of the pre-application process.

We can also take steps to analyze the environmental impacts of permits at the end of the permitting process.

Finally, we should engage in strategic planning for an evolving legal landscape and explore plan amendments to incorporating environmental justice.

MIG also suggested that we focus on enhancing community engagement by:

Clearly defining what meaningful community engagement looks like for permit applicants and identifying metrics to evaluate how meaningful an applicant's engagement has been.

We should also outline the necessary resources and timeline for permit applicants to work with CBOs and recommend CBOs in specific communities for applicants to engage with.

EJ Advisors should review materials for community accessibility and cultural relevance.

And we should invite staff to community meetings as a learning opportunity.

MIG's final recommendation is that BCDC work to foster a culture of collaboration, inclusivity and equity within the BCDC.

We can do this by prioritizing the meaningful participation and representation of diverse voices in our work.

They also suggested that we create white papers and legal documents to illuminate the EJ impacts of our work and originate new projects with staff and EJ Advisor participation.

As we have done now, we should continue to conduct regular program evaluations and impact assessments to measure progress and demonstrate accountability.

And we should see each other as allies, seeking to build a comprehensive inside-outside strategy among staff and EJ Advisors to accomplish our shared goals.

Having reviewed the findings I would like to go over what is next for the EJ Advisors Program.

Since the report came out in June, we have made some really significant strides towards accomplishing the near-term recommendations. They include:

Having the EJ Advisors update their governance documents and deciding their leadership structure, which we plan to finalize in the next EJ Advisor meeting.

We also met with the EJ Advisors and senior staff to collaborate and coordinate on the EJ Advisors Work Plan, which we plan to present at the next EJ Commissioner Working Group this month.

At the beginning of August, we brought on a NOAA Fellow who will be working with the EJ Advisors to develop a Meaningful Community Engagement Guidance document, fulfilling the recommendation that we focus on engagement.

And the EJ Advisors are currently planning a Toxic Tour for the Commissioners where they will share their perspective on the work that BCDC is doing.

In all, the organizational development assessment has helped orient us in a new direction, strengthening our relationship with the EJ Advisors and providing a more solid foundation for the program to move forward.

The work is ongoing, but this process has helped us to identify the direction we are taking it in for us to make the EJ Advisors Program a stronger and more impactful program. We anticipate great things will be coming in the next stage of the program. Thank you, and I am happy to answer any questions.

Chair Wasserman asked: Do we have any questions from the public?

(No members of the public addressed the Commission.)

Chair Wasserman continued: Commissioners?

Commissioner John-Baptiste was recognized: I wanted to just say thank you for this presentation. I know that there were many, many organizations, particularly after the summer of 2020, that made a commitment to equity, both public and private organizations that made a



commitment to equity. And made some steps forward, tried some things, and found out that it was actually challenging to change the behaviors and the practices that have existed for a long time. And in some cases what that has resulted in is sort of a reversion to the status quo that existed prior.

I really appreciated the analysis, the report, your presentation, because I think that if we are actually going to achieve what are critically important goals, we have to approach it with intentionality and with perseverance and also a willingness to be really candid about what is happening, why it is happening, and how we move forward to adjust, and so I just congratulate you for leading this effort.

I appreciated the recommendations as well. I really liked the idea of a Toxic Tour for Commissioners. I noted that there was a training recommended for staff on EJ principles and practices. I think given that this is a governing body, a decision-making body, it might be a good idea for that kind of training to be offered to Commissioners as well; something to think about.

But again, just congratulations for staying in what can be a challenging process, but an incredibly important process if we are actually going to get where we are trying to go. Thank you.

Ms. Armenta acknowledged: Thank you.

Commissioner Gioia commented: First, thanks for the presentation and the recommendations. I wanted to offer some suggestions and thoughts, especially coming from and living in and representing an EJ community for over 30 years in Richmond.

I think there were some comments about people have other jobs, which is true, and the turnover. I think it is important to look at the work that is happening in another regional agency that I serve on, the Bay Area Air Quality Management District. I think as a regional agency it is probably doing more than any other in terms of incorporating EJ work in a meaningful and impactful way.

It is not through the staff, and it does involve development of greater infrastructure within the organization, but also it has a broad now Community Advisory Council. I am not sure if it is 15 members, something around there.

I do think having a limited number of EJ Advisors puts a lot of time pressure on a small number of people. Having a much broader, more inclusive Community Advisory Council who receive

stipends appropriately for their time, or paid for their time. Just like our staff is paid to work, those who give their time from the community should be paid. And having a larger, more inclusive number from around the Bay Area.

Because ultimately it is about hearing from individuals in those communities and not having things being filtered through others but hearing directly.

And the other state agency, of course, the California Air Resources Board, has an Environmental Justice Advisory Commission.

But I would suggest that BCDC engage, and I know that discussions occurred somewhat, but look closer at the infrastructure that has developed at the Air District, which has taken time, and the model that happens there, because we are a regional agency just like the Air District.

I have to say, air quality issues attract, I think, more EJ commitment and involvement than the Bay does, but I think the air quality impacts a lot of people, whether they live near the Bay or not, so, there is a lot of interest in that issue.

Again, I agree with the recommendations, but I really think we should be going further about expanding and maybe changing this EJ Advisors into more of a Community Advisory Council with a larger number. Which then doesn't put, I want to emphasize, does not put as much pressure on a small number of people to do all the work. And then to look at how the Air District has built up the staff infrastructure to do work as well.

I am not suggesting we have as large of a staff. Air quality work and that work is, I think, broader in scope than what BCDC is doing. So those would be some of my suggestions as we move forward.

Commissioner Randolph addressed specificity issues: I would find it very valuable to have more specificity about exactly what we are talking about. There's a lot of resources and processes being put into the topic of environmental justice, lots of thought going into it.

But when I hear this, I am hearing a very broad concept, one that we can all embrace and all support, I think. But what I am not hearing is enough specificity about what exactly are we talking about? What precise cases is this coming up in? Are there specific projects, specific policy discussions going on?

So, for example, if we could hear at some point case studies like, here was a particular problem or a particular project, here was who was being affected, maybe a geographical community, or

certain people in the community, here is how they were represented, or their interests were represented by the Environmental Justice Advisors. What the process was and then what outcome did that produce? How did that affect a policy? How did that affect a project?

Because it still feels to me, years into this process, that we are all supportive of environmental justice, but I am struggling to understand specifically on a case-by-case study, what it means by way of example. And if we could get more on that I think it would be helpful for us to wrap ourselves into this more deeply.

Commissioner Eklund stated: I share the thoughts of the previous Commissioner. I am confused about are the EJ Advisors providing advice to whoever is doing that particular outreach, compliance or enforcement, whatever, with community members to make sure that all voices are being heard? I am not sure I really understand what the EJ Advisors do.

Ms. Armenta fielded this question: They advise on a number of things related to what BCDC is doing. Some examples are, we have our Racial Equity Action Plan, they helped us with the beginning stages of that. They are sitting on the Regional Shoreline Adaptation Plan and helping to advise us on how to incorporate equity into that plan, as well as the Bay Adapt Implementation Coordinating Committee. They have limited interactions with our permitting stuff, but they help with community engagement.

If there is a permit that shows up in the community they will help us with outreach to the community, help us get connected to other community-based organizations, and other issues as they come forward.

Commissioner Eklund continued: So then the EJ Advisors talk to whoever is doing the permit within BCDC and make suggestions on how to do more effective outreach to make sure that all voices are being heard?

Ms. Armenta replied: Yes.

Commissioner Eklund acknowledged: Okay, great. And the issues that the EJ Advisors do not feel like they have the authority to, if the suggestions are not being taken, that they may not have the authority to help influence it more.

Ms. Armenta stated: That has been a concern, particularly around permits. There is a question about when and where it is appropriate for them to make comments and come in to advise on permits. Because we have that as a process it is difficult to have them come in early on. They

have had experience before where they have provided comments as it came before the Commission.

Commissioner Eklund acknowledged: Okay, great, that helps me to understand more about what the issues are. Really appreciate your work, very much so.

Vice Chair Eisen was recognized: Commissioner John-Baptiste said a lot of the things that I have been thinking too. It is really hard work, and it is the kind of work that one might easily give up on. But it is really important work, and it does not lend itself to the kind of specificity that we like to see in our lives. You know, it is amorphous, it is hard to get your arms around it.

But one of the things that you mentioned as a possible suggestion was focusing on enhancing community engagement. To me that seems something really tangible that we could obviously use help on. Just answering the question I asked earlier about how many people showed up for that meeting and you said three, the last meeting. Community engagement and communication in those community engagement meetings is exactly what we are trying to accomplish and exactly where we could use some help.

And I understand the frustration that the EJ Advisors have on not really understanding what their role is other than, make us better.

And I also understand how difficult it is when you have such a complicated agency, and you are supposed to be making recommendations to make it better when you do not really understand exactly what they do.

Focusing on enhancing community engagement seemed to me that is something tangible that we could really move forward on. Other things as well, but that struck me as one of the best recommendations and I appreciate you providing those to us. Thank you.

Ms. Armenta added: Thank you. Yes, we are hoping with the NOAA Fellow that we will actually make our community engagement much more robust. They are going to be focused primarily on that.

Commissioner Gioia opined: I want to say I appreciate this discussion, but this work is not amorphous, it is really clear. This is about listening to, about having lived experience from communities around the Bay that are impacted by decisions, have a meaningful voice into the development of policy and our decisions. The Air District is much further down the road, had a

lot of these same questions when it started. It is about the culture of our decision-making, the process of our decision-making.

The comment that this is a hard agency to understand. It is not any harder to understand than the Air District's complicated work. People get it. I do not think we should underestimate the intelligence of the community and what they feel about the Bay and what they feel about input into decisions.

I think maybe the biggest sort of area we need to improve is having four EJ Advisors implies that four people can advise our environmental justice work. That does not make any sense. It really has to be a broad base of input, and others have talked about this, of community engagement. Of acting in a way that really results in greater community engagement from the impacted frontline communities around the Bay, of which there are many. And how do we incorporate more of those voices, those individuals, into our process?

I think maybe if we turn back the clock, but we have learned a lot. Instead of having a few EJ Advisors we have a broader base, like the Air District has a larger number and incorporates in other ways. I think that is where we need to be moving and expanding that. And we could establish that kind of advisory group and hear directly from them, and they will have experience from different parts of the Bay.

That would be my suggestion, having gone through this at the Air District and other agencies. We established an Office of Racial Equity and Social Justice in Contra Costa after 18 months of a community planning process involving thousands of people giving input. There are enough people who want to give input here. We just need to figure out how to engage them into our process. We have not engaged enough people.

Executive Director Goldzband commented: A few things just to put some finer points on as well as maybe a little bit of sauce on top.

With regard to Commissioner Randolph's question, I urge you to look at BCDC's Strategic Plan, Goal 3, Objective 1, because that says specifically, we need to find out what BCDC has done in the past and how we have done it so that we can learn from the future. It is a lot nicer said than what I just said. And our NOAA Fellow is starting to work through that process.

We want to know, we want to take a look at various permits, various plans, find out what has actually happened. How have they or have they somehow created or somehow instituted or

somehow made worse environmental injustice. Because if we do not know that, we do not know what we have done in the past, we do not really know how to change things in the future.

Second, if you take a look at the work plan that the Environmental Justice Advisors and staff have agreed needs to get done over the next 12 to 18 months, one of the really interesting things that I think is in that plan is helping the Regulatory Program basically meeting the Permitting Program, probably more than anything else. Develop guidance for our permit applicants for how to deal with, work successfully with our Environmental Justice Bay Plan Amendment and Policies and actually create a checklist that will enable our permit analysts to know and to work to know how well this has been done.

Because you will remember, as Phoenix said just a few hours ago with regard to the Cargill Permit, that the Cargill staff has fulfilled what we think are the EJ principles and the EJ requirements that they have done. We need to create an institutional way for that to be seen by the Commission, which is another thing that you will see over the next 12 to 18 months being developed.

And finally, let me point out that we have 2 people full-time on this, which amounts to 2 out of our basically 50 people, plus everybody else working on it in various ways.

I would love to have more resources. I am not going to get any. But at this point I think that they are doing a tremendous job, not only creating things that need to be seen, but ensuring that the really, really well-done consultant report is going to be implemented.

We will work with you all as Commissioners to inform you as we move forward on the progress we make in that work plan with the EJ Advisors. Happy to answer questions.

Commissioner John-Baptiste announced: I'm sorry, Chair Wasserman. I have to run, so I am trying to interject.

I just wanted to build off the comments from Commissioner Gioia. I think that there is just a really different way of thinking about the practice of an organization when we are trying to move these principles into the center and how we organize.

When we think about community outreach, particularly in a public agency like this, we are seeking to get people to come talk to us about the thing that we are doing, right? The thing that we think matters, the Environmental Assessment for a salt pond operation. That doesn't

matter in most people's day-to-day life actually, what matters is, are my kids healthy? Are we safe? Do I have access to clean water? Is the air clean?

So, as we think about outreach strategies, I would just encourage us to consider rather than sort of placing our agency needs at the center of that design, to consider having conversations with communities about what is it that matters most to you, and then determining in what ways we can contribute to achieving the goals that the community is articulating.

It is just a really different way from how most public organizations have operated, particularly planning and regulatory organizations, and I say that from experience of being in those organizations. Anyway, that is my last two cents on this topic. Thank you.

Chair Wasserman stated: I first want to praise what staff has done, praise what the EJ Advisors have done, and the consultants. I think this report lays out some issues that we need to consider and a framework to deal with them.

There is, I believe, an inherent but predictive tension in approaching this issue in the way that we have, in bringing on these EJ Advisors. And we are not the only organization to have done it this way. It is not the only model. We can consider whether we should use other models. I happen to think there is some real value in this.

But that tension is that we are really inviting some representatives of the impacted communities inside to do a much deeper and more informed critique than you often get in community meetings, which are also an important part of the process. But that tension is they are bringing that outside view, and there is friction with our doing what we need to do as a planning and regulatory agency. It is a productive tension, I believe, but you need to recognize it is there.

I think we have done some really good things in this program, as Phoenix has said previously; and as we know and as pointed out in this study, there were some hiccups in this. We made some mistakes as an agency, as a Commission, staff made some mistakes. There were some communication problems. There was turnover on our staff, which caused a significant problem. Not Phoenix's problem at all, she is doing a good job. But that is part of this process that is ongoing, and I think we need to indeed focus more attention on it.

One of the pieces of the report that has not been talked about very much but is in there is some suggestions about how to get some more resources for the program. Not necessarily for our

agency, but for this program. I will pledge to work with staff and the EJ Advisors to look at those and pursue and see what we can do in terms of increasing the resources for that.

There is also a tension that we are doing it this way because we want some people to really focus on it. We do not have and will not have the resources to have all of these people employed full-time, or even remotely part-time. Indeed, there are some problems and conflicts in even thinking about doing that one.

But we probably do need to figure out some ways to help support the people involved to be able to spend more time. Because part of the issue is, you look at this work plan and it is way more work than these people can reasonably, the current advocates can reasonably be thought to do, given that they have got full-time jobs, they have got lives, and they are doing this on a very part-time basis, appropriately. It is a very complex issue. We are working through it.

We will continue to stumble; that I guarantee. We will also continue to work on it; and I will guarantee that one too. I think the report is very helpful. Doesn't say I agree with everything in it. But I think it is very helpful and I think it gives us a framework to move forward.

Commissioner Kishimoto was recognized: I found this a very painful report to read. I just wanted to share maybe a thought about reframing it in a way. Because basically what we are trying to do is, you know, so much of our world is market-driven, right? That is why we are in the situation we are in. Basically, all the air and water quality and areas that face the floods are less expensive because more secure places cost more, obviously. In a way, the difficulty of this is that the policymakers have to try to make up for the pressure of the market forces. That is why it is hard.

Another way to think about it is that it is not just the EJ or the outsiders, in a way. It is really maybe ask, maybe try to bring it, what can you do to bring this more into the core of BCDC, right, so that it is kind of asking what the minimum standards of safety are, should be for everyone in a way.

So possibly we might consider not calling it just EJ, but really kind of just trying to reframe it as a kind of basic, basic safety standard. Well, I don't know if this is helping at all, but really trying to get it out of race issues, of class, but back to just kind of basic standards.

Chair Wasserman continued: Thank you.



Any other comments or questions? This is not the last time we will be hearing about this; I guarantee that one.

Thank you very much, Phoenix.

Ms. Armenta acknowledged: Thank you.

**12. Adjournment.** There being no further business, upon motion by Commissioner Eklund, seconded by Commissioner Randolph, the Commission meeting was adjourned at 4:05 p.m.