

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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May 30, 2014

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 May 1, 2014 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 1:12 p.m.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted, Commissioners Addiego, Bates, Chiu, Gibbs (represented by Alternate Arce), Lucchesi (represented by Alternate Pemberton), McGrath, Nelson, Randolph, Sartipi (represented by Alternate McElhinney), Sears, Techel, Vierra (represented by Alternate Doherty), Wagenknecht, and Zwissler.

Chair Wasserman announced that a quorum was present.

Not present were: Alameda County (Chan), Santa Clara County (Cortese), Department of Finance (Finn), Contra Costa County (Gioia), Sonoma County (Gorin), Governors Appointee (Jordan Hallinan), U.S. Army Corps. of Engineers (Hicks), San Mateo County (Pine), Solano County (Spering), and U.S. Environmental Protection Agency (Ziegler).

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

Seeing no speakers, Chair Wasserman moved on to Item 4, Approval of Minutes.

Chair Wasserman later acknowledged public speaker Janice Li whose card was submitted to him after approval of the minutes.

Ms. Li addressed the Commission: I am here on behalf of the San Francisco Bicycle Coalition. I am a community organizer with them. I am here to talk about the permit that was spinning its wheels for the last 10 years now regarding the permit to Rec and Parks for the path along Marina Boulevard.

There was going to be a meeting scheduled last week for April 24th. That meeting has been cancelled. For the last couple of months I have been doing public outreach with a number of agencies.



Making San Francisco Bay Better

BCDC MINUTES
May 1, 2014

This is a very popular path and is well used. I put out a public call for comment on the path by anyone wanting to urge the state agencies to move forward with what's going on.

The response is very, very clear. The emails I have received have been forwarded to BCDC staff. It is clear that 98 percent of the people using the path are either biking or walking.

There are over 100 slips there for boat owners. There are only about 26 permanent spots along the area. This is not adequate for the parking that is needed for the slip owners.

The San Francisco Bicycle Coalition along with many other folks is advocating for looking into parking relocation. The permit that BCDC put forward in 2004 was really great and it talked about creating high-quality bicycling and pedestrian experiences.

We would like to return to that mission that was outlined in the original permit. We would like BCDC to consider the best option that has been put forward by Rec and Parks, which is relocate that parking and return this space to the public for the 98 percent of the people that are currently using it.

Vice Chair Halsted commented: I think you summed it up really well. Making that the best path possible is really an ideal goal for us. We appreciate the effort by all involved so far and I hope we can bring it to a conclusion before too long.

4. **Approval of Minutes of the March 6, 2014 Meeting.** Chair Wasserman entertained a motion and a second to adopt the minutes of March 6, 2014.

MOTION: Commissioner Sears moved, seconded by Commissioner Addiego, to approve the March 6, 2014 Minutes. The motion carried by voice vote with no abstentions or opposition. Chair Wasserman returned to Public Comment with one speaker card that was returned to him late.

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

a. **New Business.** Chair Wasserman asked if there was anyone who wished to suggest new business to take up at a future agenda. He received no suggestions.

b. **Engineering Criteria Review Board.** You will find in your packet a recommendation to appoint Dr. Ron Mayes to BCDC's Engineering Criteria Review Board. Currently, Dr. Mayes works for Simpson Gumpertz & Heger Inc., an engineering firm here in San Francisco. He has 40 years of management and technical expertise in earthquake and structural engineering, including working with many of the world's leading authorities in these fields, and he is highly respected by his peers. The recommendation provides Mr. Mayes extensive qualifications and I believe that he is eminently qualified to serve on the Board. Mr. Mayes is here and would you please stand. If anybody has any questions now is the time to ask them. If not, I intend to appoint Dr. Mayes to the ECRB. Thank you Dr. Mayes. We look forward to your service.

I had the luxury of a vacation in Prague and even there rising water levels is of current concern. They had very major floods in 2002 and are still building to protect themselves against their rising rivers. There was an article in this morning's Chronicle on a potential new sail powered ferry experiment. I commend it to you. It is inspired by the America's Cup fixed wing sail and looks like an exciting possibility. We had a meeting earlier today right here on rising sea level and we hope by the end of June to have an outline for our report to you on what we think the next steps will be that we will present to you sometime in late summer.

c. **Next BCDC Meeting.** There will not be a BCDC meeting on May 15th. Our next regularly scheduled meeting will be held on June 5th, here at the Ferry Building. The preliminary agenda expects to include the following matters:

(1) A review and act upon permit applications requesting permission to mine sand in the Bay, we will have an update on that issue. In addition, it is possible that we shall hold a public hearing on such applications.

(2) As requested by Commissioner McGrath, we will have a briefing on the status of the Oakland Middle Harbor Enhancement Project.

(3) The Commission may take up and review staff comments on the Bay Delta Conservation Plan (the BDCP) Environmental Impact Report and Statement, which is the subject of a briefing today.

(4) The Commission expects to receive a short briefing on a design competition held recently called "Watermarks," part of the 100th-anniversary celebration of the Department of Landscape Architecture and Environmental Planning at U.C. Berkeley. The competition sought innovative ways to communicate the level of floods that will eventually occur, from inundation of unprotected floodplains by large floods, overtopping or failure of levees, failure of upstream dams or coastal flooding, and of course, all fueled by rising sea level.

(5) Finally, the Commission will review and hear from the photographer and publisher of the new book "Saltscapes," which demonstrates the beauty of the Bay in some interesting and creative ways really demonstrating that the salt ponds are a creature of art as well as nature as well as man's interference with our environment.

d. **Ex-Parte Communications.** That completes my report. If there are any ex-parte communications that you have not registered online or in another way with the clerk now is the time to present them. These are on matters of permitting not necessarily policy matters.

Commissioner McGrath reported: I did speak this afternoon with Arthur Feinstein who asked me to take a close look at SB 1184 particularly Section 66649 (C)(1)(b) and he would comment on it. It's the Hancock bill. This section establishes a regional response plan and particularly of interest is the section that talks about new shoreline development.

Commissioner Bates reported: Arthur Feinstein also attempted to talk to me about that.

Larry Goldzband will present his Executive Director's report now.

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

It has been a while since we last met. Thankfully, baseball season has started, which means that spring has sprung, hearts turn to love and our allergies return. Although reviewing the seasons necessarily reminds us of the circles of our lives, I think that the advent of spring reminds us of what we want to accomplish. For BCDC today, that means a vote on a new permit, a discussion of legislation and new thoughts on how water flows affect the Bay.

With regard to budget, I do need to let you know that BCDC is facing a rather serious structural deficit amounting to about 7% of its operating budget. We are working with the Administration and the Legislature to fix it in the long term and we shall not simply kick the budget can down the road given the important work that BCDC does. We have received somewhat positive news so far. For example, the Department of Finance has let us know that the Governor's budget will ensure that we get reimbursed for the extra rent that we now have to pay. We shall keep you informed, but please know that our goals are to fix the problem by implementing a wide variety of solutions and to protect our staff which is small, hardworking and eminently resourceful. We have met with the Senate Budget Committee staff, staff of the Resources Agency, and – tomorrow – we shall meet with the Department of Finance to review our options. In addition, I would like you to take a packet of materials out, which is in front of you and has been paper

clipped. Do not open it up. Simply look at the top page please. The top page is a first clipping, which is a rather well-researched article on state workers' stored leave. That means that when state workers retire, they can expect to receive a check based upon their accumulated vacation. This will affect BCDC's budget mightily during the next 2-3 years and going forward. It is worthy of your reading.

Knowing that you will probably get questions about the Golden State Warriors' announcement that the team will not attempt to develop its new arena on Piers 30/32, I want you to know that the lot in Mission Bay that is now the team's development site is not in BCDC's jurisdiction. You should know, however, that the BCDC permit that covers the entire Mission Bay development site requires the permit holder to complete construction of a park with Bay access on the five-acre parcel that sits across Terry Francois Boulevard from the Warriors' new site. We'll keep you informed of that progress.

BCDC is partnering with the new Climate Readiness Institute which is the new collaboration among Cal, Stanford, and Davis on a grant proposal that soon will be pending before the National Science Foundation. The grant proposal seeks to bring together multi-disciplinary teams of researchers, educators, managers, policymakers and other stakeholders to conduct collaborative research on sustainability. Those are a lot of big words and some jargon, but a major thrust of the proposal is to fund research in the field of rising sea level around the Bay including on such issues as governance.

Another good piece of news is that BCDC will participate in the newly formed San Francisco Bay Regional Coastal Hazard Mitigation Working Group led by FEMA. This is a forum for local, regional, state and federal representatives to improve regional coordination.

For another piece of good news I want to turn to Chris Tiedemann of the Attorney General's office to give us an update on the Potrero Hills landfill litigation.

Ms. Tiedemann commented: We got good news on Tuesday from the Court of Appeals in our appeal of the Solano County Court's judgment that set aside the Commission's permit to authorize an expansion of the landfill in the Suisun Marsh.

The Court of Appeals determined that the decision was supported by substantial evidence and that it complied in every respect with the Marsh Protection Policies. The decision reflects very well on the Commission's painstaking analysis for that permit. Commissioners who served during those proceedings will remember that it was a contentious permit and it was complex. Staff spent literally years doing the analysis for the permit, in particular, Ming Yeung, Bob Batha, Tim Eickenberg, John Bowers and Will Travis who is here today participated in the work for that permit and the Commission should be proud of their work and proud of the appellate decision that describes so well the work that the Commission did to make certain that the expansion complied with every protection policy in the Marsh.

The meaning of the decision is that the permit is effectively final so this matter is not going to rebound to the Commission for a whole new set of hearings. The Commission should be extremely grateful for that. It is not a published decision.

Executive Director Goldzband continued: Now I want to draw your attention to the second article in your packet. It is an article from The New York Times Magazine entitled "It's the End of the World As We Know It and He Feels Fine." This article has received major attention within the environmental advocacy community because it tells the story of a committed environmentalist who, some people feel, simply has given up. Attached to it is a cogent response to that position. I encourage you to read both. It has received wide, wide reading and I think it's well worthy of your attention.

Finally, three bits of good news. Next in order in the pile of reading in front of you is a draft color version of BCDC's Strategic Plan which you adopted last year. Attached to it is the BCDC Action Plan and behind that is one example of one kind of action that BCDC will be taking. The objective is to increase the understanding of the Bay's dynamic social, economic, ecological and environmental value and it is about public education. I am the lead in developing a public information program in collaboration with all sorts of folks to do that. You can see what the tasks are as we develop that program.

We will be coming at you throughout the summer with more and more actions and we'll be sharing them with you so that you can comment on them.

Below that paper is a newspaper article on the second piece of very, very good news. Last week, as many stakeholders watched (including BCDC staff), the runway at the old Hamilton Air Force Base in Novato was flooded when its levee was breached. To incompletely quote Winston Churchill, this is the end of the beginning – that being the almost twenty-year program to begin to recreate wetlands at the surplused base. BCDC approved the fill when I was a Commissioner the first time. And the Coastal Conservancy voted to start the work when I was on the Conservancy Board. It was a long, long time ago. Finally, I am very proud to report that the BCDC Bocce Team, named "Bobby B. and the Shoreline Band," has won three of its four matches this spring, including one against the Port of San Francisco. For some reason, however, the Chronicle has not sent a single reporter to cover the dirt in the bocce venue.

That completes my report, Mr. Chairman and I am happy to answer any questions.

Chair Wasserman asked if there were any questions from Commissioners. Commissioner Sears asked when the bocce games were held and Executive Director Goldzband mentioned that the next game would be played against the Coastal Commission.

7. **Consideration of Administrative Matters.** Chair Wasserman stated that Bob Batha was available to answer questions regarding Administrative Matters. He received no questions and moved on to Item 8.

8. **Commission Vote on Permit Application No. 2011.002 from the Water Emergency Transportation Authority (WETA) for the Vallejo Ferry Maintenance Facility proposed along the Mare Island Strait at 1080 Nimitz Avenue, in the City of Vallejo, Solano County.** Chair Wasserman announced that Item #8 was a vote on the Water Emergency Transportation Authority's application for the Vallejo Ferry Maintenance Facility proposed along the Mare Island Strait in Vallejo. We held a hearing on this application in November of 2013. Michelle Levenson will make the staff recommendation.

Ms. Michelle Burt-Levenson presented the following: You have before you a staff recommendation for the Water Emergency Transportation Authority's Application No. 2011.002 to relocate and expand an existing ferry maintenance facility bayward of Waterfront Avenue, between Sixth and Seventh Streets, on Mare Island in the city of Vallejo, Solano County.

The project will involve relocating two floats from the existing maintenance facility located a half mile upstream, placing five new floats and installing up to 40 pilings in the Bay.

Bay fill placed with the project consists of a total of 13,096 square feet of floating fill for ferry floats and 210 square feet of solid fill for pilings.

Work proposed in the shoreline band consists of installing utility connections within an existing wharf as well as a ferry portal and guard rails.

A total of 26,063 square feet of public access will be provided with the project and consists of extending a public access promenade and installing two public access areas.

Public access provided with the project has been authorized under BCDC Permit M2006.22.03 and will be constructed by Lennar Mare Island and the city of Vallejo.

To offset the Bay fill impacts associated with the project, the applicant will remove a total of 114 creosote-treated piles, a pile-supported pier, and trash and debris from locations close to the project site.

As Chair Wasserman indicated, there was a public hearing on the application on November 7, 2013. And while a vote on the application was scheduled for the November meeting, the permittee requested a postponement of the vote until it received U.S. Fish and Wildlife guidance on potential impacts to the Delta Smelt.

On April 2, 2014 U.S. Fish and Wildlife Service issued its biological opinion on potential effects to the smelt. The BO found that by implementing measures during construction, the project is not likely to jeopardize the smelt.

So with that, the staff recommends that the Commission approve BCDC Application No. 2011.002 of WETA to relocate and expand an existing ferry maintenance facility on Mare Island.

The staff recommendation contains several special conditions to ensure that the project is consistent with the McAteer-Petris Act and the San Francisco Bay Plan; these include, Special Condition II-C which requires the permittee to submit its lease with the U.S. Navy for the waterside work prior to the start of construction and Special Condition II-E which requires several measures to ensure that the project is constructed in a manner that minimizes impacts to special – status species.

Chair Wasserman announced: We'll start with a motion and then we'll go to questions. Is there a motion to approve the recommendation?

MOTION: Commissioner Pemberton moved this item, seconded by Commissioner Nelson.

Chair Wasserman continued: Does the applicant wish to make any comments on the recommendation and confirm that the applicant agrees with the recommendation.

Mr. Chad Mason responded: I'm Chad Mason with WETA. I have no comments to add at this time and we do accept the conditions that go along with the permit.

Chair Wasserman recognized Commissioner McGrath.

Commissioner McGrath requested geographic clarification: I am interested in refreshing my geographic sensibility since it's been awhile since the hearing. Do you have a map that puts the proposed access in the context of the eventual access?

I note that the land in question is, the water belongs to the Navy and the land belongs to Lennar but that's not a problem in terms of implementing the access conditions. They've all reached agreement?

Ms. Burt-Levenson replied: That's correct. Lennar provided staff with a letter stating that all of the improvements proposed on land are consistent with its lease.

Commissioner McGrath continued: So it's consistent with the long term plan. How does this fit into the regional context?

Ms. Burt-Levenson responded: It's my understanding that the public access along the wharf has long been a vision of the City and that with each development along the island, a piece of this wharf promenade is a requirement of Lennar's.

This project is prompting the construction of this 400 foot long section of promenade/public access.

Commissioner McGrath added: So in essence in an area where public access wouldn't have been appropriate for security reasons and for safety reasons, we're piece-by-piece establishing this and this sounds great to me.

Ms. Burt-Levenson agreed with Commissioner McGrath.

Vice Chair Halsted commented: I appreciate the staff's inclusion of the reference to retaining discretion to go to the Design Review Board if they feel it's appropriate before it's constructed.

Chair Wasserman highlighted a point for the record: I just want to note for the record that the evaluation by staff and the report before us does include the effect of rising sea level on this project and the steps that have been taken to deal with that projecting over the 50 year life of the project.

This state agency is taking those matters into consideration as we approve developments on and about the Bay.

Commissioner Zwissler asked for clarification on the 50 year aspect of the project: So what was the consideration of 50 years since we've been debating what that should be?

Ms. Burt-Levenson answered: On page 10 of the staff recommendation there is an analysis that WETA provided to us regarding elevations at the site. The elevation of the quay wall and the projections for the hundred-year flood and discharge from the Napa River.

The elevation of the quay wall is at 12 feet mean lower low water. Taking into account the hundred-year flood, the Napa River discharge and the State's sea level rise guidance the anticipated tidal elevation at the site at year 50 is 10.77 feet. The quay wall is roughly one foot higher than that estimate. The floats are floating so they'll go up and down with the tides and the pilings that secure the floats will be at cut off elevations consistent with these sea level rise projections.

Chair Wasserman added: Keep in mind that it's a context in that location where you're also dealing with a hundred-year flood plain rise of nine feet.

There are no public speakers on this item so we don't have to close that. We will have a roll call vote on this item. We need 13 affirmative votes and federal representatives cannot vote.

VOTE: The motion carried with a roll call vote of 16-0-0 with Commissioners Addiego, Bates, Chiu, Arce, Pemberton, McGrath, Nelson, Randolph, McElhinney, Sears, Techel, Doherty, Wagenknecht, Zwissler, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO", votes and no abstentions.

Chair Wasserman moved on to Item 9.

9. Commission Consideration of Legislation. Chair Wasserman announced: Item 9 is the consideration of legislation starting with SB 1184 and Steve Goldbeck will make the presentation.

Chief Deputy Director Goldbeck presented the following: You have before you a staff report on SB 1184. This bill was introduced by State Senator Loni Hancock who is also an ex-officio member of the Commission. The bill directs BCDC to prepare a regional strategy for rising tides in San Francisco Bay.

The Senator introduced the bill after discussions with staff of the Commission's program and what the Commission's needs might be in terms of addressing this issue for the region.

And Section 2 of the bill directs BCDC to prepare the regional strategy in collaboration with affected local governments and appropriate state and federal agencies.

The bill intends for BCDC to work closely with local governments and its regional partners in preparing such a strategy.

Section 3 provides for how the strategy is to be prepared. It has two main components.

The first is community planning with local governments and that is to continue the Adapting to Rising Tides Project which now has turned into the Adapting to Rising Tides Program. This is to allow us to go around the Bay and work to develop the tools for how to actually prepare an adaptation strategy for the region working with willing and interested local governments who want to work with us.

The second component of the bill is the actual regional strategy itself. It's composed of preparing regional assessments and planning that will be used to prepare a regional strategy. It's supposed to be guided by 13 goals and objectives. They are drawn from your Bay Plan, Climate Change Policy 6 that calls for preparation of a regional strategy. These are all goals and objectives that were worked out with the interested parties as a part of the Climate change Bay Plan Amendments. We believe that they had regional input from all the interested parties. At the end of which you will remember that the parties were supportive of the Commission preparing the regional strategy.

The bill also directs BCDC to work in close collaboration with local governments but also with the Joint Policy Committee and the sister-state agencies: State Coastal Conservancy, the Ocean Protection Council and the State Office of Planning and Research.

The strategy is supposed to be prepared so that it can be a part of the Sustainable Communities Strategy and provide the shoreline resiliency component. The strategy is to be prepared by December 31, 2018 and submitted to the Legislature.

This bill is consistent with your climate change policies in the San Francisco Bay Plan. It is also consistent with your Strategic Plan which is in your folders. It also is consistent with the Joint Policy Committee's adopted work program and plan.

The bill is supported by the East Bay Municipal Utilities District. It will also be supported by the Bay Planning Coalition and the Nature Conservancy if it is amended as per their suggestions.

The Sierra Club is also going to have a support if amended position. We have heard no opposition to the bill.

The proposed amendments that we have received are largely clarifying in nature. We are working productively with the Bay Planning Coalition and the Nature Conservancy to craft language that would be acceptable to all parties. We think that we are very close in that and we will continue working with them.

We've also been talking with the Administration and they've just given us some their thoughts and concerns on the bill. We're going to be working with them as well.

The bill has passed the Senate Natural Resources Committee and it's now in the Senate Appropriations Committee to look at the impact to the state budget.

It's likely going to be put in what's called, "suspense," because it has likely fiscal impacts. We're hoping any amendments that we agree on can be included at the committee.

We've also heard that Assembly Member Rich Gordon—who has another bill that you'll be considering today and is an ex-Commissioner has asked to become a sponsor of the bill.

The staff recommendation is that you take a position of support and sponsorship for the bill. We also recommend that you direct staff to continue working with the various parties to craft amendments that are consistent with the direction of the bill and your climate changes policies and Strategic Plan.

Chair Wasserman recognized Commissioner Nelson.

Commissioner Nelson asked: Have any of our Joint Policy Committee partner agencies taken a position or commented on the bill?

Chief Deputy Director Goldbeck answered: We have been working closely with our Joint Policy Committee members and the work in here is what we have been discussing with them and that the JPC approved.

The bill is now with the appropriate legislative committees of the agencies. My guess is that they will likely take it up after we work out these clarifying amendments.

Chair Wasserman announced: We'll hear from the public now, Arthur Feinstein.

Mr. Feinstein addressed the Commission: I am Arthur Feinstein representing the Sierra Club. We are very supportive of this bill.

For the first time we've gone over 400 parts per million of CO2 and it's only going to get worse. It's a scary world we're in when you talk about climate change.

This is a much needed policy, a much needed process to develop a regional strategy plan.

We do have one concern with the bill; on page five, under the Government Code, little c, one capital B. what it says is, the formulation of the resilience strategy shall to the extent possible address all the following goals and objectives.

Under one it says, advance regional public safety and economic prosperity by **protecting** all the following. And then B is, new shoreline development that is consistent with the San Francisco Bay Plan and other applicable state policies.

The concern we have here is that since climate change is so new, when you say, new shoreline development – we don't have state policies that actually have criteria for what is, appropriate development or not on the shoreline. I'm assuming, on the shoreline, means in the Bay itself.

Because climate change is so new we don't have actual state policy that defines where we should or should not build new developments along the Bay. Your climate change amendments do not specify criteria for helping to choose that either. You have an internal inconsistency in saying, you're developing a regional strategy to identify how we're going to adapt to climate change and sea level rise based on policies that do not address climate change and sea level rise for new development on the shoreline.

What we're urging the author and BCDC is to look for language that would not ask for identification for where you should and should not actually develop. This was not workable because it got into property rights and kinds of related issues. We're hoping that BCDC and the author will support the idea of having this resiliency plan identify **criteria** that local governments and agencies can base their decisions on new development on.

You're not identifying where it is appropriate or not but rather, just identifying through this process, criteria that will help local governments and agencies decide where new development is appropriate on the Bay shoreline.

I hope this avoids the controversy that we had before the conflict over the property rights. We're just suggesting that there be a process that helps identify where it might be a good idea to do it or not, otherwise, you have an internal inconsistency developing a plan based on material that does not provide the plan with any insight on what to do.

The Club supports your support in sponsoring the motion with the proviso that you continue to have conversations with us, and others who are seeking amendments.

Chief Deputy Director Goldbeck stated: The staff just received these suggested amendments. I would point out that the Commission, after much discussion, adopted criteria for it to use in approving development within its jurisdiction under climate change and sea level rise.

Mr. Feinstein is also thinking of local governments and areas that might be out of our jurisdiction. We don't recommend our policies to local governments at this time.

We need to look at these comments and we want to come out with an approach on this regional strategy that the region can live with.

Executive Director Goldzband commented: Steve has been with the Bay Planning Coalition and the Nature Conservancy, and the Bay Area Council has said that they are happy to jump in if the Bay Planning Coalition is satisfied.

Our basic thrust here is that the Commission had a tremendously difficult task in front of it a few years ago, it solved that issue. We don't want to do something that breaks that apart, we want to further it.

This is how we tend to look at all the amendments that are coming at us no matter from whom they are coming.

Chair Wasserman recognized Commissioner McGrath.

Commissioner McGrath made an observation: The language says in essence, the strategy should protect all of the following, existing development and there is no controversy there. The question is, what is the definition of new shoreline development?

Arthur did say they he assumed the possibility of Bay fill. I kind of assumed the opposite. My question to the staff and to the Attorney General is, is the term, new shoreline development, a new term or art that needs to be defined and could that resolve that concern or has it already been defined sufficiently so that we can be assured that there is no Bay fill that doesn't entail Bay fill, rather, it means development in the shoreline band which is how I would interpret it?

Chief Deputy Director Goldbeck responded: I don't believe that "new shoreline development" has been defined in the law or the policy.

Commissioner McGrath continued: So this could be resolved by a definition of, new shoreline development or use of an existing term of art such as, development in the shoreline band?

Chief Deputy Director Goldbeck replied: It could be. We'd have to think about that because you want to consider whether you want to include new shoreline development that's sited in the Bay and whether that should be part of the regional strategy and whether it ought be protected or not.

I'm not sure that a simple definition would resolve the issue.

Commissioner McGrath further commented: What we've grappled with in getting this far is the idea that there are some developed areas that are too low, too close at the Bay Trail in between them and don't have room. We are facing a future that to protect existing development we may be facing some areas of Bay fill and we want to make sure that is adequately mitigated both in terms of the impacts of the fill and impacts of any disruption to public access.

That's kind of a ship that is already sailed. What I've seen and what we've done with new shoreline development is we have made sure that that's not going to occur. That is what I see as a practical matter in the ongoing planning.

I don't see this as a show stopper but perhaps just through careful selection of words or definitions it can be clarified.

I don't want to say that there can be no Bay fill if we already need a certain level to protect existing development. This is the kind of issue I want to finesse here.

Chief Deputy Chief Goldbeck responded: That's correct because your Bay Plan policies actually allow you to protect existing development with new Bay fill. I think we can go back and look to see if there is clarifying language that would address your concern and could achieve consensus.

Chair Wasserman commented: The language says that in C that we're focusing on that it will address **all** of the following. It does not say, those are the only things that will be addressed. I think this is correct and it is the way that it should read.

Commissioner Zwissler commented: I am curious about what the likely budget impact is that the Committee is going to unearth.

Chief Deputy Director Goldbeck replied: That is a perceptive question. The bill may have budget impacts and we are talking with the appropriations staff right now on that. We have been open that there are going to be some costs associated.

We think the costs could be significant but they're not going to be in the tens to hundreds of millions of dollars but they could be on the order of a million dollars.

We have been very successful in garnering funds through federal, state grants and in-kind work from partners to cover a lot of the work.

It's difficult to say what the actual budgetary impact is going to be depending on how much of these funds we can obtain going forward.

Commissioner Zwissler asked if the costs involve the production of the work and not the impacts of the findings? Chief Deputy Director Goldbeck, the correct costs would mainly be adding staff to work on it and maybe some contractual work.

The Coastal Commission actually has a grant program to local governments, but I am not sure whether we could get that included. In the last couple of years with the state budget in such dire straits most bills that had these kinds of fiscal impacts were not moving very fast. We're hoping both with the state budget outlook being a little better and also because this is so important to the region, that this small amount of money will be accommodated to avoid much more costly impacts.

Commissioner Zwissler continued: But should we be discussing further advocacy for this bill or is that something that's not appropriate?

Executive Director Goldzband answered: I would argue that the best thing for the staff to do would be to get a measure of support from other legislative bodies and BCDC in sponsorship. And then be able to craft the amendments that need to be crafted and then we will then be rounding up support that is preliminary at this point but probably asking each of you to ask your legislative bodies or whatever it is you can do to also support it and do advocacy on behalf of the bill.

We have absolutely no problem doing that but I would argue that we're probably better off doing that after the amendments have been successfully crafted.

Commissioner Arce commented: I was curious to what extent we needed to have language, apart from a position of support and sponsor, to provide some direction to work with Sierra Club and other folks on those amendments. I was curious on how far we had to go to specify, beyond support and sponsor?

Chair Wasserman answered Commissioner Arce: The motion will address that.

Commissioner Pemberton had a question: I just wanted to ask, could BCDC do what's required in the bill now or is legislation necessary to carry out these duties?

Chief Deputy Director Goldbeck replied: We believe that additional resources would be necessary to do this, particularly in the timeframe that the bill requires.

Commissioner Bates chimed in: You might even consider saying that we're not going to ask for any state funding and say that we're going to look for outside grants and outside opportunities to fund the program.

First of all, in front of the fiscal committees unless you say how you're going to pay for it you're not in very good shape. Once you get past the fiscal committees the climate could change and you have to go to the other side of the House and you might find an opportunity then to put in some way how you're going to pay for it.

It was not uncommon when I was there to say, we're going to look for foundations and other kinds of outside support and we would be able to move the legislation along.

Once it's adopted then the question is, how do you pay for it? Then at least you have your framework in place and it's in the law.

Chair Wasserman agreed: There is no question that that is a strategy that has been used successfully in the past. I would suggest that the position you're advocating is the one we've done in the past. I think now is an appropriate time to ask staff to continue working as they have been. Staff believes and I support that now is an appropriate time to talk with the Administration and the Legislature about some changes for our base funding in addition to some redirection of some of the funds that we bring in but don't keep.

Part of the underlying fact of that is, if the Legislature and the Administration truly believe as they say, that adapting to climate change and in particular, adapting to rising sea level is critical for the safety, viability, sustainability of the state and this region in particular; it doesn't get done without funds. This is a new activity and it's a necessary activity and we are a state agency appropriately undertaking it.

Commissioner Bates added: I don't disagree. I think that first of all, we probably won't have our amendments together between now and Monday when it will be heard. It's going to go to suspense.

The big question is whether we're successful in the Governor's May revise whether he recognizes some of these fiscal considerations. And if the Governor says, this is something that we important then it's all systems go.

If they are reluctant then we need to think around another strategy.

Chair Wasserman agreed: Absolutely. And staff is watching this closely and we will be as flexible and agile as we can.

Chief Deputy Director Goldbeck added: With the proviso that when the Appropriations Committee whose workings are somewhat opaque, when they announce their decision, that's kind of it unless you can get someone to amend the rules.

Commissioner Bates stated: But you also have to go through the next appropriations committee too.

Chair Wasserman recognized Commissioner Nelson.

Commissioner Nelson commented: The Governor is very committed to addressing issues related to climate change so let's see if it's possible to find some funding to begin implementation without being completely reliant on outside funding.

I just want to clarify the word, development, as I read it in 6649 (C)(1)(b). As I read it, development, refers to projects that will be developed over the course of time in the future and that as we develop those projects we need to make sure that those projects are fully adaptable to the impacts of climate change.

That doesn't address what the criteria are for approving such a development. I do think this is an important issue for us to think about.

I want to offer a word of caution. This is an opportunity for us to avoid triggering the extended debate we had in the past in this area. I am not suggesting that we should use the words, guidelines or criteria, but clearly, what we're trying to do here is to develop a regional plan that will assist local and regional government in thinking about those land use management decisions.

We need to make sure that it is within the scope of this effort but I also want to make sure that we're careful to avoid the words that might trigger controversies that we don't need or want to trigger.

Commissioner McGrath added: I couldn't agree more. I would think that it is not necessary for the Commission to get involved in word butchering at this time but instead to approve, in concept at least, and to make it clear either on the record or with an amendment, that we direct the staff to work with the interested parties to include clarifying amendments that ensure the policy language is consistent with the adopted Bay Plan amendment on climate change.

So to reiterate, the staff recommends that the Commission support, in concept; and the second amending language is, and to work with interested parties to include clarifying amendments etc.

Chair Wasserman asked Chief Deputy Director Goldbeck for some clarification: From your perspective, is it important to say, support in concept, as opposed to, support?

Chief Deputy Director Goldbeck replied: I would agree that, "in concept," isn't really needed and it sounds a little equivocal.

Commissioner Pemberton had a question: Is the recommendation also to sponsor in addition to support or just to support?

Chair Wasserman answered: Support and sponsor. Commissioner McGrath gracefully accepted the minor correction.

MOTION: Commissioner McGrath moved that the Commission direct the staff in support and sponsorship of SB 1184 to work with interested parties to include clarifying amendments consistent with the adopted Bay Plan Amendment, seconded by Commissioner Sears. The motion passed by a voice vote with no abstentions or opposition.

Chief Deputy Director Goldbeck continued: You have an additional staff recommendation in your packet for SB 792 which was introduced by Senator Mark Desaulnier and it mandates certain provisions on the Joint Policy Committee and how it conducts its business and how it formulates the Sustainable Communities Strategy.

The bill had issues last year. BCDC and the other JPC agencies suggested a range of amendments. One of the amendments was that BCDC move to the new regional headquarters at 375 Beale.

The Senator took many of these amendments and then the bill foundered in Appropriations. The Senator then amended the bill again and in part of those amendments it removed any of the provisions that had been in the bill pertaining to BCDC that would mandate costs. That took out the move to Beale and also us being in charge of addressing climate change planning in the Sustainable Communities Strategy.

Under the bill as it stands now, the JPC is supposed to prepare and report a plan to consolidate certain common functions and cost savings associated with moving in together and working together more closely and report those back to the Legislature.

It also does other things such as directs the JPC to maintain a website, which it already does, and also to form an economic advisory committee that is supposed to adopt goals and policies related to economic development for the Sustainable Communities Strategy.

And for the Sustainable Communities Strategy the JPC agencies are supposed to form an advisory group for public participation in preparing the SCS and the amendments lay out various things that need to occur.

They must also report bi-annually on progress in implementing the SCS.

The JPC agencies have discussed the latest version of the bill and have further recommended amendments and they would direct that the Air District and BCDC would provide technical and policy analysis and recommendations for the SCS addressing respectively, sea level rise planning and priority air pollutants but would not be directed to have to adopt the SCS.

We are directed to be involved but not actually adopt it and there's also language directing, using existing funding so that this wouldn't be some new funding requirement in the bill.

We also are recommending that some of the directives in the bill be simplified and clarified to the JPC to make it easier to do business while still getting to what the Senator wants to achieve.

The agencies believe that the JPC could live with this bill but we have Allison Brooks here who is the Executive Director of the Joint Policy Committee who could talk to the amendments and provide that perspective.

Our staff is recommending that the Commission support the bill with the staff recommended amendments as I've just discussed them.

Ms. Allison Brooks addressed the Commission: I just want to clarify one point. In the amended language it does expand a little bit the issues that may be covered under the next update of future sustainable communities strategy which I think is important given the previous discussion about sea level rise and climate adaptation.

The language reads, it shall also include goals, implementation measures and performance targets pertinent to the focus of the Sustainable Communities Strategy and relating to economic developments, social equity, governance and the environment including but not limited to air quality, sea level rise, climate change and other hazard readiness including shoreline resilience and long-term recovery from major earthquakes.

The previous version was very focused on the intersection of land use and transportation, this does open up an opportunity for BCDC and the Air District to play a very meaningful and active role in updates of future plans.

Chair Wasserman announced: I would entertain a motion to support the bill with the staff and JPC recommended amendments.

MOTION: Chair Wasserman moved that the Commission support SB 792 with the staff and JPC recommended amendments, seconded by Commissioner Pemberton. The motion passed by a voice vote with no opposition and one abstention.

Chief Deputy Director Goldbeck continued: The last bill today is AB 2516 which was introduced by Assembly Member Rich Gordon. This bill comes out of the hearings that have been held around the state on sea level rise and the California economy. They have been listening to what folks are doing and the potential impacts around the region and the entire state.

They decided to move this bill from the results of these hearings and it mandates the state Natural Resources Agency to establish and maintain a database on a public website that would list all the various adaptation efforts ongoing across the state with information about them and that is geographically located so you could know what's going on in Santa Clara County or San Benito County and get more information about that project.

They did this because they determined while there's a lot of good work that is going on, most people don't know about it. They thought that this would be a useful first step in making sure that everybody knows the various state efforts that are going on. They also recognized that oftentimes these websites are fabulous and six months or a year or two later you find that they haven't changed and they're quickly out of date.

The bill also mandates that the database be updated monthly. BCDC and other agencies including the State Lands Commission would be required to provide information on projects that are being implemented by them and also in their respective jurisdictions.

Staff believes that this is a good effort and ought to be supported. The main concern we have is the burden of having to update projects monthly and whether things are really changing that fast. Staff believes that three or four times a year would keep it up to date and reduce the work load on the member agencies.

The staff recommendation is to support with recommended changes updating the database three or four times a year.

Commissioner Pemberton commented: I would note that the author just accepted amendments to make the reporting requirement quarterly rather than monthly. In light of this would it make sense to change the recommendation to support or to stay with support as amended. I'm not sure.

Chief Deputy Director Goldbeck asked: Have those amendments officially come out?

Commissioner Pemberton answered: I don't know if they've been officially amended into the bill but I know when the bill was heard on Monday in committee those were recommended in the analysis and the author accepted them.

Commissioner Nelson made a point of clarification: If we adopt a support-if-amended position because we're not sure if these amendments are final, once that language becomes final staff has the discretion to make the decision that that qualified-support position will become a straight-support position.

MOTION: Commissioner Nelson moved that the Commission support AB 2516 with the recommended amendments, seconded by Commissioner McGrath. The motion passed by voice vote with no opposition and one abstention.

Chair Wasserman moved on to Item 10.

10. Briefing and Panel on the Bay Delta Conservation Plan. Chair Wasserman announced: Item 10, which is a briefing and a panel on the Bay Delta Conservation Plan. John Coleman, Executive Director of the Bay Planning Coalition and President of the East Bay Municipal Utility District will chair the panel. Panelists include Paul Helliker of the Department of Water Resources, Carl Wilcox of the state Department of Fish and Wildlife; Marguerite Patil of the Contra Costa Water Agency; and Jonathon Rosenfield of the Bay Institute. Joe LaClair will introduce the topic.

Chief Planner LaClair presented the following: I want to extend our gratitude to the panelists who are taking time to assist us in this matter. This project is incredibly important to the state of California and to the San Francisco Bay Area.

The Commission was briefed on the Bay Delta Conservation Plan (the BDCP) in February of 2013 and again in February of 2014 to understand the broad outlines of the project.

Some of the project alternatives being considered and potential impacts the BDCP may have on the Bay and on the Suisun Marsh will be discussed.

The BDCP is both a habitat conservation plan and a natural communities conservation plan under state and federal law.

The purpose of the plan is to provide benefits to species covered by species protection laws, not only to prevent further jeopardy to them, but also to provide for their recovery in the future and to improve water supply reliability.

Conservation Measure 1 is a conveyance facility consisting of two pipelines that would convey water from the north end of the Delta and deliver it to pumps at the south end of the Delta.

The remaining conservation measures in the plan would improve habitat for protected and non-protected species alike.

The Department of Water Resources and the U.S. Bureau of Reclamation have prepared an environmental document for CEQA and NEPA review.

The document is monstrously large because BDCP is a very large and complex undertaking.

Today's briefing and panel is intended to bring some clarity to the issues raised in the staff report about the environmental documents we mailed to you last week.

Staff will use all of this information together with our review of the EIR to prepare comments on behalf of the Commission which are due on June 13th.

At the February 20th Commission meeting on the BDCP, Mr. Helliker provided the Commission with a comprehensive overview of the project. At that meeting, Commissioners and members of the public and staff raised a number of issues regarding potential effects of the project on the Bay and Marsh.

I'll briefly summarize the issues that we raised in our staff report.

We want to examine whether the potential effects to the San Francisco Bay and to the Suisun Marsh individually or cumulatively are significant, and if they are; can they be avoided or mitigated? As we noted previously, the EIR states that there will be no significant effects on the Bay or the Marsh.

Should the BDCP include Delta freshwater outflows that exceed the requirements of current rules included in Water Board Decision No. 1641 and the related biological opinions so that we can protect Bay and Delta fish species? There is concern that current standards may be insufficient to protect species of concern.

Should the environmental document analyze the effects of increasing salinity on Bay species such as the Dungeness Crab or breeding waterfowl in the Suisun Marsh?

Other issues include, can the proposed governance mechanisms in the BDCP effectively protect species during a prolonged drought? And will these mechanisms be adequate to implement the adaptive management program, particularly for habitat conservation measures? Will sufficient funding for governance and conservation implementation available?

How will climate change affect the proposed conservation measures? And, can near-term conservation measures be evaluated at the project level in the environmental document?

Can projected impacts on sediment delivery from the Delta be addressed? And, can the environmental document include additional analysis to assess whether the proposed restoration/conservation measures will create sediment sinks upstream of the Marsh and Bay that could be sufficient to compromise restoration projects in the Marsh or the Bay?

I know that our panelists came prepared to discuss these issues and others that you may raise today. John Coleman, our moderator, will now introduce the panel and provide some comments that frame the discussion and issues of most interest to the Commission and how the BDCP will affect the Bay and Suisun Marsh.

Mr. John Coleman spoke: The Bay Planning Coalition has their annual decision makers conference coming up on May 16th and we are giving Chair Wasserman the Frank Berger Award which is given to somebody who has demonstrated leadership in the environmental as well as economic arena in the Bay.

We have two panels that are focusing on changing shoreline, land use implications as well as shoreline resiliency.

We're now switching to BDCP not to be confused with BCDC. BDCP is the Bay Delta Conservation Plan. Hopefully the dialogue today will allow us to have some real discussion take place.

This is not an issue of north versus south, rural versus urban; it's a question of how we're going to restore the Delta. What is the right way to restore the Delta and what are we going to do with the water that is currently being taken by the state water contractors and brought into the San Joaquin Valley, into southern California as well as parts of the Bay Area including the East Bay as well as San Jose. How do we go about it the right way and how do we protect the environment.

If you read the summary or outline of what the goals of the BDCP are, one really can't argue about it. It's talking about how to fix the Delta and nobody can argue that the Delta is in great shape; it is not. It's in decline and has been for years for a lot of different reasons.

Some of these reasons the BDCP can fix, others it can't and the state and the feds will have to get involved to deal with those issues, which are not addressed by the BDCP.

The BDCP, the way it has been outlined, if it's done right, will improve water quality as well as the ability to transmit water in other parts of the state, and at the same time have economic and environmental benefits.

I would like to have each of the panelists give a brief presentation of who they are and they're here because they are experts. I will then throw a question out and then it's open to you.

Mr. Rosenfield introduced himself: I'm Jon Rosenfield, conservation biologist for the Bay Institute, thanks for taking the time for this agenda item.

My organization is a non-governmental entity, non-profit and we participated actively in the dialogue and planning over the BDCP for at least seven years. We've participated in the process because we recognized that the status quo in the Bay Delta and for half a dozen endangered fish species and many other terrestrial species and a bunch of species that should be listed and are not; that the status quo is not working. We need a big change.

The change that we need to restore our Bay Delta Estuary and its species is not going to happen in court. We need to be able to go beyond just saying, what's the maximum impact without causing things to go extinct?

The Bay Delta Conservation Plan as an HCP, NCCP provides that opportunity. We have participated in those long conversations and a lot of planning.

At this point we don't believe that that planning and that effort in these documents represent an advance over the status quo. You will hear some people say, the status quo is terrible, we have to do something and this is true. But we have to do something that is better than the status quo and we think that there is opportunity to do that.

Mr. Wilcox addressed the Commission and attendees: I'm Carl Wilcox with the California Department of Fish and Wildlife. I'm currently the policy advisor to the Director for the Delta.

I've been working on BDCP since late 2006. It's been a long process and what is currently before the public for review is a milestone in that there have been numerous administrative drafts. The document and the Plan improve over time even with those administrative drafts and public input. It will continue to be shaped by public input and agency input.

The Plan will be a natural community conservation plan. That type of plan, from the perspective of the state and the California Endangered Species Act requires a very high level conservation standard. That is, the plan must achieve the conservation of the species within the plan area.

It's a higher standard than mitigate, which is arguably the standard under an HCP. It holds us to a higher standard. It also is based on the fact that there are public benefits associated with achieving that standard and consequently NCCPs include substantial public funding, not just permittee funding or developer funding.

When you look at the Bay Delta Conservation Plan, it is a mix of contractor funding, primarily for the infrastructure component, and fairly large contributions from the state and federal government over a 50-year lifespan.

The certainty of funding is always a question. If you look at the plans that have been approved today, they have had their issues but all of them continue on track, and have managed to cobble together their conservation funding over time.

Ms. Patil addressed the attendees: I'm Marguerite Patil and I'm the Special Assistant to the General Manager of the Contra Costa Water District, not to be confused with the Contra Costa County Water Agency, which is part of the County.

We're actually a special district. We just do water and we serve about a half million people in Contra Costa County. We get 100 percent of our supply from the Delta. We are physically located in the Delta. We operate and own four intakes in the Delta.

We are a little bit different than some of the other Bay Area agencies. We work closely with our neighbors like East Bay MUD and we're in the same situation as East Bay MUD as far as BDCP in that neither one of our agencies is a BDCP proponent, meaning we're not one of the agencies that is proposed to get benefits from the project. We are more in the category of looking at the potential of seeing significant impacts. In fact, the draft EIR has identified significant impacts on our agency.

Our agency has not taken a position on BDCP because we believe in the 2009 legislation and we believe in the co-equal goals. We also believe that the status quo is not acceptable. We want to see a solution come forward that we think can get support from a broad set of stakeholders. I don't think we're there yet. We're going to be making significant comments on the EIR in regard to three areas.

These are the water quality impacts to our District, the impacts on our water supply and the potential for financial impacts. We all work together and we want to see this all move forward to a solution.

Mr. Helliker spoke: I am Paul Helliker with the Department of Water Resources. We have been in the process of getting comments back on our documents and look forward to yours. We continue to refine it every month that we work on this.

Mr. Coleman posed a question to the Mr. Helliker: We hear concerns in the Bay Area primarily about the conveyance system and taking the water north of Sacramento versus on the south end of the San Joaquin Valley is less water going to flow through the gate as a result? And secondly, how is the water quality changed or is it changed by virtue of where it's taken from and where it flows into Suisun Bay and into the Bay and falls under the purview of BCDC?

Mr. Helliker replied in response to the issue about flows, in the document you will find that our estimate for the Decision Tree, which is the proposed project under CEQA for the 9,000 cubic-foot-per-second tunnels alternative that the range of exports is expected to be somewhere within plus or minus 10 percent of what the average has been for the past 20 years depending upon whether you go with the high-outflow scenario or the low-outflow scenario.

In terms of water quality, we do have extensive modelling data in the documents. Our commitment is to meet the water quality standards that we're currently subject to, the Water Board Decision 1641 in our operational plan and that any of the modelling variations that we see that when we get to the real-time operations that we will make sure to meet all of the requirements that we have now, plus those that are imposed through the habitat conservation.

Mr. Helliker responded to Commissioner Zwissler's question "how do we calculate some of the projected climate change impacts such as change in precipitation and rising sea level?"

We do have extensive climate change analysis in the document identifying what those likely results are going to be in terms of sea level rise as well as changes in precipitation type.

We don't actually predict that there's going to be any net reduction in the precipitation. It may come as a different form. There will be an increase in temperature.

Those are all identified and what the impacts will be. Our obligation is to make sure to meet the mitigation standard but also contribute to the recovery even with climate change.

The impacts on outflows we don't anticipate that the Bay Delta Conservation Plan is going to have any impact on outflows but climate change will.

Mr. Rosenfield commented: I wanted to note a few things about the use of an average outflow standard. We are at the low end of average and a few years ago we were at the very high end of average. The fish and wildlife in this estuary don't experience the average, they experience the conditions in a given year.

During certain years under BDCP high outflow scenario or any of the scenarios, outflows are projected to be lower than they currently are. That is an impact.

It doesn't matter that five years later, five generations of smelt in the Delta in the future that it will be better, don't worry. That's not how the system works.

The other thing I would point out in the analysis is that the one factor that is strongly related to ecological conditions for most fish and wildlife species that are native to this estuary is that they respond very positively to freshwater flows from the Sierra through the Delta and out.

Every agency that I know of that has fish and wildlife trustee responsibilities, the EPA, U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, National Marine Fisheries Service and the State Water Resource Control Board has determined that current water flow conditions through the Delta are woefully inadequate. And over the last 25 years we've seen half a dozen fish species listed as threatened and endangered. And for each one of them, diminished flows are a cause.

This is an example of, no change, thumbs up. Now it's thumbs down where the status quo is not good enough and maintenance of the status quo is not good enough. And the status quo is not flat like this table. The status quo has declined.

Commissioner Zwissler queried Mr. Rosenfield: What about the demand side? How do you factor that in? If there is increased population, more agriculture et cetera?

Mr. Rosenfield replied: That is a question that BDCP does not address. The movement of the point of diversion is a tool. The diversion itself is a tool and moving it around may have beneficial effects.

It's a tool to achieve an end and the end should be, as the Legislature mandated, dual goals; improve the Delta ecosystem and improve the reliability of the water supply.

Improving reliability of the water supply is not the same as increasing the water supply, but there is the need to serve more people. That calls for the BDCP to be nested within a group of solutions that take into account the whole state and says, how can we increase local self-reliance?

The Legislature also mandated reduced reliance on the Delta and putting two tunnels underneath the Delta in concrete is not reducing reliance and increasing reliability throughout the state.

This is one of our concerns with the project as proposed.

Mr. Coleman joined the conversation: I'm going to play the devil's advocate here. I do know that many agencies throughout the state, East Bay MUD for one, the '76 drought was the drought of all droughts which many agencies do their measurement by. Our population has gone up by more than one-third yet our usage is down by more than one-third since that point in time.

Metropolitan Water, their population has gone up by nearly a million in a 20 year period and their usage is down by over 40 percent. Many agencies are more self-reliant and in particular, southern California is doing a hell of a lot better job than we're doing in northern California in that respect.

You are seeing, and as also mandated by law, that all agencies have to reduce their water usage by 20 percent. Many agencies have not only met that but have already exceeded that goal that was established by the Legislature.

Mr. Rosenfield agreed: I have no disagreement that the municipal agencies have done a good job and are continuing to do a good job at reducing demand. They don't use the largest fraction of water taken out of the Delta.

Commissioner McGrath commented: I am an administration official with the Regional Water Control Board and our State Water Resources Control Board can look and must look comprehensively at the whole program. My goal here is to focus on the potential impacts to San Francisco Bay rather than the whole suite of issues and how those might be affected by the proposal.

I haven't heard anybody comment about the sediment changes. It's intriguing that all the sedimentary features that we see in the Bay that we love, formed in only about 8,000 years and yet there is no longer enough sediment coming down to sustain them.

There are three specific impacts that trigger concerns about potential problems with sediment.

First, the proposal is to increase the volume of water diverted, about 10 percent. Ten percent when you get to velocities can be very significant because sediment transport is a power function. If you increase diversion by 10 percent and it affects velocity directly, you could reduce sediment transport by up to 20 percent.

The document does acknowledge that there will be changes in velocities in channels both directly and perhaps from diversion of flow now going through channels which would become water and sediment transported through tunnels. That has a whole host of very complicated effects.

Third, there is the proposal to develop habitat in the Marsh and river flood plains upstream of the Bay which has the potential to create sediment sinks.

As the saying goes, the devil is in the details. If you just take that last question, there will be a lot of sediment generated by different projects. It is entirely possible that those habitat restoration projects could be done in a manner that they would not create sediment sinks.

This is a programmatic document. It neither provides the analysis of where they are or the commitment to make sure that those impacts aren't there. As the Bay faces an increasing sea level rise, any diminution of sediment has, in my personal opinion, a concern for the viability of the wetlands. Anybody willing to take on the question of the project's impacts on sediment transport?

Mr. Carl Wilcox replied: Having worked in San Francisco Bay on wetland restoration for 20 years I share your concerns. I think the thing to keep in mind is that the Delta, Suisun and San Francisco Bay are sediment starved as it is. The amount of sediment that comes into the system is very small compared to what it has been historically and was during the hydraulic mining era. We are seeing the end of that plus we have a bunch of rim reservoirs that restrict sediment transport into the fluvial system.

There just isn't very much sediment to go around. Certainly it's of concern. Anytime you restore or open up new areas to tidal influence, you're going to get sediment deposition.

One of the issues that we're struggling with in BDCP is how to do that. Much of the restoration in the Delta will require use of dredge material or fill to get it up to suitable elevations.

There may be an increase in sediment accumulation. Another concern is that, particularly species like Delta Smelt, is reliant to a degree on turbidity in the system and particularly maintaining conditions that maintain turbid conditions during their rearing period, particularly in the vicinity of the low-salinity zone.

From a BDCP perspective or from the Department's perspective in looking at BDCP maintaining sediment input to the system is an important component.

The thing to keep in mind also is that the Delta is more than 95 percent changed from what it historically was. It used to be 394,000 acres of tidal habitat with an extensive flood plain around that. Today you're lucky if there is 15,000 acres of viable inter-tidal habitat in the Delta and most of that is in one place.

I think this is an issue that BCDC should express its concerns about. This goes to the broader issue of how we manage sediment in the future and maintain a supply of sediment in the system as it relates to dredging activities whether navigational or restoration. We're severely constrained by our ability to recycle that material in the system.

Commissioner McGrath asked a question: Do you think the analytical tools are there? I have only read the Executive Summary which is summary in nature. Do you think the analytical tools are present to look at the impacts on the transport of sediment under different regimes and be able to craft those solutions in policy?

Mr. Wilcox replied: I think modelling is always modelling. The same tools that are used in San Francisco Bay to model the effects have been used in the planning for the Bay Delta Conservation Plan and to assess the effect of the project and its activities on sediment supply. The tools are what they are. It's been recognized that the diversions in and of themselves will reduce the amount of sediment. Then the question is, what do you do with that sediment that is captured to get it back into the system?

There's also the issue of reasonable tunnel material which from my perspective needs to go back into making wetlands that are part of the conservation strategy and will be needed.

Part of that is to allow some source of sediment to be re-suspended within the Delta that can mimic what goes on in the Suisun Bay. Sediment management is going to be an important component of the Bay Delta Conservation Plan in achieving its conservation objectives in the habitat components.

Mr. Helliker commented: First of all, we're not proposing an increase in outflows. The decision tree includes a range including an increase in exports as well as decreases.

On sediment, Carl mentioned the operation of a CM1, the tunnels. We do anticipate that with the sedimentation basins there may be some portion of the sediment removed from the system by that in that process. We're looking at ways to reintroduce that plus all of the habitat restoration measures.

In terms of some numbers, some recent studies have shown that about two-thirds of the sediment coming into the Bay actually comes from the Bay watershed itself and about a third comes in from the Delta. We're talking about maybe a 10 percent maximum reduction with the sedimentation basins with the tunnels assuming that that sediment doesn't get back into the system. We're talking somewhere around two to three percent total.

Mr. Coleman stated: Jim, there's another way to get sediment back into the Bay but that's wearing another hat and I won't go there.

Marguerite, let me ask you, CCWD has their water, they take it from the Delta and it's critical to water quality. What are some of the concerns that you have with BDCP as an agency in terms of how it may impact water quality for you?

Ms. Patil replied: There's a lot of focus on water quality because we traditionally look at salinity as an indicator of what is happening with water quality. For us, this is the first thing we look at, what is happening to the salinity levels at our intakes. We're not monitoring long-term or monthly averages. We are looking at this on a day-by-day basis across the full period of analysis. We look at 82 years of operational studies and oftentimes that many for water quality analysis.

We have to pay a lot of attention to what's happening outside our intakes. Salinity is part of it, because it helps drive our operations of our Los Vaqueros Reservoir and drive our decisions on how much water do we have to release from Los Vaqueros to blend with our Delta supply. For us it's a financial consideration as well.

There's a lot more to the water quality picture that we're tracking. Even things that on the surface look like they would be a good thing, like ecosystem restoration; when it's in the wrong location, like too far into the south Delta where we don't think there's a strong scientific case that that's actually going to provide any benefit.

What it can actually do is heat up that water and create an environment where algae is going to grow and microsites and other bacteria can thrive and encourage growth of invasive species and turn our south Delta area into an environment not very great for providing water supplies.

This is an area that we're pretty focused on because due to the programmatic nature of the ecosystem restoration side of this, it is a bit of a hybrid. The project of the tunnels is project specific but because we don't fully understand what's going on at the ecosystem, it is actually hard to tell. So we're spending a lot of time looking into that.

This just gives you a sense of the range. It's a complicated situation but we're trying to fully understand what the impacts are going to be. Where we really want to focus ultimately is on how that might be mitigated.

We see this year as a pretty good example of what can go quite horribly wrong with Delta water quality when you're not releasing enough water. In the case now, we got lucky because of the recent storms. The projections for salinity and all the other bad things like bromide that come with it, were going to be really awful this year.

We see how we cope with this. This may be a good indication this year of what those kinds of impacts look like.

Commissioner Nelson shared an observation: I'm observing the fact that we're all stumbling over our acronyms and I find it symbolically significant here because biologically there's not much of a distinction between the Bay and the Delta. Legally there is an enormous distinction.

We don't have permit authority over activities in the Delta. It's an enormously significant legal distinction from our perspective.

It's not a well-founded biological distinction. Sometimes Delta Smelt are on our side of the line, sometimes they're on the other side of the line.

Paul, I want to make sure that we are clear about the scope of BDCP. I want to make sure that I'm accurately capturing it. The acronym is Bay Delta Conservation Plan, but is it fair to say that BDCP has not been looking at restoration actions to restore Clapper Rail in the south Bay or Dungeness Crab in the central Bay, right?

Mr. Helliker answered: Yes.

Commissioner Nelson continued: And the co-equal goals that the Legislature passed were with regard to the Delta. They weren't with regard to the whole ecosystem. I simply wanted to observe that there is a complex relationship there of where the biology and the ecosystem functions don't always neatly line up with our legal authorities.

But it's essential that BCDC maintain a clear focus on where we do and don't have legal authority. With that piece as background, I want to ask a couple of questions. The first is with regard to different potential impacts on the Bay side of our jurisdictional line with regard to sediment, salinity, primary productivity, water quality, habitat both positive and negative impacts, flow, turbidity, fisheries impacts; the independent Science Board has said that more evidence is needed there.

I wanted to ask for those of you who have reviewed this document, do you feel that the existing document has captured adequately potential impacts on the Bay side of that line? If each of you could briefly address that from your organization's positions; how has this document done in analyzing that full range of potential impacts over which we do have some authority.

Mr. Rosenfield replied: I appreciate that distinction that you're making there because as a biologist it's all together as a system. Each of the 11 fish species that are covered species under this plan lives in the Delta at some point and in the Bay. Some of them actually go out to the ocean. Longfin Smelt used to be the most abundant native fish species in this ecosystem and were seen as

the crux for the food web. They spawn in the Delta and live throughout the Bay including down to the south Bay. Then there is Chinook Salmon migrating from the rivers through the Delta, through the Bay twice. Steelhead and Sturgeon form a fishery, mostly just outside the Golden Gate and then back in the rivers.

Impacts that we see to these fish species from BDCP are impacts to the Bay. Whether that impact occurs in the Delta or not is sort of immaterial to what your concerns need to be because if the fish don't make it out of the Delta then they don't make it into the Bay. There are significant impacts to several of the species that BDCP is designed to improve the status of. There is a requirement for these populations to be restored. They are not going to be restored and some of them are actually going to suffer impacts from BDCP. That is one class of impacts to the Bay that's going to happen because of an action in the Delta. There are impacts to the Bay even if it looks as though they happen in the Delta.

Mr. Wilcox agreed: I agree with Jon. I think the whole reason there is a decision tree is reflected in that dilemma relative to the effects and the role of flow.

If you read the document and look at Conservation Measure 1, kind of where the fisheries agencies are is in the high outflow version of the decision tree and that's all about flow.

Ms. Patil commented: We don't really look at the impacts on the Bay specifically. We're a water district. We're going to work on the impacts on our facilities but in the course of doing that we spent a lot of time looking at the operational analysis of the high outflows scenario. I think the issue is that it is very hard to tell how that is going to work. Even for us who are primarily looking at it in a more simplistic aspect of what it does to flows and water quality, we tried to do some independent analysis of it and we were actually unable to because there wasn't enough specific information there on how that would work and where that water would come from to produce that high outflow. How that would be purchased and all that is another issue. But even understanding the nuts and bolts of how it would work is difficult. That sort of issue carries through to the point if you're going to look at it in a numerical analysis in the Bay. I think you might find that a challenging exercise.

Mr. Helliker spoke: The Bay Delta Conservation Plan does not include any actions that go beyond Suisun Marsh and Suisun Bay. That is one of the reasons why the planning area is defined the way it is.

While it's true that fish species live both in the saltier Bay and the fresher Delta in Suisun Marsh, that once you get to the Carquinez Straits that the physical and chemical aspects of the ecosystem are dominated in the Bay by the saline system. So any impacts that might be identified to flow or water quality get washed out by that particular element. That's why Carquinez Straits is also the boundary of the action area that we've identified. We don't identify any impacts further west than that.

Mr. Rosenfield added: There was a back and forth that happened from the Resources Agency in sort of trying to correct urban myths about the BDCP. One was that one of those addressed this issue of reduced freshwater flows to the Bay beyond Carquinez Straits having an impact. The point from the Resources Agency was, it's such a small amount of freshwater that's not going to make it past Carquinez Straits that it's really immaterial. The point to keep in mind there is that it sort of like baking, if you add a few percentage more of baking soda to your cookies it's going to have a massive difference on your cookies whereas if you add a few more walnuts it's no big impact, right? Freshwater in an estuary is a critical ingredient whose effects don't just change such as a one percent change in freshwater will equate to a one percent change in everything affected by it, that is not the case. A small amount of freshwater not making it to the Bay can have large leveraged influences on things downstream.

Commissioner Nelson inquired further: Listening to your discussion and reading the staff report, it seems to me that there is a different kind of potential impact that we are thinking about here. It's more related to institutions than it is to direct physical impacts.

Paul, let's assume for a moment that you are correct, that what BDCP is going to do is not going to have any impact on the Bay system and there are no direct impacts in our jurisdiction. Now Jon, let's assume that you're correct as well that the State Board and others have said, the ecosystem needs more flow. Both of those statements can be accurate, the question is, what is the relationship between those two things? That seems to me to be an institutional arrangement. It seems to me it's credible for BDCP to say, our job is to avoid impacts to the Bay system, but perhaps that means it's the State Board's job to make sure that we're actually taking affirmative actions to make sure that there is adequate flow for the Bay part of that ecosystem. What's the relationship between the BDCP process and the State Board's standard-setting process?

Mr. Helliker commented: The direct relationship that is happening right now is the BDCP for the tunnels, Conservation Measure 1 will require a new location in our water rank. We will be proposing that to the State Water Board. BDCP is itself an application for incidental take under state and federal endangered species acts. It's limited to that particular law and the regulatory agencies who implement that. However, we also are subject to water rights. Those water rights themselves incorporate much of the ESA requirements that are in our Section 7 consultations and then through this will be a habitat conservation plan. They are inter-related.

The Water Resources Control Board has begun a process of reviewing their water quality control plan. Part of that water quality control plan focusses on the Delta and that will be in process for a few years probably. Once that process is completed then it will be new standards that would relate to the operations of the state and federal water projects as well as other water projects in the San Joaquin/Sacramento Valley. They do have the water right regulatory authority. We will be subject to whatever changes they choose to make in those water rights. We're proposing the water right change to be consistent with our current one which is Decision 1641.

Mr. Wilcox commented: Paul characterized the situation. BDCP is not a redo of the Water Quality Control Plan. It's within the scope of what the state and federal projects can do relative to their operations. The Water Quality Control Plan affects all water rights holders potentially tributary to the Delta. Those folks whether they're exchange contractors, settlement contractors, 314s, riparians, all contribute to the overall problem in the Delta, not just the state and federal projects themselves.

That is the forum in which the broader issue of outflow, inflow to the Delta is going to be addressed is in the State Board's process and in the Water Quality Control Plan. You've already seen some indication from the Board that there needs to be more water coming out of the San Joaquin system. How much that is is still in play but that will be the first place. And the question is, how does that get arrived at and how long does it take to come about? Depending on what the decision is, then that's going to potentially open up water rights and then years of litigation before any resolution is at hand or some kind of arrangement similar to what's been seen in the past to increase outflow. That's the forum where the bigger issue is addressed but again, within the context of BDCP its change of place, the point of diversion is going to require approval by the Board. Part of that is in this whole issue of whether it's high outflow or low outflow or something in between.

The crux of BDCP is the difference between those two and then ultimately whether or not at the end of the day there is a feasible project for anybody to finance.

Chair Wasserman commented: I think that in recognition of the fact that we have lost our quorum despite the importance of this discussion, we need to wrap this up.

Mr. Coleman stated: Carl, you were talking about the San Joaquin River. Right now the state water contractors take the water out of the San Joaquin River. If the conveyance system is built whether it be 9,000 CSF or something less and the majority of the water is then taken off the Sacramento River or some portion thereof. Would that improve water quality in the San Joaquin River or not?

Mr. Wilcox answered: It doesn't specifically change water quality in the San Joaquin River because the projects don't really affect the San Joaquin River other than as the Stanislaus contributes to flows. All of the tributaries in the main stem other than the Stanislaus are non-federal projects. The burden for meeting water quality standards in the south Delta and in the San Joaquin River lie with the Bureau and the New Melones Project. What will improve water quality conditions in the San Joaquin system is increasing the amount of outflow which is the focus of the Water Board's actions right now.

I think the underlying impetus for BDCP, that diverting water from the south end of the Delta is the worst place you can do it because it turns everything around and has entrainment effects. It has water quality effects. The alternative is diverting from a different location in the northern part of the Delta where you can actually put effective screens on a system. And you have potentially less direct effect from the actual diversion point on the other species of concern. I think that is where it lies. It would be great not to have south Delta diversions at all. The San Joaquin would probably be much better, or at least the south Delta would.

Mr. Helliker made closing comments: Thanks again for your time. We look forward to your comments and every comment we get is helpful to us. We will continue to refine this project.

Ms. Patil closed as follows: I echo that thank you. I'm glad to come back anytime. Moving forward we really want to see solutions come through. We know it's probably not possible to get a project here in this kind of a scale in California that is going to have absolutely no opposition. We think it would be great if the opposition could be minimized by doing the right thing and mitigating for impacts wherever possible.

This should be tied back to what we call comprehensive solutions. We need more storage. We need more conservation recycling. We'd like to see this as a part of a broader solution.

Mr. Wilcox had this closing commentary: Thank you for the opportunity. I am willing to come back for further discussion if you'd like. From the Department's perspective we have a permitting decision to make at some point after the environmental review process is completed. Certainly all of the comments that come in on the public document will be helpful to us in evaluating the project as well as for the purposes of permitting but also looking at ways to make it better.

Mr. Rosenfield closed with the following: Thank you for your time today and the Bay Institute is willing to come back at any time to answer more of your questions. As BCDC looks at the BDCP, in the consideration it's important to look at when the benefits are projected to occur versus the well to water supply and then to the environment. Most of the projected benefits in the Plan are related to habitat restoration that occurs decades in the future. Most of the benefits to water supply occur as soon as you have a tunnel.

It's a 50 year plan with a 50 year permit. There are no surprises clause to that permit. It would be valuable for you to look at the weighting of costs and benefits and how those roll out over time.

Mr. Coleman spoke: I'd like to thank the four panelists as well as the Commission for inviting me here today. I think this is an important dialogue.

Chair Wasserman continued the meeting: Thank you all for your presentations.

11. **Closed Session to Discuss Potential Litigation.** The Commission did not go into closed session.

12. **Adjournment.** Chair Wasserman announced: That brings us to the end of the meeting. Since we do not have a quorum I'm not going to ask for a motion, we are simply adjourning.

The meeting was adjourned at 3:27 p.m.

Respectfully submitted,

LAWRENCE J. GOLDZBAND
Executive Director

Approved, with no corrections, at the
San Francisco Bay Conservation and
Development Commission Meeting
of June 5, 2014.

R. ZACHARY WASSERMAN, Chair