

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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July 9, 2009

TO: All Commissioners and Alternates

FROM: Will Travis, Executive Director (415/352-3653 travis@bcdc.ca.gov)
Mamie Lai, Assistant Executive Director (415/352-3639 mlai@bcdc.ca.gov)

SUBJECT: Approved Minutes of June 4, 2009 Commission Meeting

1. **Call to Order.** The meeting was called to order by Chair Randolph at the Ferry Building, Second Floor in San Francisco, California at 1:00 p.m.

2. **Roll Call.** Present were Chair Sean Randolph, Vice Chair Halsted, Commissioners, Bates, Bourgart, Chiu, Goldzband, Gordon (represented by Alternate Groom), Jordan Hallinan, Lai-Bitker, Lundstrom, Maxwell, McGlashan, McGrath, Nelson, Reagan, Shirakawa (represented by Alternate Carruthers), Thayer (represented by Alternate Kato), Wagenknecht and Wieckowski.

Not Present were: Resources Agency (Baird), Sonoma County (Brown), Department of Finance (Finn), Speaker of the Assembly (Gibbs), Contra Costa County (Gioia), U.S. Army Corps. of Engineers (Hicks), Governors Appointee (Moy), U.S. Environmental Protection Agency (Smith).

3. **Public Comment Period.** Chair Randolph asked for public comment. Mr. Allen Jones stated that he was here because of the facility that is proposed to be built at San Quentin. He asked a simple question -- when this was a \$200 million project and buried in the middle of the Environmental Impact Report there was a letter from me, and in the letter I asked the question, based on what I heard at the Environmental Impact Report from somebody who was proposing building this facility, they stated that the law says that condemned inmates must be housed at San Quentin. And my letter simply asked the question is it easier to build a \$220 million facility or change a law that says where we should house these inmates? And it was never answered. Now, this project is a \$400 million project and I still can't get an answer to that simple question - - which is easier, building a new facility or changing the law that says where a condemned inmate should be housed? Thank you. Chair Randolph responded that staff would respond to Mr. Jones' question.

4. **Approval of Minutes of May 7, 2009 Meeting.** Chair Randolph entertained a motion to adopt the Minutes of May 7, 2009.

MOTION: Commissioner Lundstrom moved, seconded by Vice Chair Halsted, to approve the May 7, 2009 Minutes. The motion carried unanimously, with Commissioners Carruthers and Reagan abstaining.

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



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a. **Item Number 8.** A scheduled Public Hearing and possible vote on the expansion at the San Quentin State Prison, has been postponed at the request of the Applicant.

b. **Next BCDC Meeting:** Our next meeting will occur on July 16th. Metro Center isn't available on June 18th. The next meeting date after that would normally be July 2nd, but as we're bumping up close to the July 4th weekend, please mark your calendars for July 16th. That meeting will be held at the Metro Center in Oakland. In that meeting, we will take up the following matters:

(1) We may hold a Public Hearing and a vote on the improvements to the confinement facilities at San Quentin.

(2) We will continue our public hearing on proposed revisions to our Bay Plan to address climate change.

(3) We will hold a public hearing and vote on changing the structure and composition of our Citizens Advisory Committee.

(4) We will receive a briefing on the work of the Dutch in adaptation to sea level rise.

(5) We will consider whether we want to make changes to our San Francisco Waterfront Special Area Plan to accommodate a proposal to re-locate the Exploratorium to Piers 15 and 17.

(6) Finally, we will consider a status report on the progress we are making in carrying out our strategic plan.

That completes my report. In case you have inadvertently forgotten to provide our staff with a report on any written or oral ex-parte communications, I invite Commissioners who have engaged in any such communications to report on them at this point. Seeing no response, we will turn to our Executive Director's Report.

6. **Report of the Executive Director.** Executive Director Travis provided the following report:

a. **Budget:** As usual, I'll begin my report today with some information about our budget. We'll get into the details of the Governor's proposed budget for BCDC later in our agenda. For now I want to bring only two issues to your attention.

(1) First, unless you have objections, beginning in July we're going to go back to the practice of closing our office on the first and third Friday of each month. As you know, in February the Governor directed that state employees take two days of furlough without pay every month and that most state agencies close their offices the first and third Friday of each month. The program was then changed to allow the furlough days to be taken anytime over the next three years so that agencies could remain open full-time. This has created an illusion that business as usual can be maintained even when state staff levels have been cut ten percent. Also, many of our staff is finding it difficult to schedule the required time off and still get all their work done. Closing the office two days a month would help us better manage this situation.

(2) Second, we have been awarded a \$300,000 federal grant from the U.S. Army Corps

of Engineers for our sediment transport analysis work. The funds will be spent over the next two years, with \$95,000 of the funding going to USGS to assist us in this project. Carolyn Box and Brenda Goeden of our staff developed the grant proposal that got us the funds.

As always, I'll keep you apprised of any new budget information as it arises.

b. **Personnel:** We have three new interns working for us this summer. Courtney King will be working in our planning division on the Corte Madera Creek wetland resiliency study. Courtney is majoring in civil and environmental engineering at UC Berkeley.

Oyntegush Batjargal has just graduated from UC Berkeley with a BS in Environmental Science. He will be putting jurisdictional determinations into our GIS database.

Eric Stevens has a BA in business economics from UC Santa Barbara and is pursuing a Master of Environmental Science and Management at the Bren School of Environmental Science and Management at UCSB. He'll be analyzing the success of marsh restoration projects.

c. **NOAA Fellow:** I'm pleased to inform you that once again BCDC has been selected to host a NOAA Coastal Management Fellow. Typically, states do not get selected back to back -- this is our third or fourth in a row. This program allows us to pay a stipend of \$7,500 a year and gain the services of an outstanding young professional who will work in our office for two years on a defined project. NOAA provides the rest of the salary for the Fellow.

Our Fellow is Courtney Scarborough, who is a graduate of the Bren School of Environmental Science at the University of California Santa Barbara. She will join our staff in August and will be working with another NOAA Fellow at the Coastal Commission to promote planning for adaptation to climate change around the Bay and along the California coast.

d. **Design Competition:** As you may recall, on July 13th a jury will select the winners of the design competition we're holding to get innovative ideas for responding to sea level rise. The deadline for submissions isn't until June 29th, but over 130 competitors have already registered. We've billed this as an international design competition and it's clearly turning out to be just that because the registrants are from the U.S., New Zealand, Italy, England, Japan, Holland, Macedonia, Ireland, France, South Korea, Singapore, Spain, Norway, Russia, Germany, Mexico, and China.

7. **Commissioner Consideration of Administrative Matters.** Executive Director Travis stated that the administrative listing was sent to the Commissioners on May 22nd. Bob Batha is available to respond to any questions Commissioners may have about matters on the listing.

8. **Public Hearing and Vote on Permit Application No. 2-06 from the California Department of Corrections and Rehabilitation for the San Quentin Prison Condemned Inmate Housing Project in Marin County.** (POSTPONED)

9. **Consideration of Response to Governor's Budget Proposal.** Chair Randolph stated that Item Number 9 is a consideration of options for responding to a proposal in the Governor's revised budget calling for the elimination of BCDC as a state department and it's realignment as a regional entity.

We'll have the opportunity for some public comments. Executive Director Travis will give

our staff report.

Executive Director Travis began by noting that Chair Randolph already told you everything that exists in writing about this proposal. It says "eliminate the San Francisco Bay Conservation and Development Commission as a state department and realign its functions to a regional agency." That is all that exists in writing.

BCDC' staff ha been working with the staff at the Resources Agency and the Department of Finance both to get a better understanding of the proposal and to try to help them make it workable. It's too bad that representatives from the two organizations aren't here today to explain the proposal.

The staff's initial understanding is that the Governor intended to provide general fund support for BCDC for half a fiscal year so we would run out of money at the end of December. Based on subsequent discussions, the staff understands that it has funding for the full fiscal year. Again, nothing exists in writing.

The motivation of this is to make state government smaller, to remove a box on the state government organizational chart. BCDC would continue to exist and do what we do now but we would belong somewhere else funded by somebody else. This is kind of like half a football play where you throw the ball down field and hope somebody catches it. But it's not even a Hail Mary, because with a Hail Mary you send your team down the field to catch it. This one seems to hope that somebody from the stands will come down to catch it.

We think that a better game plan is needed. Probably the proposal should have never been made in the first place. If you're going to eliminate state agencies, it makes more sense to eliminate the ones that don't work instead of those that do.

The best thing would be to simply drop the proposal, but it has been made, it's out there. If it isn't dropped, what we think should be done is to finish the game plan. Do an objective, independent analysis, figure out where, in the overall scheme of government in California, BCDC's box belongs, and then figure out how we should be funded.

Yesterday the legislature's conference committee on the budget took up the proposal. I could not testify because the Department of Finance spoke for the administration and because we are still a state agency that is part of the executive branch of government, I'm not a member of the public either.

Finance described the proposal for BCDC as a work in progress. They said the intention is to have BCDC retain all its authority and responsibilities but be carried out by a regional entity, which has been unnamed, and an agency that doesn't get general fund support.

The committee took up a whole raft of proposals and they referred all of them to the various policy committees, and then they want the policy committees to report back to the conference committee for the final decision.

As a parting shot, what they said was we embrace the Governor's objective to make state government smaller, so they called for eliminating a number of cabinet agencies including the Resources Agency and Business, Transportation and Housing.

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So next Tuesday, the Senate Committee on Natural Resources and Water will take up the proposal. I don't know if we will be allowed to testify.

Our recommendation to you is that you take no position on the merits of the proposal, but you endorse the idea of having an objective analysis to determine where BCDC belongs and how we should be funded.

The Governor has described crisis as an opportunity and we agree. This is an opportunity to figure out how to best govern bay protection, especially when we're dealing with the new challenge of climate change. Now, we're working with some of our partners at Bay Area Council of Economic Institutes, SPUR, and others to see if they can do the necessary study pro bono for the state of California.

If that doesn't work, we can do the study ourselves, because we already did it in 1995. We have a 25-page report that went to the legislature on how BCDC should be funded. That was in response to a directive from the Governor and the legislature. A lot of those ideas are still valid and deserve to be looked at again. So our recommendation is that you endorse the staff's proposal to call for this analysis to be done.

Chair Randolph added that a lot of very fast work went into bringing about this particular result, this interim result, over the last week or so, with a lot of background work and discussion in Sacramento with some good staff support. So it looks like the most catastrophic or the most disruptive option has been passed here, but the issue is obviously not off the table. He commended Executive Director Travis for what he's done on this so far; I think we all know his diplomatic skills, as well as his bureaucratic skills, and I think they're being put to good use. So I commend him and the staff for their good work in bringing this into kind of a focus where we're not taking a confrontational stand -- which I think wouldn't work in this case -- but are finding a solution that's actually constructive all around.

Chair Randolph then recognized other speakers who would like to comment on the matter.

Mr. David Lewis, Executive Director at Save the Bay, began his comments by agreeing with Chair Randolph's characterization of the work that's been done. He expressed his appreciation for Executive Director Travis "jumping on it" and added a little bit more background on some other things that have been done in the last week.

I was also up in Sacramento on Tuesday for the previous hearing on where we thought this matter might be touched on. It's been kind of crazy up there. And in addition we've helped generate a number of pieces of correspondence objecting to this proposal from us Greenbelt Alliance, the Bay Planning Coalition, San Francisco Bay Joint Venture, Bay Area Open Space Council, Port of San Francisco, Department of the Environment in San Francisco, and Association of Bay Area Governments. And I think there are others.

And that's I think a testament to the broad business and environmental support for the work of the Commission and the support's been earned over a long period of time.

We think it's very important to combat this assault a little more directly than Executive Director Travis has been able to do from his position right now. At least for the Commissioners

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to do that, both as a Commission and as individual representatives of local government and other places as you're able. And I say that because I think Travis was generous in his description of the administration's explanation.

At the end of the Tuesday hearing before the Budget Conference Committee, Senator Leno asked several questions of the Department of Finance, and to say that their description of this proposal was half baked I think is very generous. They have no idea why they proposed this except that, as you said, it might eliminate a box. No explanation for how local government could possibly take over this cost, nor why it's in the state's interest to have the state's resources that BCDC is managing for the people of California not be in the state's hands, nor an explanation of how that would fit with the federal role that BCDC also is taking on. So this truly deserves to be swatted down, I think is the frank way of saying it.

So I understand the reason for making the constructive suggestion and doing this study, but I actually think an additional direct rejection of the wisdom of this is appropriate in both the Commission's communications with the legislature and your individual communications with the legislature.

We often hear from the Commissioners, especially in your annual strategic planning process, that you're concerned that not enough people in the region know about the good work of the Commission or even that it exists, and there are only two members of the legislature who have previously served on this Commission, and that's Leland Yee and Jerry Hill from San Mateo County.

So there's not a lot of direct knowledge up there either. Fortunately, in this era of term limits there is some staff people up there who do know about the good work of the Commission and that's a great asset. But I think that the opportunity in this crisis, the additional opportunity, is to do exactly what you bemoan the lack of at other times, and that's why it's very important for there to be a lot of communication from you as individual Commissioners and from the Commission, not just about the wisdom of doing a study of other funding mechanisms, but why this Commission is so successful, the good work that you have done, and the broad support in the Bay Area for doing it the way you have done it -- on the cheap, very efficiently, very inexpensively. This proposal doesn't save a significant amount of money, and it has a great potential cost to it.

So Save the Bay as the organization that helped sponsor the legislation that created this Commission in the first place, we feel particular responsibility to help you do that and to encourage you to do that and the assure you that we're doing that to the best of our ability.

Ellen Johnck, Executive Director of the Bay Planning Coalition, began her comments by noting that BCDC is doing a good job, a good job. That is why we wrote a very strong, unequivocal letter of support for BCDC and recommendation that the proposal to eliminate the state budget support, four million dollars plus, should be rejected.

We want to be part of the process going forward. Executive Director Travis has put some recommendations for you about an analysis. The analysis is good. We think that the analysis should not just be relegated to just funding, because funding is tied to what you're doing, what BCDC has been doing over more than 45 years, it's core functions under the McAteer-Petris Act,

but there's some thoughts about doing some new things, you've got some new arenas in your strategic plan. The sediment transport thing, we're going to be involved with that. Discussion about climate change.

I think any analysis, and as stakeholders, as permanent applicants we want to be part of an office that includes not only funding, because this may involve of course permit fees; who knows where this budget, even if BCDC gets some money for this next fiscal year, what's the year after that.

So I think our thoughts for you are to say that analysis should look at the level of function, to the scope -- and here again you have another item on your agenda, and I'll just say I think these two go together -- the climate change and where BCDC is headed in the future and the amount of money it will take and how it's going to be funded to carry out your very important function. You are a very essential public voice for the orderly economic development of the Bay in balance with environmental natural resource protection, and this is absolutely essential, and we want to continue to be part of this process and working with you to figure out the best job for you in the future.

Chair Randolph thanked both Bay Planning Coalition and Save the Bay, and by extension all the other organizations that have sent letters in support of BCDC. Their support at this particular time is very critical and we will welcome that continued support because we're not anywhere near out of the woods on this yet.

Chair Randolph then asked for questions or comments from members of the Commission.

Commissioner Nelson started by commending staff. He has had a number of conversations with the staff about this issue, it's a very challenging situation and the staff has done an excellent job of handling that situation.

I have a tremendous sense of déjàvu here. There was a proposal, as Travis mentioned, 15 years ago to eliminate the Commission by folding it into the Coastal Commission. At that point I was wearing David Lewis' shoes at Save the Bay and there was a very similar outpouring of opposition from the Bay Planning Coalition. And at that point it died a quick and painless death, the proposal to eliminate BCDC. But I don't think we can count on the same thing happening this year because of the extraordinarily difficult budget situation that the state is facing. That's a combination of a structural budget problem and the state's economic condition.

But between those two, I don't think we can assume that this idea will die a quick and painless death this year or even potentially next year or the one after that. So I do think that the staff is absolutely right that we have to develop a responsible alternative to the way in which the Commission has been financed for the last 44 years.

That said, I very much agree with the staff's recommendation. I think we should consider David Lewis' advice as Commissioners to go a little bit farther. The impact of this, of a change here, the impact of handing BCDC in its current configuration and its current budget to the region has tremendous implications for potentially local governments, many of whom are represented around this table, and for permittees as well. Those are the two most likely sources.

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And I think the Commission should think carefully -- maybe we don't take this position until after an analysis is done, but I'm deeply concerned about the implications of any signal from the Commission that perhaps we can survive without general fund dollars or survive without being a part of the state as a whole.

So those would be my two suggestions. I'm very much in support of the staff's recommendation regarding developing a study, and the second is inviting a conversation among the Commissioners about whether we should take a position at this point on the idea.

Commissioner Lundstrom stated that on the issue of local government funding and taking a look at alternative funds, which this proposed analysis would do, some of them were like a small regional sales tax augmentation, surcharge vehicle license fee, and so on. A lot of those suggestions would be in competition with local government and which is being faced with 8 percent takeaway of its property tax right now. It is providing basic services like fire, police, and roads.

So I look at this and don't see that it's a win. I personally feel that BCDC should be funded by state general funding. I look at the discussion here in the staff report, and one of the excellent points is that as a state entity we are under the Coastal Zone Management Act and therefore we can get federal funding for that, and we take in permit fees that go to the state general fund. I think those are our strong points.

Then another point would be that the Association of Bay Area Governments, which is an amorphous sort of a planning organization which has changed its focus over a period of time, is funded by local government at very nominal rates. So that to me is not a comparison with BCDC, which has permit authority which has adopted policies in the Bay Plan. So they're two entirely different entities and local government is not going to be -- and it's not a good policy to have local government contribute on the model of the Association of Bay Area Governments to BCDC in the same way because of the permit authority and the Bay Plan aspects of it.

So it would be to me a nice exercise to go through looking at other funding, but from a local government standpoint I believe that numbers of those funds would be in direct competition with hard pressed local governments now.

Commissioner Wieckowski stated that Bed's Executive Director makes a great recommendation about calling for an objective independent analysis and he supports that. Travis is the Executive Director for us as the Commissioners, so this is one of these times when we actually get to boss him around and direct him on what we want to do, if we choose to do so. And I think as a state employee you're very careful in saying I want to make a proposal on making the termination.

But we as Commissioners can direct the Executive Director, I assume this is going to be in a letter to the state, that we believe that this proposal should be dropped and that we base that on -- as staff has pointed out, there's a state sovereignty issue about the tidelands, both public and private, the federal issue, and a couple of the other key points.

And I think that I would just weigh, this is the time he has a job, he's supposed to be the director, but we're the Commissioners who provide that direction on how we want to respond.

So I think the letter can be crafted in such a way that the state understands that it's those of us around the table here that are telling staff this is what we want him to do, and then fold in the independent analysis stuff which I think is great.

Commissioner Carruthers remarked that he could understand the strategy of having the Commission take a role that is not directly challenging to the administration, and that's sort of based on your analysis of what would be the negative effect of making a more assertive position relative to this.

The other thing is, though, whatever role the Commission takes for whatever reason can be quite separate from the roles that even the agencies that have members on the Commission take. I, for one, for example, have sent in a letter to the Governor, to the Speaker, to the President Pro Tem, as an individual, and I am talking with our supervisors to see about putting this on the county's legislative committee agenda for the county to take a position.

I think it's perfectly appropriate for the agencies that benefit from BCDC, including the local governments, to take a very assertive role about not diminishing the scope of the Commission's functions or sending its funding off into a limbo.

So I would support the staff recommendation if we all have a sort of shared understanding that we are free to pursue -- in our own member agencies -- a more aggressive position, if that's what our agencies want to do.

Commissioner Chiu commented that, like others, he certainly supports the staff recommendation around pushing an independent and comprehensive analysis, but he has to agree with his fellow Commissioners that he is worried about putting the Commission at a competitive disadvantage as we are trying to make our case about this Commission vis-à-vis other Commissions.

The Governor is trying to blow up a lot of boxes and if other Commissions are taking the position and saying that we ought to save our Commission and we are simply saying "let's do an independent study and see where that ends up," that concerns me.

And so the question I have for Executive Director Travis and others is do we know what other commissions are doing to protect themselves? And then I'll just add a comment that I do also plan to introduce a resolution at the city and county level in San Francisco asking our Board of Supervisors to ask the Governor not to do this and I hope that some of my colleagues in other counties also do the same.

Executive Director Travis responded that the other commissions are in kind of the same position that he was in. They are both part of the administration, so they could not speak for the administration, but they aren't members of the public. So I don't know of anyone that was going up there and saying "yes, I am a member of a commission and it's a really totally worthless organization and I just do it for the hundred bucks" -- except for the Integrated Waste Management Board, which gets \$132,000.

So that's one way of saying none of them have publicly, so far as I know, taken a position in opposition to the Governor's budget, nor would I think the legislature expect anybody to take a position that they think the work that they are doing is meaningless.

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Commissioner Chiu remarked that we should take a step further and say the work that we are doing is not only critical, but there is no other way for us to really do this funded at a local way connected through a regional body. Executive Director Travis commented that if BCDC could be restructured as a regional entity, I think you would be far more efficient, faster, and probably less expensive. Our largest division is administrative services. The reason I don't get paid very much is I have so very, very little authority. I can't hire staff, lay off staff, choose where our offices are, figure out how much the staff gets paid --. That's all established by the control agencies in Sacramento. As a regional special district, we would have more authority.

From the perspective of the management of governance in California, I think it would be terrible to have a whole bunch of little independent districts doing management of resources in California. So you want to look at it and say, well, is our primary goal to be a self-sufficient independent entity that goes about doing our business or are we part of the overall family of governance in California? You come to two separate answers. That's why I think an independent study probably makes some sense.

Commissioner McGrath commented that Commissioner Nelson has raised an interesting question. He was in fact at the Port of Oakland the last time and did convince them of something, and my question here is how we get this message across.

I was allowed to come and testify in support of maintaining BCDC by management at the Port of Oakland, which was not entirely friendly to BCDC conceptually. With one very simple argument -- I said the environmental seal of approval of the Coastal Management Agency for issues that are publicly controversial is like gold, and having that agency credible and sufficiently independent is good for business. It may be a pain in the butt, but it is in fact very good for business.

So that's the message that I haven't heard yet, and it may not be the message that could be best delivered by the Commission or the staff. So my sort of strategic question is how do we get that message across best in your opinion?

Executive Director Travis responded that through the work of Save the Bay and the Bay Planning Coalition, there are letters that have gone in from the Port of Oakland, the Port of San Francisco, the Bay Area Council, Save the Bay --. It seems like for every letter they get from the folks that are on the conservation side of BCDC, they get an equal letter from the development side, which indicates to me that the community out there is aware of this problem and they are communicating directly to the legislature. So I think that message has gotten there. I think in large part that's the reason we have a slightly different understanding of the unwritten portion of the Governor's budget that has moved from half-year funding to full-year funding.

Commissioner Reagan stated that the perspective he has had, going up on several meetings in Sacramento recently, is that the work of the conference committee -- they are very much looking for people to recommend solutions to the legislature rather than "don't cut me, cut the other guy behind the tree" kind of drill. The staff's recommendation, which advocates a study, a dispassionate addressing of it, is a good recommendation. The legislature is going to need to see something that can be scored as an appropriation decrease in this year.

Because, from what I'm understanding, as they are trying to put back some of the Cal

Works and Family First and some of those other things, they're going to be looking for offsetting reductions elsewhere. And so I think when you communicate a study you need to put bounds on how long that study is going to be, and I would reiterate the unlikely willingness of local government to step up to supplant state reductions in funding.

Commissioner Bates noted that I do agree with what the people have said here, that they support the staff's idea and staff's recommendation. I do think it's appropriate to say that -- as Travis has indicated -- that there is a certain amount of good idea to have this body actually be a regional body. And I'm not saying we should, I do understand the arguments against it, about the whole overall health of the state.

But I think the hope for funding of the state is such a mess that this problem is not going away, I mean this problem could solve this year, but it's going to continue, particularly with the downturn in the economy and then not having the revenue coming in and the amount of debt that the state has embarked upon -- it's going to be terrible year in, year out for a long time. So a lot of us are starting to start thinking about ways in which the state lets go of some of these responsibilities and actually moves them down to more regional bodies.

In this particular case, I think they're 12 regional bodies in the state. We have a multi-headed monster, we have basically ABAG and MTC and the Air District and, of course, BCDC. But there's a move to start saying, well, you know, the state's not going to want to raise taxes, the state's not going to -- why in the Bay Area do we need to be tied in with people who live in the desert and don't want any taxes and don't pay for anything. They don't really care.

What really burns me to the -- when I was in the legislature the urban districts would vote for schools and vote for roads and all this stuff and all the money went to the suburbs who didn't vote for it in the first place and didn't want it, you know, didn't want it because it would raise their taxes.

So I think there's some real logic to start saying we can move that health care issues, there's a way to do that, there's a way to move that into state government, you need highways, you need, you know, prisons and things like that. You can start thinking about different ways of looking at the whole governance issue and to start figuring out how the state can get out of the business of trying to determine what people -- you know, give the local areas the ability to raise taxes in a logical way that's not, you know, two-thirds, that gives them a chance to actually have more self-governance.

So I'm hopeful that over time -- and no, it's not going to happen right away -- but over time we'll see that occur, and I think BCDC can play a major role in this area in providing the kind of government that we want.

Commissioner Bourgart stated that, from the standpoint of someone whose agency was abolished yesterday along with five sister agencies, let me just make a comment on some of the things that have been said.

I agree entirely with Commissioner McGrath's comment that the communications and advocacy that come from the clients and stakeholders of a given agency, from conservation organizations, permittees, et cetera, is a far more effective way to communicate that advocacy

than the agency itself. And I'm not going to make any comment as to whether the agents, whether BCDC should go beyond the staff recommendation or not and in the event there is a motion to go beyond I will have to abstain on it.

But I do think it's very apparent that every agency that is potentially touched by the budget proposals is going to say "don't touch me," and that's what Commissioner Reagan had mentioned, and it's absolutely what has happened, what will continue to happen, and I think to some degree will be discounted. But, as Commissioner McGrath said, the communications that come from those other parties who are stakeholders, and particularly those who are not otherwise always on the same side, and I think we've seen that in this case, have a much greater effect.

Commissioner Reagan asked Executive Director Travis if he had any sense of when he would offer the outcome of that study to the legislature? Executive Director Travis responded that it could be done by the end of this calendar year so that it could be used by the Governor and the legislature when they are crafting the budget for the FY 10/11 Fiscal Year.

Commissioner Carruthers asked if there is a sense or idea of how the study would be put together, what's the process to make it objective? Is there some kind of an oversight process or is this still a work in progress? Executive Director Travis responded that it is still a work in progress.

Chair Randolph remarked that the independence of the study would be important whatever the source of it. We would need a number of detached objective participants or reviewers to kind of validate the findings. That would be key.

Commissioner McGrath stated that this is a little vague for him to be kind of comfortable; and he was not certain if it's strategically benefit. So I'm supportive of the staff recommendation, and certainly all the Commissioners have the capacity to utilize their own contacts, and I'm sympathetic of the idea of saying perhaps beyond what the staff has said that the agency as a state agency brings a couple of unique aspects of benefit to governance.

But if that's what we want to do as a group, I'd like to be a little more specific, so perhaps a friendly amendment that suggests that first of all BCDC is involved in the governance of valuable state lands which are an important resource for all of the public. That doesn't include the shoreline band, but that includes most of what the Commission does in fact do. And second, it might be important to say that the certification of BCDC's program in the federal system gives it the ability to influence federal activities that could affect BCDC's jurisdiction, and this has been extremely important in issues such as preserving land and the closure of bases that have provided for necessary economic development of ports without bay fill.

So there are perhaps some things we could say that indirectly value governance as a state agency and using the authority of the state which are different than the regional. Those are the two things that I could think of kind of immediately that are a little more specific. He asked for Executive Director Travis' advice on how to frame this strategically to be not confrontational but perhaps to get people to realize there might be some things that the state would give up that it would be sorry it gave up.

Commissioner Wagenknecht added that it is always tough to write something in a committee like this. The Commission may want to just come up with a couple people to add to the words that Commissioner McGrath has crafted so that we have the right words with the right tenor.

Executive Director Travis suggested that the staff could craft something that essentially says that the Commission believes that the Governor's proposal may have some unintended consequences, specifically that BCDC plays an important role in the governance of state lands -- state resources -- and its approval as a part of the federal coastal management program could have adverse consequences that are unintended. Nevertheless, if the Governor proposes to advance this study, we think you need the independent analysis.

Commissioner Bates stated that he thought the original staff idea was the right one. The Commission needs to provide this study, especially if there are some ways of getting it done without additional state funding, that this an appropriate way to do it.

Commissioner Jordan Hallinan commented that state parks kind of falls into the same category. As a property owner in the Bay Area, the two things that I think make us so appealing and probably affect our property values very much is how much green space we have around us. Very few places that you can live in an area like this -- and the bay. I'd rather have this on my property taxes and be paying for my parks and be paying for the protection of my bay and know that that's protected for perpetuity.

In terms of what the Commission proposes is the objective analysis and, we are going to present some solutions and alternatives. "We don't suck, we deserve to live, and by the way, here's what we would propose." That's kind of in partnership with what the Governor is trying to restructure things so that we can actually survive long-term as a state and be able to have these great amenities in our state. We're coming up with some actual alternatives on how we could be funded, so we'll provide solutions as opposed to opposing his recommendation.

Executive Director Travis responded that he thought Commissioner Jordan Hallinan was absolutely right. But there's a whole series of alternatives that deserve to be explored. The Office of the Legislative Analyst is looking at a proposal for partly funding Cal Fire, the Department of Fire Protection. Those areas of the state that are particularly vulnerable to wildfires would create a tax district, and if you live there you pay a fee and you get fire protection. We've begun to explore whether a similar district could be created within the view shed of the bay or within local jurisdictions that front the bay have when you think about the vast area and our small budget, a very tiny fee, would be needed with, the legal nexus being that if you have a property that has a view of the bay it is worth more than one that doesn't have a view of the bay, there is a defined fiscal benefit that comes from protecting San Francisco Bay.

The other nexus is that if you live within this microclimate where the bay acts as a heat sink, your heating and cooling costs are lower, so it makes sense for you to pay a small fee to protect the bay. And the leg analyst said "that's interesting." And it might also qualify as a fee that doesn't take a two-thirds vote. So perhaps you could set up the district by a majority vote and then it will be subject to a vote either in the jurisdictions or by the electorate in the Bay

Area.

We are trying to explore things like that, and there are a whole slew of other things. At this point I don't think we can come in and say "here's what we think you ought to do," but we can say "we want to work with you constructively to find a positive solution."

Commissioner McGrath asked Executive Director Travis -- if we return to the staff recommendation, and you have had the benefit of the Commission discussion about other ideas, would you have the capacity within your own negotiating ability to delicately raise those other issues with just the recommendation going forward as initially conceived by the staff? In other words, if we return as a body to the staff recommendation and we've given you a number of ideas, can you carry those ideas forward into the most useful venue and try to explore ways out of this crisis? Is it of any benefit for the Commission at this point to perhaps put a little more direction in our support for your efforts.

Executive Director Travis responded that he likes the amended motion where you state the positive benefits of BCDC and raise possible unintended consequences, and therefore we think that the whole idea should be revisited, but if you do go forward with it, before you reach any conclusions an independent study is needed and we are offering to do that and we will come back to the administration and the legislature by the end of the year.

Commissioner Nelson followed that by saying that he just wanted to make sure there is a motion in front of the Commission that accepts the staff recommendation with some additional language that came from the Commission, not from staff. We should be clear about that and vote on that motion.

Commissioner Goldzband stated that, just to let people know, he will vote against the motion because he is a gubernatorial appointee, and he believes that it's his duty as a gubernatorial appointee to basically support the Governor as much as he possibly can. He'll fall on his sword on this one, knowing that he's been on BCDC longer than most of all of you and I love it and I think Mr. Travis is an exceptional Executive Director, I think BCDC has an exceptional staff, and I think it ought to continue.

But the fact of the matter is that these are times which nobody has ever seen and the only way to get out of this mess is not to do the same thing we've always done before, because then my kid, who's five years old, in twenty years when he starts paying property taxes, knock on wood, will end up being in far worse shape than we are, and therefore I must support the Governor.

Executive Director Travis responded that he thought that the staff recommendation does support the Governor. Commissioner Goldzband reiterated that he doesn't think it does and, you and I have known each other forever and I just disagree, and that's fine. That's absolutely fine.

Commissioner Halsted stated that, as a gubernatorial appointee, she believes that this informs the Governor's recommendations and that it should be supportive of the Governor's recommendations.

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Chair Randolph remarked that it would be an issue for the Governor's appointees to oppose, but the idea of a study, an objective third-party study with at least an affirmative statement of the value of BCDC to the state, which doesn't say other options shouldn't be explored, but just here it's a valuable asset -- because it's consistent with our role as appointees. But I think it's personal judgments for sure.

Executive Officer Travis reiterated that the Motion was to support the staff recommendation with an affirmative statement of the unique value of BCDC because of its governance of valuable state resources, and the importance of its federal approval, and that there could be unintended consequences should BCDC not be a state agency. And therefore if the Governor's proposal nonetheless stands, there should be an independent analysis as called for by the initial staff recommendation.

MOTION: Commissioner Wagenknecht moved, seconded by Commissioner Jordan Hallinan, to approve the motion.

VOTE: The motion carried with a roll call vote of 17-1-1 with Commissioners Bates, Chiu, Groom, Jordan Hallinan, Lai-Bitker, Lundstrom, Maxwell, McGlashan, McGrath, Nelson, Reagan, Carruthers, Kato, Wagenknecht, Wieckowski, Vice Chair Halsted and Chair Randolph voting "YES", Commissioner Goldzband voting "NO" and Commissioner Bourgart abstaining.

10. Second Public Hearing on San Francisco Bay Plan Amendment No. 1-08 Concerning Climate Change. Chair Randolph stated that Item 10 is a continuation of the Public Hearing opened at BCDC's last meeting on revisions to the Bay Plan to address climate change. There was a lot of interest in what the Commission was going to come up with and the feeling was we needed to continue to think about that carefully and keep the door open for further input. And so the staff has recommended we keep the hearing open until our July 16th meeting.

Leslie Lacko provided some more background information. She first provided a refresher regarding Commissioner comments and the public comments heard at the May 7th Public Hearing. She noted two letters that were received since then, one from Designing Accessible Communities and one from the Santa Clara Valley Water District. You received written and verbal comments at the last Public Hearing that ranged from suggested changes to the draft staff report, and preliminary recommendations to questions about a larger issue about how the Commission should manage development around the bay until a more comprehensive regional strategy to address sea level rise can be developed.

The Commission suggested that, prior to considering specific policy changes to the Bay Plan, it would be wise to first address this larger issue of how to develop this strategy. While the staff seeks your input on the preliminary staff recommendation that's before you today, we acknowledge the difficulty of providing this without first discussing three possible policy options that we laid out for you in the staff report.

Each option assumes that the Commission will at a future date adopt some version of the revised Bay Plan findings and policies on climate change that will guide your regulatory decisions under your current authority.

Those options are to first amend the Bay Plan policies before developing proposed

legislation to address climate change on a more comprehensive regional basis; second, both amend the Bay Plan policies and develop proposed legislation that would direct BCDC to address climate change on a more comprehensive regional basis; or third, amend the Bay Plan policies and develop proposed legislation that would both direct BCDC to address climate change on a more comprehensive regional basis and give BCDC interim regulatory authority over areas that are vulnerable to sea level rise.

Chair Randolph acknowledged Mr. David Lewis, Save The Bay, who requested to speak. Mr. Lewis noted that the Commission has Save The Bay's letter of May 7th, which offered some detailed comments and suggested language. At the last hearing -- which I agree was an excellent discussion by the Commission, one of the best that I've seen and a very well attended meeting -- my oral comments were focused on the case for BCDC asserting its leadership in this area and explicitly seeking additional legislative authority sooner. And I think the minutes reflect that there was very strong Commissioner input on that idea and some significant support for that, and that's mostly reflected in the staff's recommended policies 2 and 3 and our comments on how to make those stronger.

Today, I want to briefly call your attention to the other part of our comments, which were addressing language to strengthen proposed policy 1 to be a little bit more explicit about what BCDC will encourage and discourage along the shoreline to help the region adapt to climate change and to preserve future opportunities for adapting to climate change. And I think our comments are relatively self-explanatory, but just to underscore, we'd encourage you to encourage the staff to move in this direction. And basically what we're trying to do is make sure that within the Commission's current authority, you try to minimize adverse effects of sea level rise during this interim period while it develops a regional plan and/or gets additional legislative authority.

And so we've made suggestions in Policy 1 to try to augment what the staff already had there, and it falls into two categories which are closely related.

First, try to deter additional harm. There are areas along the shoreline that are not developed where there's opportunities for restoration and natural shoreline protection and while you're developing a longer-term plan and getting additional authority, we want to try to discourage those opportunities from being destroyed.

And secondly, there are opportunities in the shoreline that are at risk of inundation that are not currently developed, where development may be proposed that is at risk of inundation. So while you are developing a longer term plan and/or getting additional authority, you may not have the authority now to prohibit those, but you do have the authority through this Bay Plan and its language to discourage them, for all the reasons that are very well-articulated in the staff report.

I think the staff tried to do that in their proposed language and we're suggesting a way to make that more explicit. I don't think what we're suggesting changes the Commission's authority in any way, it doesn't step beyond the Commission's authority in any way, just trying to be more explicit about what to encourage and discourage and why which is strongly supported by the staff report.

Chair Randolph then opened the Hearing to members of the Commission.

Commissioner Goldzband began by noting that he had an ex parte communication with David Lewis three minutes before the meeting, and forgot to raise his hand. Chair Randolph acknowledged the ex parte communication.

Commissioner Goldzband continued, first by asking Mr. Lewis a question about Policy 2, a portion of which says "the Commission should formulate a regional climate change adaptation plan with strategies."

And, from my standpoint, what you're doing here is you're saying "don't do strategies, do a plan." And what I need to know is, if we were to do that in the Bay Plan, from a legal standpoint, what is the difference -- and maybe I look to Alice for this, I don't know -- between saying we're going to plan versus have a strategy, and how does that all fit within the rubric of what we're allowed to do within the Bay Plan and what it's supposed to do?

Mr. Lewis responded that the staff has recommended -- and some of this is semantics about strategies and plan -- but the staff has recommended working with other regional agencies, joint planning commission and others, to develop a common view about what should happen next, and then if that requires making changes in McAteer-Petris and giving BCDC or somebody else additional authority, do that then. And we're suggesting that the -- and we talked about this at the last meeting -- the Commission should have that conversation with other regional bodies and interested parties, but you should own that process and not have the success of that process be dependent on the joint planning commission. I think Supervisor Jorrell was particularly attuned to why that might be a good idea.

We also think now that the Commission does need additional authority and should have additional authority. So we're suggesting that you seek that now. The staff has suggested that that should wait and be revealed by the process.

Commissioner Goldzband remarked that he understood that from sort of the strategic perspective, which is what you're talking about. He would take a look at the language which would be in the Bay Plan and is now trying to figure out what authority does that actually give BCDC to do various things if it puts in the word "plan" versus what authority does it give the Commission if it only has the word "strategy," and does the Commission have the authority to put the word "plan" in there.

Mr. Lewis responded that he thought that the Commission can and does do planning that may or may not be incorporated into its Bay Plan at a later time. Going back a number of years, the Commission was engaged in some North Bay planning. It was a planning exercise and didn't become part of the Bay Plan. And Commissioner Nelson probably has a longer history and recollection of planning when the Commission was doing planning functions separate from or prior to proposing a change in the Bay Plan.

So I didn't mean to create confusion about that by the use of wording. And I don't think the use of the word "plan" instead of "strategy" is the most important part of our comments. Commissioner Goldzband concurred that it was not; he wanted to make sure it doesn't screw up what Save The Bay is trying to do or what he may think the Commission is doing.

Mr. Lewis responded that the short answer is the Commission can and should and does do planning that is not the same as changing the Bay Plan. It is engaged in a Bay Plan amendment process right now and can do other planning.

Commissioner Goldzband asked Deputy Attorney General Alice Reynolds if the language was limiting in any way. She responded that she didn't think that this type of language limits BCDC in any way in terms of other types of planning that it can do outside of the language of the Bay Plan.

Commissioner Nelson commented that for him the real implication of Mr. Lewis' suggestion is that if the Commission directs staff in adopting this language to develop strategies, those are strategies that may never come together as part of a coherent plan. It may mean someone else writes that plan, it may mean there's no plan. This change suggests a direction to direct staff to make sure that there is a plan, a coherent plan that comes out of that process and he would be interested in the staff's response to that.

He would also be interested in the staff's response to the other two substantive recommendations, is a policy change that would discourage changes in land use put additional development at risk of inundation, and I think the important question of staff is what authority we have to implement that change, even if we put that in the plan. I tend to think that that's a tremendously important issue for us to wrestle with as a Commission, but I think we need to be very, very clear about what legal authority we have to implement that.

We do have plan policies. We've discussed one of those with regard to San Quentin and encouraging a ferry terminal at that location. We have very limited authority to implement that recommendation, but nevertheless the Commission does take positions on issues on which we have somewhat limited jurisdiction.

Ms. Lacko stated that the difference between the use of the word "plan" and the use of the word "strategy" -- the reason staff put "strategy" in there rather than "plan" is because staff doesn't know what this might look like at the end and "strategy" is a broader term that staff felt was less limiting.

Commissioner McGrath wanted to clarify that he understood, procedurally, where we're at today. The Commission is at a place where there's another round of Commissioner comments, and that's going to be followed by some modifications perhaps to the staff recommendation, and it's going to be brought back for a vote at a future time; is that correct? Chair Randolph responded that that was correct.

Commissioner McGrath continued, stating that he did like the idea of asking for some additional authority and he liked the general way that David Lewis put it, which is to prevent things from getting any worse. On the other hand, I'm not willing to go as far as he has suggested with his suggestion for number 3 or his suggestion for 2(d), which is a broad discouragement that doesn't reflect what may already be there.

And I will give you an example that's non controversial. In the South Bay Salt Ponds there's an overall flood control effort that may provide flood protection to non-wetland areas well behind those levees that are below sea level. And where that development and whether or

not it floods from the Bay is probably really of no concern to the overall mission of enhancing wetlands. So a blanket prohibition that doesn't reflect the geographic realities would make me very uncomfortable.

And I'll give you one other example which is very topical. There are some streams in western Contra Costa County, particularly through minority communities, that are now flood-prone and, while I'm attracted to the idea of not creating something that would put a whole bunch of other people at risk, I don't know that we should necessarily ask for that authority rather than encourage the local government to consider the economics and the feasibility issues as they approach their own climate adaptation plan, trying to think through flooding from the land and flooding from the Bay and the amount of development that you have at risk is a pretty complicated issue for this Commission.

So, those are the two comments I have about David's suggestions and I would like to see the staff try to work some of those ideas into their recommendation, but avoid some of these unintended consequences of getting us into all flood control everywhere.

And then finally, as I've said before, I would like a recommendation about changes in the delta in terms of -- and the implication of that is the delta delivers still about half the sediment that we need to cope with rising sea level, and if we make recommendations in our plan they have some status in CEQA for how those changes outside our jurisdiction might have to be looked at in CEQA.

Commissioner Jordan Hallinan stated that her recollection from the last meeting was that one of the topics discussed was getting input from the local jurisdictions, and other than the Santa Clara Valley Water District, maybe one other. I didn't see any from any of the cities or counties. Am I remembering that correctly, and if so, what has taken place or what are we expecting or planning on doing in terms of the local jurisdictions?

Executive Director Travis responded that there is always a tendency to do your homework the night before it's due and, by indicating that we were going to keep the hearing open until July 16th, possibly some of the testimony that we would have gotten today, people said, "well, okay, we've got another month and a half." But we will redouble our efforts to make sure that every local government fronting the Bay is aware of these changes and that we would welcome their input.

Commissioner Lundstrom commented that the magic words "flood control" and "local government" -- because I was concerned and I did bring up at our last meeting on having a one size fit all, having for new shoreline protection projects, this is Policy Number 1 under shoreline protection, and the maintenance and reconstruction of existing projects. The latter part -- I was very concerned about having unintended consequences if local governments, if local flood control engineers could not patch a levee to a different standard. It's like renovating the Bay Bridge after the Loma Prieta Earthquake, they had to retrofit it to the existing standard of the bridge, they couldn't retrofit it to a higher standard.

So I did ask Leslie before the meeting today about going to all the counties -- and specifically to public works departments, not the planning department, but public works departments -- and asking their flood control engineers on the ground who might have to get a

permit to patch something, or there's a long-term project and it might have unintended consequences. But that was the section I would -- in following up exactly what you're saying -- make sure that every county around the Bay that you have followed through and asked those public works flood control engineers to respond to that because it is of concern.

Commissioner Wieckowski stated that he certainly can't speak for all the cities, but Fremont was in session until 11:45 in the first round of its budget, so there may be an overlay with the triage that's going down at the local level right now, with people trying to just keep their departments open. I mean, we're cutting 75 people from the City of Fremont's budget, so they may not have -- it's not a lack of want to weigh in on our strategy or our plan, but they've got some cops and firefighter issues that they're trying to deal with right now.

On the differences between 2 and 3 on the proposed legislation -- what jumps out at me is this mandated direction to the Commission versus this interim authority over certain vulnerable shorelines, and I was wondering if staff could sort of clarify what legislation you're thinking about in I guess 2 rather than 3.

Executive Director Travis responded that what staff sees is just, for purposes of conversation basically, three broad alternatives. One is the first one that the staff has previously recommended. You should work with all the joint policy committees, the regional agencies, local governments, we'll try to come up with a strategy for dealing with climate change in the Bay region. If, out of that process, the conclusion is we need to make some changes in the law to give BCDC more or less or different authority or transform it into a regional agency or whatever, that the legislation would flow from that process.

The second alternative is we say "look, before we at BCDC roll up our sleeves and work with everybody else, we'd like to have direction from the legislature, tell us what you want us to do." We'll tell you what we think we should be doing, but give us directives. Say "BCDC, we want you to do this by this, by this and report back to us."

And the third one is the same as the second one, except it also says "and while you're doing that, we're going to give you some different authority." It could be that everything that's within those areas that are subject to inundation by mid-century, or the end of the century subject to approval by BCDC, or appeal to BCDC, or anything that costs more than a gazillion dollars in that area, or whatever criteria. So those are the three broad options we saw.

Commissioner Wieckowski followed that one of the values the Commission talked about in the last item is this certainty that BCDC brings to the debate, whether you're a proponent of a project or you're an environmentalist, you feel like you get that stamp of BCDC if your project is approved and there's an added level of legitimacy.

And at the local level, one of the challenges that we have is how we put together that plan, to put it in concrete, and we all want to do the right thing but we don't have the resources and I think that BCDC is forward looking in at least grabbing the bull by the horns now and saying -- at least for the last year or the last two years I've been here enjoying that reputation as coming up with the Climate Action Plan.

And I think some of these -- the concern, and I can speak from Fremont, and I'm not going

to speak from Redwood City, but -- we've got some projects down there, they're on the scope of folks that don't want to have it. And I'm not saying -- I can't speak for David on paragraph 2(d) that there's discouraged some development, but -- I can think of some projects that we have that if BCDC's authority was expanded to include those areas.

And I don't know where the areas are scientifically, but include those areas that we're pretty sure are going to get inundated as the sea level rises and it must --. I was just a kid, I was playing Little League in 1965 when we were formed, but when I read it I see that there were some people that were planning dumps, some cities that were planning dumps and some people were saying, you know, Fremont does not have a marina, we didn't get to dredge the South Bay and create a marina and there are -- the interest groups said it there and I don't think we're at this stage to be a little bold in --.

And we can't say for certain that these areas are going to be flooded, but I think when we're looking at 16 inches of sea rise that we can say, you know, pretty soon our jurisdiction is going to be here and at least asking the legislature to say we need additional authority or we're going to seek, they can always say no, but I think part of our "shtick" that we have in being prospective in these problems is identifying these areas and let them trim us back a little bit when we ask for authority to make these decisions which are going to effect economic development, but also the Bay health.

Commissioner Carruthers noted that, relative to having interim authority, his vague memory was that during the two years that the original Bay Commission was preparing a plan that they had interim permit authority and -- again my vague memory of '78 -- the people involved in that process, Joe Bodovitz and others, felt that the quality of the plan was enhanced by having gone through the process of doing interim permits because it was considering the permits that illuminated for them what the plan ought to have and what the ultimate powers ought to be. So if that is the case then that would seem to be support for the alternative of pursuing some interim powers.

Executive Director Travis responded that it was the case but there is a slight, no, there's a significant difference. What we had then was a situation in San Francisco Bay where you had -- all the local jurisdictions had control of the bottom of the Bay, and each one of them acting on their own would have been absolutely nuts to stop filling the Bay because they were getting rid of their garbage right out the front door and in the process of doing so they were creating space for their communities to expand, they were creating taxable real estate to increase the revenue base for the community. And as long as your neighbors were doing it, you might as well do it too because you weren't going to save the bay by yourself -- except Berkeley which did stop, once again demonstrating its international leadership on an important issue, after coming up with one of the worst proposals to fill the Bay that would have doubled the size of Berkeley.

But in any event, there was a demonstrated failure, I don't want to say failure, there was a demonstration that local government acting on its own, in its own self-interest, could not advance the state or regional objective. At this point, as you said, local governments are strapped for resources, they need funding, they need information, there is no demonstration that local governments working alone and together can't address sea level rise around San Francisco Bay.

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So I don't think you could make a compelling argument at this point that if we leave the decision to Redwood City or Fremont or anybody else that they'll make bad decisions if we provide them with good information. It may be that after a period of time we will say, "whoops, we shouldn't have done that," but right now one of the few authorities that local government has left since the state has taken so much of their financial capacity away from them is land use, and they defend that authority.

You guys work hard, get elected, and you want to help make your communities better, and then if the state comes in and says we're going to take away your authority to deal with and regulate land use which is one of the few authorities you have, you are naturally very hesitant and resistant of that. And I don't think we can make a compelling argument why that authority should be taken away yet, which is why we advanced the original staff Alternative 1.

Commissioner Lai-Bitker noted that Commissioner Wieckowski had mentioned earlier about how in such difficult economic times with local government really inundated with budget challenges and things like that, and not only the budget challenges itself, it's the process itself, and I know that in the month of June most of the jurisdictions are really going through the budget deliberation process, adoption process. So the middle of June, I thought if we really want to have engagement of those cities and counties for their input on this, maybe the middle of June is not the best time.

And then, when you send information out to them do you specifically also highlight what are the things that we really are talking about here, you know, the interim authority and this kind of thing? Executive Director Travis stated that we don't, because what is of concern to one local government may not be a concern to the other. But we can try to crystallize some of the issues that we're grappling with here and we ask their advice on it.

Commissioner McGrath stated that Executive Director Travis had made a very interesting and compelling case that helps the debate in a significant way but also convinces him that to some degree BCDC ought to look at this geographically. So let's say that a community like Fremont, perhaps not Fremont, has areas that might be inundated. Now, BCDC doesn't currently have the jurisdiction or the authority to deny a permit because they might be inundated in the future, it's limited to sufficient public access. Somebody probably should have that authority, but I would hesitate to say that that should necessarily be BCDC.

What if this community, that's sort of like Fremont, already has to put in some type of flood control facility, and they have the existing economic wherewithal and tax base so that they're going to have to do it, and at the end of the day it matters not at all to the Bay outboard of that whether it also covers an inboard piece of property that is now subject to inundation and whether or not they want to pump behind it.

So I tend toward the idea, too, that doesn't necessarily highlight the jurisdiction being BCDC's, but the jurisdiction or the issues being implemented perhaps to the California Environmental Quality Act so that the future susceptibility of this has to be dealt with at the development decisions.

So, just in terms of a little bit of guidance, I think flood control both from the land and from the Bay are very important issues and perhaps the mechanism to do this wouldn't involve BCDC jurisdiction being enlarged, but local government being charged under CEQA to make sure that these issues get thoroughly vetted.

Commissioner Bates stated that if you identify the problems through the CEQA process, then local government is going to figure out how the heck they're going to deal with these problems. Then it will actually have the effect of making them sober in terms of how they proceed. And I agree that if we find abuses, there is the opportunity to sue, for one thing, people who are concerned can litigate these issues if they ignore them, and we could kind of see how things go.

So I'd love to be able to have the authority to make sure that we look to the future so we know what the impacts, potential impacts, are going to be in terms of sea level rise and then let local governments figure out how they are going to deal with it.

Commissioner Nelson stated that he thought that Commissioner McGrath was right, that there may be, and I simply don't know, we don't have a complete inventory of all the diked bay lands that are out there that are potentially subject to inundation, a parcel by parcel. There may be places that are essentially "green in holdings" that are undeveloped pieces of property that are surrounded by urbanization and whether that parcel is developed or not has little effect on whether the surrounding community has to be protected. And I think that's an important issue for us to take into account.

But it does seem to me that when you look at some parts of the Bay where there are substantial diked bay lands over which we have now very limited jurisdiction and that are generally speaking not surrounded by urbanized areas or not engulfed by urbanized areas, I think there's an important question there from a public policy perspective about how we appropriately plan for sea level rise.

One alternative there is to give BCDC jurisdiction over those diked bay lands just as we have over the tidal portions of the Bay now, to strengthen our diked bay lands jurisdiction. And I think that's something we want to think carefully about.

And there are a couple of approaches to that. One is to ask for that authority up front, the other is to do some careful planning and revisit that decision. And I think, as I interpret the staff recommendation, Alternative Number 1, there's nothing in Alternative Number 1 that would prohibit us from coming back and at a later point deciding we've now refined our understanding of these issues, perhaps taking into account the sort of issues that Commissioner McGrath has raised, and as a subsequent act asking for some additional authority. There's nothing in Alternative 1 that would prohibit that.

There is another way to approach this problem and that would be to tackle the problems with regard to diked bay lands. We're having exactly the same discussion regarding the delta right now. It's just the accident of the formation of the Commission that we don't have jurisdiction over the delta. But we're having a very similar debate right now with regard to the delta and the delta secondary zone. And the debate in part is how much of that authority should go to the Delta Protection Commission, how much of that authority should be revised

direction to local governments.

And I think we might want to think about that model here. One potential solution to the diked bay lands problem is stronger BCDC jurisdiction.

There's another solution, and that is for the state to provide guidance to local governments that are responsible that have jurisdiction today over those areas. The state could say to those communities, "you folks, in order to approve anything in these areas, have to meet the following criteria." And I think for areas -- there is a profound difference between diked bay lands and subsided delta lands and other areas at risk of inundation. When other areas flood they often will flood ankle deep. When diked bay lands flood they can flood to the eves, and there is a profound difference between the nature of the flooding in those sorts of subsided areas.

So I would ask the staff to think about those two different approaches. One approach is strengthen the Commission's jurisdiction, the other might be a recommendation from the Commission that the solution is legislative direction to local governments to provide -- whether it's flood protection or anything else -- with regard to those diked areas. We could approach that in either way and perhaps there's a combination of the two. But I don't think, right now, that the staff report discusses that sort of potential direction of local governments in alternative to BCDC.

Commissioner Reagan added that, following up on the analogies of how we're having to deal with the similar issues in the delta as this -- we can't put an artificial boundary on sea level rise between the Bay system and the delta system, and the strategies that the state and national governments are going to have to be pursuing to try to help us adapt to, what I think at our last meeting was envisioned as potentially a thousand square miles of loss to California, which is probably an unacceptable outcome to everyone, that -- I think the suggestion that you have that the direction from state and federal legislatures to local government to ensure that adaptation strategies are included in their project approvals is the right approach.

And I don't see -- in the struggle that the state's going to be going through in how they're going to be setting up these various multiple governing agencies to deal with this, as you do your study that we talked about previously, you have a parallel thing with the Delta Protection Commission, you have parallel things with the Coastal Commission, et cetera. There's going to be a different set of players probably in five years than there is now, and different authorities and I think the one common continuing set of players are going to be local government at the end of that.

Commissioner Wieckowski commented that when staff is looking at the jurisdictional issue, whether it's under CEQA or local governments, maybe it would be a good refresher, since this is a refresher hearing, to look at our authority on the ability that will we be commenting on these proposals, will we exercise our ability to sue if we found that there was a proposal, do we just advise, do we advocate for this Bay Plan if the proposal doesn't meet the goals or the findings we have in there? What would be some of the tools that the Commission or BCDC would be doing during this process?

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As we move forward -- I'm just thinking, as we're going between 1 and 2 and 3, and if we look at legislation that maybe strengthens CEQA or provides this authority, what would be the role if, for instance, at the suggestion of my colleagues, it will be the local governments that make the decision given all those pressures that they would be under to do things, and the new role that BCDC might have that maybe expands our jurisdiction. Not that we're going to have the authority, but somewhere in between where we would be commenting or -- I'm not exactly sure, I just gave some verbs.

Commissioner Carruthers expressed his concern about an approach that requires that the Commission staff review every project out of every jurisdiction around the Bay. He has been in situations where an organization will say, "well, gee, we ought to review all these things." Well, it's a lot of work and I don't -- but the permit process, and I'm not really pushing improvement, but it generates some funding to do the work, it's hard for me to picture a process where there would be funding, you know, additional funding for us to do the work of reviewing all of the EIRs and commenting on them. That's a major responsibility. Now, it may turn out to be the best thing to do, but it's not an easy thing.

Commissioner Reagan stated that at the Delta Protection Commission when they put out a management plan, and then development that some people may see as incompatible, can then be appealed to that Commission, which has a consistency determination but no permitting authority. So if they have concerns about whether the project as proposed is consistent with the management plan, they just remand it back to the local government entity that's proposing it. But there isn't an authority to -- there isn't a permit given, it's just a consistency determination. The Commission makes comments about how it is inconsistent, the local jurisdiction then has an opportunity to tweak the project and bring it back.

Executive Director Travis remarked that what he is hearing is staff offered the Commission three alternatives and it said that there are benefits of all three and detriments of all three and variations of all three that we hadn't really thought about, and that we should go back and look at all three of them and bring forth to you a recommendation. David Lewis said that he heard at the last meeting that there was a lot of Commission support for getting interim authority to make sure that no harm is done while we're going forward.

What I heard out of this -- and correct me if I'm wrong -- is that there is some hesitation to doing that, and you seem to be more comfortable with "let's move ahead, do the planning, see what we learn from that, see if we need to provide more resources to local government, see if we need to make changes in CEQA, see if we need to make some changes in our law to give us some different authority." But I didn't hear a broad enthusiasm for going to get a change of law right now.

Commissioner Nelson added that, on the interim authority issue, the Commission needs to think about that carefully, but also that that consideration has to be informed by the budget discussion the Commission just had. So looking at that, some other options of the DPC model is the kind of hybrid I was talking about. There's an alternative that would simply place the burden entirely on local governments to meet certain criteria without giving the Commission additional authority. Given the very real challenges to expand our authority -- if we decide that's the perfect solution I think we should think of more than just one solution to that

potential problem.

Commissioner McGlashan stated that the other advantage of looking at Commissioner Nelson's approach is that, over time, in order to get a more meaningful response from flood control districts and boards of supervisors that embody this agency, you'd have to kind of flesh out what it would mean for a local jurisdiction or a project proposed in a local jurisdiction to either be rendered consistent or to seek a permit, then you'd have to describe that to county staffs and then it has to make its way all the way up to the boards of supervisors of both the flood control districts and the general land use authority, and that's going to take months.

So I think, you know, if you want a fast answer the best I think we can do is with Commissioner Nelson's approach, which says we should start our planning, start to identify what areas of potential inundation are like and what that process would feel like, and then start to loop out to the locals to start that dialogue. Because Commission Lundstrom pinned it, where you have to talk not only to the planning agencies in the different counties and cities, you should also be talking to public works, and that's not a quick process.

And before BCDC could ever give any meaningful letter back signed as a Commission there would be hundreds of person hours of staff time involved in trying to understand what that would really mean. And I think -- before anybody rushes to the legislature looking for that kind of change that has to happen; otherwise, you'll end up with a bunch of opposition letters out of the local governments. Ignorance is not a friend. So it's a good approach to start to articulate exactly what that would mean and what the different options are in terms of implementation and then start to loop out; and meanwhile, we get a move on. And so, if we want to kind of reach a decision, an interim decision in July, I think Option 1 is looking good, but then we commit ourselves to looking at Option 2 and 3 over the next year or so as part of our strategic planning on this effort.

Executive Director Travis remarked that the trick to getting the summaries of the meetings out so quickly is that I write the summary before the meeting. I'm done on this one. Here's what I'm hearing. The Commission decided that it prefers to amend the Bay Plan policies before developing proposed legislation to address climate change on a more comprehensive regional basis and asked the staff to explore legal and legislative mechanisms to ensure that local governments adequately address sea level rise in their planning and permitting through CEQA. Is that what I'm hearing?

Commissioner McGlashan commented that right now the Attorney General is interpreting CEQA quite aggressively with respect to climate change and I know that our own [county's] execution of our countywide general plan looked at everything to do with avoiding and adapting to climate change, and so CEQA itself wouldn't, I don't think, be much of an answer because it's a process for us to explore the impacts, which we did.

But really, I think the heart of the question is does BCDC want to pass judgment on projects in these new zones of the Bay or is it better to do a consistency approach or is it better to tell the local governments how to do that? If the latter option is used, that probably would manifest through CEQA, I assume, but that's not necessarily clear. So a lot of it is how one interprets CEQA and how one uses its process, which I think ultimately BCDC is going to have

-- if we end up moving through 1 to 2 and then ultimately to Option Number 3, which is saying we want the legislative approval, we're going to have to describe what that means and how we intend to use it.

Commissioner Goldzband offered that the outreach to local governments, and the real specific ideas about talking to public works, talking to planning departments, talking to the local elected officials, needs to be very, very active in reaching and pushing out ideas and reaching out to them to pull in their thoughts.

Chair Randolph reiterated that the Commission will be coming back to this on July 16th. He thanked everyone for all their contributions.

11. **Consideration of Strategic Plan Status Report.** Executive Director Travis stated that there were two suggested changes in the plan. One was to drop one of the items because of frankly, fiscal capability (or rather, incapability), and the other was to change one deadline.

MOTION: Vice Chair Halsted moved, seconded by Commissioner Maxwell, to adopt the two suggested changes. The motion carried unanimously.

12. **New Business.** There was no new business

13. **Old Business.** There was no old business

14. **Adjournment.** Upon motion by Commissioner Wieckowski, seconded by Commissioner Goldzband, the meeting adjourned at 3:15 p.m.

Respectfully submitted,

WILL TRAVIS
Executive Director

Approved, with no corrections, at the
San Francisco Bay Conservation and
Development Commission Meeting
of July 16, 2009

R. SEAN RANDOLPH, Chair