

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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January 11, 2013

TO: All Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653 lgoldzband@bcdc.ca.gov)
Sharon Louie, Director, Administrative & Technology Services (415/352-3638 slouie@bcdc.ca.gov)

SUBJECT: Draft Minutes of December 6, 2012 Commission Meeting

1. **Call to Order.** The meeting was called to order by Chair Wasserman at the Ferry Building, Port of San Francisco Board Room, Second Floor, San Francisco, California at 1:08 p.m.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted and Commissioners Bates (represented by Alternate Butt), Chan (Represented by Alternate Gilmore), Chiu, Gibbs, Gioia, Jordan Hallinan, McGrath, Moy, Nelson (represented by Alternate Ranchod), Pine, Sartipi (represented by Alternate McElhinney), Sears, Spering (represented by Alternate Vasquez), Techel, Vierra, and Ziegler. Assembly representative Feldstein was also present.

Not present were: Association of Bay Area Governments (Addiego & Apodaca), Sonoma County (Brown), Santa Clara County (Cortese), Department of Finance (Finn), U.S. Army Corps of Engineers (Hicks), State Lands Commission (Pemberton) Governor's Appointee (Randolph) and Napa County (Wagenknecht).

3. **Public Comment Period.** Chair Wasserman called for public comment on subjects that were not on the agenda. Comments would be restricted to three minutes per speaker.

Chair Wasserman announced that there were six public speakers wishing to comment on matters that were not on the agenda.

Doctor Jim Stevenson commented: I would like to go on record in opposition of the enforcement case against the city of Benicia and Phil Joy for a cleanup of what was known as the Garske Boatyard from 1958 to 2005.

This historic site has been in operation since at least 1886. I am here today to ask the Commission to grant our request to desist from removing the picturesque barges and equipment from this site until an EIR is completed.

I am aware of many sites that are eliminated because of a disregard for historic value of such locations as this.

I have read BCDC's mission statement that notes that the public now enjoys the views from parks and restaurants around the Bay.



Making San Francisco Bay Better

**BCDC MINUTES
December 6, 2012**

I would like to direct your attention to tab two on our handout. This site is a remnant of Benicia's waterway industries and is a reminder of the industrial center that Benicia once was.

This is an authentic historic location and a working boatyard.

A big concern regarding this property is the environmental effect of years of industrial use by any number of companies.

I ask the Commission to cease action on dismantling the remaining picturesque vessels and equipment and to obtain an environmental impact report (EIR) addressing the historic nature of the site, to look for buried industrial toxins and to consider the risk of erosion of newly exposed areas that would be subject to river and tidal action.

Mr. Greg Davis addressed the Commission: I am a resident of Benicia and I live across the street from the site Dr. Stevenson just spoke about. I am here to speak for many Benicians, among them artists.

We want to save the water scene at this location as it appears now. This is the last working boatyard in Benicia.

This also provides a diverse habitat for wildlife including waterfowl, river otters and many others.

This water scene is fronted by a seated viewing area which is part of the Bay Trail. This seating area was negotiated by BCDC.

This scene is a visual hook to Benicia's industrial past, a connection to the Bay Area. This area will continue to be a part of Benicia being recognized as a destination for heritage tourism.

Benicians are in agreement that the most important thing is to preserve and secure a pollution-free healthy waterfront.

Ms. Sue Wilson spoke: I am a retired business consultant and I used to perform large organizational reviews at large corporations and public entities. I have an MBA and Masters of Business Administration from Saint Mary's College.

I have an undergraduate degree in anthropology and sociology. I was able to go into organizations with an open mind.

Multi-generations of Benicians have lived with the scene we have been talking about today. This site connects with Benicia's rich water industry heritage.

When we learned that a state agency wanted to remove this scene, we asked, why? Upon what evidence was this proposed removal based on?

So far, the answer has been that no studies will be done, not even studies to ensure that the action itself will not cause harm.

We see a difference between isolated cases and this case since the vessels are located in an old boatyard where chemicals were used in the course of business and bad stuff has been removed in previous cleanups.

Lifting these vessels for removal could stir up nasty stuff and we ask that we follow the rule, first, do no harm.

We are concerned that taking out the tidal breaks without first building a seawall will harm the shorelines and the ability of the boatyard to keep functioning.

It seems to me that the Cal Recycle Funding with a 70 day implementation limit is not a good fit for this Benicia action. More time is needed to consider the impacts and to do prudent studies.

It is inappropriate to use funding deadlines that would rush an important decision that could significantly affect the public health and the cultural, economic and educational health of the community.

As such, we ask BCDC to work with us to gather information needed to find a satisfactory way for all.

Mr. James Lee commented: I live in Redwood City. I am here today because we have been working at the city level now for weeks trying to get some sort of compromise or provisions for the folks that live at Pete's Harbor.

A Port Commissioner said that he felt that the live-aboards at Pete's Harbor had an artificial sense of entitlement. A Housing and Human Concerns Commissioner said that the eviction was in line with Redwood City's General Plan.

I am here today to ask you to do what you can to help these people out. It is really hard for the live-aboards to find some place to go; they have no place to go.

The ten percent cap is something that can be lifted or exceeded if operators of harbors and marinas can show that there is a public safety issue at stake.

I think the issue of live-aboards being evicted and having to anchor out on the Bay because they have nowhere to go is a public safety issue.

We think it would be nice to receive an indication from BCDC saying that Pete's Harbor is a local urgency issue and that this would be a valid reason for a marina or harbor owner to be allowed discretion as to whether or not they can exceed their ten percent cap.

Mr. BK Cooper spoke: I am the founder and former owner of Cooper Crane and Rigging. We closed up a year ago because the state of California owed us \$2.4 million for five years. We finally received it this year. We laid off 55 Bay-area employees.

I am here today to speak about 805 South Eliseo. In 2005 our firm took the job to fix an erosion problem on a condominium on the Corte Madera Creek.

We were hired to do a green fix on the foundation of this structure. As a stopgap measure we have installed, under permit, these geo-tubes that look like expanded cardboard.

We were issued a \$30,000 fine by the enforcement group at BCDC. We explained that this was a stopgap measure and the fine was reduced to \$5,100 of which I promised I would pay. The women that own this property don't have the money to pay this fine.

I would like BCDC to consider that these stopgap measures weren't to make a buck but rather to give these gals some comfort until we could finally get our permits. We finally got our permits six years later.

I have a check for the fine amount and I was about to write it out for the Orphan's and Widow's Retirement Fund but I decided I probably shouldn't. (Mr. Cooper handed an envelope containing a check to Executive Director Larry Goldzband.)

Mr. Roman Pearce addressed the Commission: I am a longtime resident of San Francisco. I am a past Commodore of the South Beach Yacht Club and I am here to ask for the possibility for this Commission to take a deeper look at a gap that exists between the public who use California waterways and the shoreline for recreation, travel, water-based businesses and living on the water.

I am requesting that BCDC initiate a process to be more proactive in getting public users of these water lifestyles incorporated into the oversight process for which this body has authority.

Currently there is a disconnect and we need to build a solid gangway that can bridge this gap.

I serve on several CACs in San Francisco for the community hospital and UCSF and in the past I have served on CACs for the Port and they are very effective units to get public input to help the Commissioners and people involved to have a closer tie to the pedestrian.

There is not any good, consistent public access from the waterside to the water anywhere in San Francisco Bay. In urban environments there seems to be a gap of knowledge that there is a great desire for this to happen.

There is economic incentive for people that make their living on the water to want this to happen. Yet, this Board is not aware of all the possibilities that need to be looked at.

I would like to suggest that you make a way for somebody or some group to be able to have more access to you people with the current concerns that we have and the needs that we have for making the San Francisco Bay more usable by the citizens that use the water.

Developers get their way and people by the waterside are not necessarily a cohesive group that can stand up at these meetings. Through CACs you can probably get a better idea of what we need and what your opportunities are and your responsibilities to oversee the beautiful use of the waterways in our San Francisco Bay.

The one horrendous gap that I see in BCDC's work is that if I'm on the water I can't get to the shore. This needs to be looked at more deeply by this group and other groups.

Ms. Brenda Hattery spoke: A previous speaker brought up the issue of anchoring out in the Bay. As a cruiser I am very happy in anchoring out and travelling around the Bay.

I agree that the connection between the water and the land here is really something that needs to be developed. We have often sat out on beautiful anchorages but with difficulty in accessing nearby parks and recreational facilities that we could enjoy because there was no way on public lands to access those nice features that BCDC has worked so hard to put in place.

You'll hear me talk again about making sure that seaworthy vessels are able to anchor in the anchorages of the Bay and able to use the full waterways and that there are programs in place to assist with problem boats that aren't seaworthy so that the Bay is better and safer for all of us that enjoy using the Bay waters.

Chair Wasserman added: When the public raises issues during this part of our session we cannot take action on their commentary because these issues have not been noticed.

We try to keep our responses fairly short because of this. Don't think that because we're not responding we're not hearing you. We are hearing you.

Executive Director Goldzband does have a short response on the Benicia issue.

Executive Director Goldzband addressed the attendees: About 20 years ago BCDC began the enforcement process against a boatyard owner in Benicia which essentially was unsuccessful.

About five years ago, staff began a very cooperative relationship with the city of Benicia and the boatyard owner to remove the debris.

Benicia recognized BCDC's enforcement authority and a lot of the work has been done. BCDC agreed with the city of Benicia that we would help the city find funds to complete the job.

We did find the funds to remove the vessels that are in question. And those funds are from the California Department of Resources Recycling and Recovery known as Cal Recycle.

Last week several individuals approached the city officials of Benicia and opposed the removal of at least a couple of the vessels.

As a result, I asked the mayor specifically whether the City was going to follow through on this cooperative arrangement. And if the City decided not to do so let us know, preferably by this meeting so we could have a discussion about how we would go forth with an alternative plan.

I also did inform the City that absent an agreement to somehow go forward with removing the vessels we would end up having at BCDC to use staff resources to prepare an order that very likely could require the City to remove the vessels on their own given that it seems apparent to all concerned that the former and current boatyard owners don't have the funds to do so.

To the City's credit, Brad McCrea and I received an email on Monday from the City saying that the staff believes, quote, it will be the city's intent to comply with enforcement action and partnership with Cal Recycle, end quote.

We think this is good news. And I want to let the Commission know that we think that we can work quickly and cooperatively with Benicia city staff. But we are still awaiting a response from the City of Benicia with a decision whether it wants to go forward.

So it's the City of Benicia at which this really is being held. We look forward to hearing from city officials about whether they want to continue this cooperative arrangement or whether they have a better idea.

We are open to all the ideas they can come up with knowing that it is our responsibility at BCDC to remove unauthorized stuff.

We appreciate the City of Benicia's response and we appreciate hearing from these people of Benicia.

4. **Approval of Minutes of the November 15, 2012 Meeting.** Chair Wasserman entertained a motion and a second to adopt the minutes of November 15, 2012.

MOTION: Commissioner Vasquez moved, seconded by Commissioner Chiu, to approve the November 15, 2012 Minutes. The motion carried by voice vote with no opposition and four abstentions.

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

a. **Today's meeting.** We have several changes in today's agenda. We will not have the scheduled public hearing and vote on the North Bay Salt Ponds Restoration Project because the applicants have requested that the item be moved to the January meeting. If anybody has signed up to speak on this issue you may speak today since it was noticed. You may also choose to wait until we actually hear the matter. We also will not have a briefing today on the Santa Clara waterfront. We will give Mr. Cortese his chance at the January meeting or in the New Year.

b. **Further Election Results.** In further results from the recent elections, we commend Commissioner and Mayor Techel who was handily re-elected Mayor of Napa. Commissioner Kelly Ferguson was not successful in her bid for re-election to the Menlo City Council.

c. **BCDC Move.** We are still working on the BCDC move. I spoke with the Director of the Department General Services this morning and we will be scheduling some meetings with the DGS staff to see what truly makes sense as well as having further discussions with the Governor's Office over the mandate to put state agencies in state buildings. This may conflict with the sense and rationale of our co-locating with the other regional agencies that we work closely with at the new regional headquarters. We will keep you apprised as the roller coaster moves.

d. **Commission Strategic Plan Working Group.** Our Commissioner working group met with most all of the BCDC staff last week to start the formal work on the strategic plan. We do have a consultant. The Commission working group is Commissioners Halsted, Gioia, Sears, McGrath, Ziegler, Vierra and myself. We had a highly productive discussion of possible BCDC goals and objectives. The Commissioner working group and staff will continue working to prepare proposed goals and objectives that will be the basis of a January 23rd public meeting on the strategic plan. I would like to thank the participating Commissioners and the staff for all their hard work on this worthy endeavor. This will significantly influence and form the work we do over the next several years.

There were two articles in today's Chronicle that are of interest and demonstrate that increasingly what we are about on this Commission is the subject of weekly, if not more often, news stories. One was on Arctic climate changes in glacial pace that talked of the rapidly increasing pace of the reduction in size of glaciers in almost every location. The second one was entitled, Time to Think About Golden Gate Locks, with the subtitle, Goldilocks. This was from an op-ed type piece arguing that we need to start thinking about building locks at the gate under the Golden Gate Bridge in order to address rising sea level. I would point out that the Commission has been thinking creatively and had a design competition for a range of ways to deal with rising sea level and a number of them included locks. This is still available on our website and I recommend it to you.

e. **Next BCDC Meeting.** We will not need to hold a meeting on December 20th or on January 3rd. Our next regularly scheduled meeting will be held on January 17th. At that meeting, which will be held at the Metro Center in Oakland, we will take up the following matters:

(1) We will take up the proposed amendments to the Solano County component of the Suisun Marsh Local Protection Program that is to be the subject of the public hearing today. We will not be voting on it today. We will vote on it in January.

(2) We will consider the North Bay Salt Pond Restoration Project.

(3) We will have a briefing from Commissioner Barry Nelson and other participants in the Bay Delta Conservation Plan process, specifically about its possible implications for the Bay and BCDC.

(4) And, we will receive a slightly more detailed update from staff regarding the BCDC Strategic Plan.

f. **Ex-Parte Communications.** That completes my report. It is time for a report on any ex-parte communications.

Commissioner Pine reported: I have received some emails and phone calls from citizens concerned about the Pete's Harbor development.

Vice Chair Halsted commented: I have encountered repeated conversations about the Arena and the sea wall lot 337. I have had to say to almost everyone I have run into, I'm sorry I'm not discussing this and I can't listen to your point of view. I also have had to make a formal statement to at least one board that I serve on that is inclined to consider or take a position on those matters that I have completely recused myself from participating in any discussion on how those views are formulated or what they are or whatever.

Commissioner Chiu stated: I associate myself with the comments of Vice Chair Halsted.

Commissioner Feldstein agreed: As do I.

Chair Wasserman remembered: I actually did receive a letter from John Briscoe on the Phoenix Commons that was sent to staff. It's part of the public record.

6. **Report of the Executive Director.** Executive Director Goldzband reported:

As Chairman Wasserman noted, our first staff-wide strategic planning session with our Commissioners' strategic planning working group was a great success. Our staff is very energized about its possibilities and we are very grateful for the participation by the Commissioners. Just as soon as we nail it down, we shall let you know of the location of our January 23rd Public Workshop which is tentatively scheduled from nine until noon at a soon-to-be-disclosed location.

First, budget and staffing. With regard to budget, no news is good news, and I have nothing worthy of a report. With regard to staffing, final interviews for the position of Chief Counsel are being set up for the next couple of weeks. I look forward to providing the Commission with good news about that process as soon as possible. With Leslie Muse's retirement at the end of the year; this is Leslie's final meeting so we should give her a little bit of applause. Reggie Abad of our staff has accepted our offer to replace Leslie. I would like to take this opportunity to commend Reggie for his work as he filled in temporarily as our records manager. Indeed, Reggie and his colleagues on the newly created Information Technology Support Team will help us fill a real gap at BCDC as they partner with Andrew Chin, our CIO, to create a responsible, appropriate and reachable vision for BCDC's technological future going forward.

This team was created as an outgrowth of something that happened at the strategic planning meeting which was that the consultant asked everybody in the room to line up from the most senior person who had spent the most time at BCDC to the most junior person. It was noted that most of our junior staff is very technologically savvy. So we're going to use many of our junior staff to help us discover our technological future.

On the policy side of the house, in case you have not heard, the State Legislature reconvened earlier this week. We shall continue to work with the Natural Resources Agency to ensure that we keep on top of any ideas that Assembly and Senate members may have and share any news that we have with you.

I also have some not so good news to report. On November 29, Judge Beeman of the Solano County Superior Court issued a ruling directing BCDC to vacate its October 2010 approval of the expansion of the Potrero Hills Landfill. The Court found that there was insufficient substantial evidence to support the Commission's finding that a smaller landfill alternative that would avoid adverse impacts to Spring Branch Creek was economically infeasible. The Court ordered the landfill opponents to prepare a writ directing BCDC to vacate its approval of the expansion, and directing BCDC to return to court to certify compliance with the writ by a date certain. An appeal of the ruling would stay the effect of the writ until a decision is rendered by the Court of Appeal. Staff is considering its legal options for further discussion by the Commission in closed session which may occur at our January 17, 2013 meeting.

In late November, the LTMS program managers held the fourth in the four-part series of public meetings designed to review the 12-year history of the Long Term Management Strategy that coordinates dredging in the Bay and, most important, to raise issues in preparation for extending LTMS into the future. Just a few days later, the Bay Planning Coalition held a forum on LTMS at which Colonel Baker of the Army Corps of Engineers, whom you will remember from our last meeting, Jason Brush of US EPA and I participated on a panel. We tended to agree that while LTMS goals set 12 years ago largely have been met, there are many challenges going forward, not the least of which is agreeing how we can work together better as a region to maximize the use of dredged materials for beneficial reuse purposes. We shall have a similar panel discussion on the future of the LTMS at a February BCDC meeting at which we hope to present draft goals moving forward.

Two more notes. First, as a follow-up to our presentation on ex parte regulations, we shall soon provide to all members and alternates a few things. Number one, a full copy of the appropriate regulations. Two, both Word and PDF versions of the BCDC ex-parte reporting form so that you can fill out what we need to know. And three, we shall open a new mailbox at BCDC to which you may send those documents via email and we'll take care of its filing and recording. And fourth, we shall provide you with an explanation of that entire process that I have just discussed in writing so you can keep it in your files so you know how to deal with ex-parte regulations.

Finally, at our last meeting, you may remember that Dr. Jeremy Lowe during his most interesting presentation on sea level rise and storm surge stated that sea level rise has occurred at the Golden Gate. Dr. Patrick Barnard of USGS in his intriguing sand mining presentation, stated that no sea level rise has been seen at the Golden Gate for the past several decades. This certainly appears to be a conundrum. We were asked by several Commissioners which of the experts is correct. It turns out both are. Now, let me try to explain why.

We talk about global sea levels, and sea level rise, and use average levels, even while knowing that currents, winds, and other oceanographic forces affect local sea levels in different parts of the world at different times. So if you're standing beneath the Golden Gate Bridge for six hours, you might observe that sea level rise is a hoax because the water has decreased. Or maybe six hours later you would say, no, sea level rise is occurring because the tide is coming in. The tide gauge at the Golden Gate, which is the oldest continuous record in the United States, has measured about eight inches of sea level rise over the past 100 years. However, persistent winds along our West Coast during recent decades have pushed ocean water offshore and suppressed sea level rise here. Oceanographers suspect that a type of 20-30 year climate variability called the "Pacific Decadal Oscillation" or PDO, may be at work here. The PDO is a longer term climate pattern; much longer than the more well-known short-term El Nino and La Nina about which we are accustomed to hearing about. The PDO may be shifting again. So we perhaps may soon see our sea level come in line with the global sea level rise average or even higher. In essence, this apparent contradiction between our two expert briefers can be attributed to their uses of different timescales. Another way to think about this is there is a great big bulge of water near Asia that may be heading this way. If you want a more complete explanation, we're happy to provide you with one. But I won't be the person who is going to do it. One of our recent hires, Jenny Jacox is a PhD in oceanography. She is an articulate explainer of these phenomena.

That completes my report, and I am happy to respond to any questions or concerns that you may have.

Chair Wasserman thanked Executive Director Goldzband and stated: I would like either a written or verbal report from Jenny because as rising sea level becomes an increasingly important part of what we're addressing, a laymen's understanding of some of the scientific issues is very important as we move forward.

7. **Consideration of Administrative Matters.** Executive Director Goldzband stated: On November 21st the Commissioners were sent listings of the administrative matters our staff is prepared to act upon. Bob Batha is available to respond to any questions you may have about the matters on the listing. We are happy to respond to any questions Commissioners may have.

8. **Public Hearing on Solano County's Amendment to the County's Component of the Suisun Marsh Local Protection Program.** Chair Wasserman announced: Item #8 is a public hearing on proposed amendments to the Solano County component of the Suisun Marsh Local Protection Program. Page Perry will make the staff presentation.

Ms. Page presented the following: I am here to present staff's preliminary recommendation on Commission certification of the Solano County Component of the Suisun Marsh Local Protection Program. I will also provide you some background on the process, how it has proceeded to date and what the next steps are.

First, I'd like to thank the County staff for their assistance in completing this proposed amendment. Also, I'd like to call your attention to some letters we have received – SRCD, Department of Fish and Wildlife and Department of Fish and Game letters to BCDC and letters from public.

To start with some background. The Suisun Marsh is the largest contiguous wetland in California. The Suisun Marsh Preservation Act and the Suisun Marsh Protection Plan establish the primary management area of the marsh comprising 85,000 acres of wetlands. They also establish the secondary management area comprised of about 23,000 acres of uplands adjacent to the marsh.

Under specific guidelines in each area, local governments and agencies are responsible for preparing and administering a local protection program. BCDC has primary permit authority for projects in the primary management area and local governments have permit authority in the Secondary Management Area under the LPP process. These locally issued Marsh Development permits can be appealed to the Commission such as the Landfill permit just discussed here.

The Law and Plan require that six local governments and special districts each prepare a local protection program component that includes general plan policies and ordinances governing development in the Secondary management area where they have jurisdiction. These local policies and ordinances must be consistent with the requirements of the Marsh Act and Plan.

The six agencies required to prepare components of the Suisun Marsh Local Protection Program are: a) Solano County; b) Fairfield; c) Suisun City; d) Suisun Resource Conservation District; e) Solano County Local Agency Formation Commission; and f) Suisun Mosquito Abatement District.

These were completed and certified by the Commission about 30 years ago.

So how does the LPP process work in general? Before the Commission can certify any LPP amendment, the local jurisdiction preparing it must hold at least one public hearing and must endorse the component before submitting it to BCDC for certification.

BCDC distributes a copy of endorsed LPP for a comment period of not more than 60 days for public and agency comments. BCDC must also publish a public notice of the endorsed LPP and notice of the public hearing in a local newspaper for two weeks, at least 30 days prior to public hearing.

Staff in the meantime prepares a summary of the endorsed LPP amendment. The Commission holds a public hearing. Following the hearing, staff drafts a Recommendation and a Resolution of Certification or Resolution of Non-Certification. The Commission then votes to certify whether the amended component is consistent with the requirements of the Act and Plan.

Now to review the history of Solano's LPP. Their current LPP is made up of the County's General Plan and the Solano County Code, including the Zoning Code as they existed in 1982 and 1999.

Solano County then completed a comprehensive update to their General Plan in 2008. To make these changes consistent with the existing BCDC regulations required amendments to the Bay Plan and Marsh Protection Plan, which Solano County applied for with BCDC.

Solano County has also revised their County Code, including repealing certain chapters, consolidating others and updating their Zoning Code. As required by the Marsh Act, Solano County then needed to update their LPP once these changes had been made in order to make them all consistent with the Marsh Act and Plan. So Solano County drafted amendments to the LPP and then issued a negative declaration on the 2012 amendment to the LPP.

The Commission granted Solano County's application to amend the Bay Plan and Marsh Plan in 2011 and they were certified in 2011.

Once the Bay Plan and Marsh Plan updates were taken care of, staff worked with Solano County in 2011-2012 to continue to develop an LPP that would be consistent with the Bay Plan and Marsh Act including zoning updates and what turned out to be extensive discussions of wind energy development issues. When Solano County proposed changes to their wind energy development policies, staff's position was that if they were to change the wind policy as was being discussed, they would need to prepare an EIR for the 2012 amendment.

To begin the review process and ready the LPP for certification, Solano County circulated the draft LPP for public comment and then held a meeting at the Solano County Planning Commission hearing in June of 2012. Their Planning Commission recommended the LPP for endorsement but only if the County kept the wind energy policy without any changes from the 1982 version.

At the Board of Supervisors meeting on August 28th, BCDC, SRCD and DFG all weighed in on the LPP and recommended that the Board remove the wind energy policy from the LPP before endorsement. The Board went ahead and endorsed the LPP as it was.

The amendment was then sent to BCDC and I have listed for you a quick outline of the steps that are needed to complete this process and to show you where we are in the process. We are here at the public hearing leaving only the staff final recommendation and the vote.

In preparing the staff report and preliminary recommendation staff found a few inconsistencies with the proposed LPP and existing policies.

First, staff found it problematic that wireless communication facilities were listed as an "allowed use" but additional cell towers in secondary management area appear inconsistent with several policies in the Marsh Act and Plan as well as in the LPP itself. Upon further analysis, staff was able to reconcile this issue because cellphone towers did not exist and were not contemplated by the Marsh Plan when the LPP was first written. We are looking at cell phone towers as serving an existing use. Staff also feels that the County has sufficient policy protections in place so if they are implemented properly, they will adequately protect marsh wildlife and aesthetics. Staff feels that this is not an issue, but we would like to hear from anyone who feels otherwise.

Second, the discussions relating to wind energy development led staff to realize that the Marsh Plan has not been comprehensively reviewed since it was written 35 years ago. The wind energy discussion became controversial since it was a policy put in place before modern wind farms as they exist today were contemplated. The public and other agencies recommended that the Marsh Plan be updated to address wind energy, climate change and other emerging issues, which led staff to the conclusion that the Marsh Plan could use a thorough review and update.

In terms of certification of the LPP before us today, the wind energy issue was resolved when Solano County chose not to amend their wind energy development policy. So it remains as it was in the 1982 certified LPP. Thus BCDC at this point, and under this process, cannot require any modification or removal of this policy.

Given that BCDC is not in a position to take any action or require any changes at this point, the only procedure in place for the Commission to induce a change in the LPP would be for the Commission to amend its Marsh Protection Plan and then the County would be asked to amend their policies to comply. If the County does not comply, the Commission can go to Legislature for approval of this amendment and then the County will have to amend its policies to match.

Given all of the above, the staff has preliminarily recommended that the Commission certify the County's amended LPP component and direct staff and the Strategic Plan Working Group to consider prioritizing a comprehensive update to the Marsh Plan.

In conclusion, I wanted to bring you back to the process and highlight the last steps.

Based on feedback from the Commission and the public at today's hearing, staff will prepare its final recommendation and will present it for a vote at Commission's January 17th meeting. Further action on changes to the Marsh Plan would be undertaken based on the Commission's direction on how that work fits into its strategic priorities.

I am available for any questions that you might have.

Chair Wasserman called for any public comment prior to questions from the Commission.

Commissioner McGrath asked for some clarification: As I understand it, there were policies that were adopted in 1982. Then policies were changed and there was a discussion of whether or not to put them in and the Board of Supervisors decided to put them in. They are not before us so they have been withdrawn from the application? This is where I am confused.

Ms. Perry answered: No, there was discussion in the County as to whether they were going to change the wind energy development policies and in the end they did not. It's the same as the 1982 version.

Mr. Arthur Feinstein commented: I am the Chair of the San Francisco Bay Chapter of the Sierra Club. I am also the Chair of the Government Relations Committee of the San Francisco Bay Joint Venture and I am speaking for the San Francisco Bay Joint Venture here.

This should be a no brainer for you guys. You've had a lot of discussion about the Suisun Marsh over the landfill and that has been an education process to us all.

These wind towers will be threatening wildlife in the Marsh. I worked on the Altamont Wind Farm issue on behalf of the Golden Gate Audubon Society as Executive Director of this organization. This issue is still not resolved and about 120 to 140 Golden Eagles are killed per year, tens of thousands of other raptors and God knows how many small birds because you can't really count them because they disappear very quickly.

We know that wind farms in the wrong location can be very devastating to wildlife. You are charged with protecting the wildlife at Suisun Marsh.

I want to commend the staff for recognizing that there is a problem with the wind farms. You have the Department of Fish and Wildlife also saying that there is a problem and you should not allow this amendment to go forward.

Renewable energy is where we need to go and there is great pressure everywhere to establish renewable energy. This is the wrong place for it.

It would be terrible if a wind farm developer decided this was a good place to put a wind farm and started the process to establish a farm before you have your amendment in.

It will then be much harder and possibly impossible to suddenly implement your prohibition if you do eventually get the amendment.

I support staff's conclusions and I urge you to change the process a little bit and make a conclusion in January that you are simply going to amend the Suisun Marsh Protection Plan and remove the wind farm element now. Bring this before the County Board of Supervisors and if they say, no, then you can do the legislative route rather than submerge this into your strategic planning process when we'll be waiting for many years before we come to a conclusion.

I hope you consider this an emergency because this is a precious area. We're not going to get it back. So, really, you want to stop things from happening now.

Mr. James Dunbar addressed the Commission: I'm the District Manager and representative of the Potrero Hills Landfill located in the secondary management area of the Suisun Marsh. I'm here to comment on the proposed changes to the Suisun Marsh Local Protection Plan.

We are submitting written comments that we feel are pertinent at this time especially given that the recent pending litigation is ongoing.

We understand that no formal action is being taken or will be made today. We will be asking for time with staff to explain our concerns and our comments.

We want to be assured that any changes ultimately approved will have no impact on our approved landfill project.

Mr. Steven Chappell spoke: I am the Executive Director of the Suisun Resource Conservation District. All the areas of the primary and secondary Marsh are the areas I work in daily and have the pleasure to enjoy.

I submitted a letter stating the District's concern and opposition to the potential to develop wind in the secondary Marsh. In the last three to five years the landscape in Suisun Marsh has changed. The wind development on the eastern side of the Marsh between Rio Vista and Suisun has really expanded.

To me, the secondary Marsh is by definition, a buffer; a buffer to allow protection of the managed wetlands.

The BCDC policies currently state that wind development in the primary Marsh is not suitable.

It's very unique when we go around the estuary today to have complete ecosystems protected; we have the bays, the sloughs, the wetlands, the tidal wetlands and the upland transitions.

If we're going to start industrializing the upland transitions for wind development because it's green there are green effects that we have to consider.

I look forward to working actively with County staff to address the issues and needs and to continue to protect this resource.

I worked closely with the County through the General Plan Update and I realized I was a little remiss in the letter I wrote you.

A lot of the provisions and changes that are in the updated LPP are good; the zoning, the sewer, the grading ordinances. I worked extensively with the Planning Commission and staff and we were supportive of that up to the point of leaving in the existing policy.

But when I look back to 1985 my Resource Conservation District had filed an appeal to BCDC with Fish and Game for a proposed wind development in the secondary Marsh. The project proponents went through the County permitting process and we had expressed opposition. It was awarded. It was appealed to BCDC.

The project proponent withdrew that. In those days they were 100 foot high windmills with very small windswept areas. Now we're looking at 360 foot tall towers with huge visual and aesthetic impacts.

We had expressed a desire for the County to remove that. It didn't happen. So I would like to support the County's effort to update the LPP. I will be before you in updating the Resource Conservation District's LPP because the world is changing.

We have a new Suisun Marsh Plan that was completed with multiple resource agencies. The EIR is complete. It's a 30 year plan moving forward. We want to work with BCDC in updating the SRCDC's policy, the local management plans and also make it consistent with the other protection elements.

Chair Wasserman asked for comments or questions from the Commission.

Commissioner Butt commented: I'm not clear why staff after going through all of the potential downsides of wind power, why staff wants to put this off to a later date.

I still don't understand the process that was undertaken here. I'm reading the second paragraph on page five and it says, staff recommends that the Commission certify the LPP as submitted but then undertake a comprehensive amendment to the Marsh Plan to address a number of emerging issues.

Are we suggesting that BCDC staff follow up by addressing the wind power issue and other issues and then at some point – how does that come back to the County?

It seems like we're in a position of ratifying the County's Plan rather than – I mean, we're not leading the Plan so, how do we – if we do something after we approve this, how does that play into the process?

Ms. Perry responded: We are here to either certify or not certify the LPP. There is no other option on the table for BCDC at this point because the wind policy that is in there was certified already. We cannot at this point say, well, we'll certify it but – it's either, yes or no.

We put out there the second step because our only avenue at this point is to update our plan which then would force the County to have their plan comply.

Chief Planner LaClair added: The process as Page has described it is that we would amend our policies in the Marsh Act. Then the Commission could turn to the County and say, County, would you amend your LPP consistent with those changes?

The County is not compelled in that circumstance to do anything. They could say, thank you but no we don't want to do that. Then the Commission would be faced with a choice of deciding whether to go to the Legislature to seek approval of the changes in the Marsh Plan and under that circumstance then the Commission could compel the County.

Commissioner Butt replied: The question I'm asking is, what is the rationale of staff not to pursue that course of action?

Chief Planner LaClair answered: We're not recommending that you don't pursue it. We're recommending that you do. We're just recommending that you do it in the context of a broader review of the Marsh Plan so that rather than take up this issue in isolation, that we would also look at the issue of climate change.

In the staff report we mentioned that the Stewardship Council is adopting some policies that address BCDC plans in the Marsh and how the Plan needs to be updated to address climate change. We recognize that we didn't have the resources or the time to do that at the time that we updated the Bay Plan.

So we think that that's a timely project as well as other issues that may emerge in the evaluation or a comprehensive overview of the Plan.

Commissioner Butt stated: But you could go back to the County on this wind turbine issue right now. Right?

Chief Planner LaClair replied: No. We've gone to the County. We've made our recommendation. The County has certified an LPP with the policy in the LPP. Because the County didn't make any changes and because the Commission certified that policy in 1982 under the provisions of the law, the Commission is not in a position to require any changes to that policy at this point.

Commissioner Butt responded: You're telling me that we have no option except to certify the County's Plan right now.

Chief Planner LaClair answered: No. You could find that the LPP is not consistent with the Marsh Plan and the Marsh Act. But the Commission could not do this because they made changes to wind policy or because the wind policy is appropriate because you've already certified that.

Executive Director Goldzband interjected: Let me put it this way because this a tremendously complex issue. It is very confusing. I spoke with Commissioner Butt beforehand and asked him to inquire along these lines.

BCDC in 1982 essentially created the Suisun Marsh Protection Program. What has happened since then is that when Solano County approved its version in August it complies with that 1982 Plan.

That 1982 document enables wind power to actually exist in the secondary portion of the Marsh.

What the Commission now has the option of doing is either saying, yes, that is true and going forward or saying, no, that is not true and not go forward.

But it seems evident to staff that indeed what the county of Solano did is in line with the current plan. However, because there is so much discussion with regard to the use of natural resources, energy resources, climate change, transportation issues, because as Supervisor Vasquez knows, the county of Solano has grown a little bit since 1982 and Highway 680 and Highway 80 and all sorts of roads that go through Solano County have experienced growth.

The staff believes that this is time after 30 years to revisit the Plan from the beginning and actually take a look at it in relation to what is actually going on in Solano County.

So, there's not much choice staff sees in terms of the way the Commission needs to progress. I suggested to Joe and Page that they write the recommendation as such to refer to the Strategic Plan. That makes sure that we do it and we do it in a timely manner so that nobody is left hanging.

Commissioner Butt replied: I think what I understand is that the only way that BCDC can address this is to first update the Marsh Plan.

Executive Director Goldzband responded: Correct.

Chair Wasserman commented: Let's assume that we update our Marsh Plan and determine that wind towers are not appropriate in the secondary areas. This doesn't mean that Solano County would have to follow that because it's a secondary area where we have much more limited jurisdiction than in the primary area.

This is why both staff and some of the speakers said, if you get to that point you're option is going to be to go to the Legislature or let the stalemate exist which would allow the current policy.

I would point out that in both the federal and state Fish and Game letters that came to us, they say, currently there is not enough information to determine the specific magnitude of impact that the presence of commercial wind energy will have on water bird and water fowl populations.

I think many of us here have a gut feeling that Steve Chappell is right. We don't make our decisions on our gut. There has to be factual evidence and findings that support our decisions.

Therefore, I feel that Larry's approach is absolutely right. There was one comment by one speaker that this could get wrapped up in our strategic plan process and could take years to settle. Our strategic plan is not going to take years. We will have a strategic plan adopted no later than this spring.

That's a plan and some of it is how we move forward on things. We will have our strategic plan done. And assuming this is part of it, then we will start that process promptly and begin the revision of our own plan to see where we go.

Executive Director Goldzband added: I do want to commend staff for doing something which is tremendously important especially with regard to sea level rise and how BCDC has worked through sea level rise.

There is a really good history of cooperation between BCDC staff and Solano County staff and the various interest groups about how the Suisun Marsh needs to be dealt with and protected.

We expect this to go forward as we move forward in this process.

Chief Planner LaClair agreed: No, that's absolutely correct. We have a very good working relationship with the County staff and all the interest groups are at the table with us.

Mr. Mike Yankovich addressed the Commission: I am the Planning Manager with Solano County. We have worked well with the BCDC staff. In the past we have dealt with wind energy in our county through EIRs.

You know that there is a threshold with regards to environmental impacts. Any project that is going to be submitted for the secondary Marsh area would have to go through this process.

Any appeal of decisions made through this process would come to the Commission. I think you can rest assured that the interests of everyone will be taken into consideration.

Commissioner McGrath commented: This is certainly an arcane and confusing procedure. This doesn't change the underlying policies that were adopted and certified previously by BCDC; whether they were a mistake or not, they're there.

In terms of whether that previous action is tantamount to final approval under CEQA I'm absolutely convinced that it's not. There are dramatically changed circumstances in terms of what we understand about the potential impacts and that can be used and applied to current proposals unless somehow the zoning would make these non-discretionary decisions.

In conjunction with the County's actions we have a responsibility to consider the broadest context under the law. As long as the CEQA process will not be compromised then I think the staff has it right, we are simply identifying a weakness that we had in the previous document and the appropriate way to address it.

Am I correct that this remains discretionary decisions?

Executive Director Goldzband responded: That is my understanding and I want Joe to tell me if I'm wrong.

Chief Planner LaClair replied: That is absolutely correct. Now this is the focus of the conversation before the Board of Supervisors when the Board voted to certify the LPP in August.

Commissioner Gioia commented: So while we're embarking on this process after the approval of our strategic plan to have a major review of the Suisun Marsh Plan, if somebody goes to Solano County to submit an application for wind power development and if Solano County approved it, it would be appealed here under our secondary jurisdiction?

In other words, if someone were to appeal it, we would be the body that would consider that issue and could potentially deny it if we believed it was not appropriate under our ability to review.

Chief Planner LaClair replied: That's correct. You would use the same policies that the County uses that are in the County's LPP for evaluating that permit de novo.

Commissioner Ranchod inquired: Is it true that there's been no wind development proposed for this location?

Chief Planner LaClair answered: Well there was a permit issued by the County in 1985 for wind development in the Potrero Hills. That was appealed to the Commission after the County approved it. The proponents abandoned the project.

We have had informal conversations with others who are interested in wind development in the Marsh and there have been folks who have testified at the County hearings on the LPP amendment and staff's position with regards to the wind policy indicating that there is interest in developing wind in the Marsh.

Commissioner Ranchod continued: That certainly makes the timely consideration of this by the Commission a lot more important. The imminent expiration of the federal production tax credit for wind is a real problem for the industry. This may make any development in the very near future highly unlikely.

This really highlights one of the challenges with the development of wind energy. There are impacts from wind energy and siting is certainly important.

The state of California has a very aggressive agenda insofar as renewable energy development is concerned. There are some very significant concerns about the impacts on endangered species and other wildlife if there was wind development in this location.

I urge this Commission to think very seriously about expediting the review and update of the Marsh Plan so that we can move forward if we are going to make changes that would impact wind development in this area.

We want to be as clear as we can to folks that are interested in wind development in this area. If we are going to exclude wind development we should do so sooner rather than later so that there is visibility to potential developers and they can plan accordingly.

Chair Wasserman commented: I'm not going to close the hearing because I think there's enough importance here and a couple of open questions that we're not voting. I want to make sure that if there are issues that come up based on these discussions or other things, that we can hear them at our meeting in January. This is the only reason that I am suggesting this.

Commissioner Vasquez commented: I would encourage that we continue this discussion. There may be other people who might want to come forward and speak to us.

Chair Wasserman added: I want to be clear that this is not because I have any problem with the staff recommendation.

Chief Planner LaClair inquired: Would it be the pleasure of the Commission that we simply have a public hearing or would the Commission like to entertain the staff recommendation at the January 17th meeting.

Chair Wasserman stated: I think we have a recommendation. You have the option of modifying it if you choose to. I'm not saying that we do anything new. I just want to leave it open until the January meeting.

Chief Planner LaClair added: Continue the public hearing but schedule a vote.

Chair Wasserman agreed: Oh absolutely. Schedule a vote. Yes. We must be very clear and schedule a vote for that day. Do we need a motion to continue the public hearing until that day? I can do this? Okay, it's done.

Items 9, 10 and 11 have been postponed and I see no one wishing to speak on these items.

9. Public Hearing and Possible Vote on the California Department of Fish and Game, Material Amendment No. Three to BCDC Permit No. 2008.008, for Phase III of the Napa-Sonoma Marshes Restoration Project (Enhancing Management Capabilities at Ponds 6, 6A, 7, 7A and 8), in the Napa River and Huichica Units of the Napa Sonoma Marshes Wildlife Area (NSMWA). Chair Wasserman stated that Item 9 was postponed to the January meeting.

10. Public Hearing and Possible Vote on the U.S. Army Corps of Engineers' Consistency Determination No. 2011.002 for Phase III of the Napa-Sonoma Marshes Restoration Project (Enhancing Management Capabilities at Ponds 6, 6A, 7, 7A and 8), in the Napa River and Huichica Unites of the Napa Sonoma Marshes Wildlife Area (NSMWA). Chair Wasserman added that Item 10 was postponed to the January meeting.

11. Briefing on the Santa Clara County Waterfront and Related Issues. Chair Wasserman announced Item 11 was postponed to the January meeting.

12. New Business. Commissioner Gioia commented: In my role as serving on the Bay Area Air Quality Management District we held a meeting yesterday at 390 Main, the proposed new building. I spoke with the architect who was reviewing the plans of where the different agencies would be and he indicated that they had had conversations with BCDC and, even with the current build out, they would be able to accommodate us as if we were involved from the very beginning.

Executive Director Goldzband agreed: Commissioner Gioia, that is my understanding as well. We have kept MTC informed about our plans. They are going through their programming right now. They seem to have enough resiliencies on the floors to accommodate us.

13. **Old Business.** No old business was discussed.

14. **Adjournment.** Upon motion by Commissioner Vasquez, seconded by Commissioner Ranchod the meeting adjourned at 2:40 p.m.