

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

50 California Street • Suite 2600 • San Francisco, California 94111 • (415) 352-3600 • Fax: (415) 352-3606 • www.bcdc.ca.gov

October 30, 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 October 15, 2009 Commission Meeting

1. **Call to Order.** The meeting was called to order by Vice Chair Halsted at the Metro Center Auditorium in Oakland, California at 1:15 p.m.

2. **Roll Call.** Present were Vice Chair Halsted, Commissioners Bates, Chiu, Gibbs, Goldzband, Gordon, Hicks, Lai-Bitker, Lundstrom, Maxwell, McGlashan, McGrath, Reagan, Shirakawa (represented by Alternate Carruthers), Smith, Thayer (represented by Alternate Kato), Wagenknecht and Wieckowski.

Not Present were: Governor's Appointee's (Randolph, Jordan Hallinan and Moy), Business, Transportation and Housing Agency (Vacant), Resources Agency (Baird), Sonoma County (Brown), Department of Finance (Finn), Contra Costa County (Gioia), and Senate Rules Committee (Nelson).

3. **Public Comment Period.** Vice Chair asked for public comment.

Mr. Mike Perlmutter, with Audubon California, stated that -- in partnership with the refuge and their local chapter, the Napa/Solano Audubon Society -- they have raised over \$350,000 in order to complete the Lower Tubbs Island/Tolay Creek Project. They are very invested in the project -- for wildlife, marsh enhancement and public access. Audubon California has been bringing people to the site to help them conduct biological monitoring and re-vegetation, and to give access opportunities that are truly unique and don't really exist anywhere else.

They feel that they have created public access, and are pleased to see that BCDC staff and refuge staff have worked together in developing a good compromise that will accommodate all parties on the restoration front and the public access front, and hope that the permit is approved.

Commissioner Carruthers commented that an important suit in the Delta has been settled. The Greenbelt Alliance sued the City of Oakley. The suit was relative to an environmental review of a subdivision in the Delta immediately adjacent to one of the levees. The court found that the city had inadequately addressed the hazards of developing in the area below sea level, adjacent to a levee; and, in addition to that, had failed to address the loss of



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agricultural land in the area.

The subdivision is now stopped. Because of the Delta issues and the concern for how the Delta will be managed, this is an important suit for the Commission to be aware of.

4. **Approval of Minutes of September 3, 2009 Meeting.** Vice Chair Halsted entertained a motion to adopt the Minutes of September 3, 2009.

MOTION: Commissioner Reagan moved, seconded by Commissioner Lai-Bitker, to approve the September 3, 2009 Minutes. The motion carried unanimously by voice vote. Commissioner Gibbs and Carruthers abstained.

5. **Report of the Chair.** Vice Chair Halsted reported on the following:

a. **Jim Bourgart.** Jim Bourgart, who has represented the California Business, Transportation and Housing Agency on the Commission for the past few years, has left his position at the agency to return to the private sector. Jim was a valued member of our Commission. Our staff has prepared a draft resolution of appreciation for Jim. I would appreciate a motion and second to adopt that resolution.

MOTION: Commissioner Reagan moved, seconded by Commissioner Lundstrom, to adopt the draft resolution. The motion carried unanimously by voice vote.

b. **Next BCDC Meeting.** The next BCDC meeting will be in three weeks, on November 5th. At that meeting, which will be held at the Ferry Building in San Francisco, we will take up the following matters:

(1) We will hold a Public Hearing and may take action on an analysis of the Governor's proposal to consider realigning BCDC as a regional agency.

(2) We will hold a Public Hearing and vote on a permit for the upgrade of a shoreline trail in Mill Valley.

(3) We will hold a Public Hearing on revisions to BCDC's San Francisco Waterfront Special Area Plan to accommodate a proposal to relocate the Exploratorium to Piers 15 and 17.

(4) We will hold a Public Hearing on the Bay Plan revisions our staff will be proposing to address climate change.

(5) We will also receive a briefing on a series of projects to provide flood protection for the Redwood Shores community in Redwood City.

c. **Future Commission Meetings:** For your reference, we will definitely be cancelling our *regularly*-scheduled Commission meetings on November 19th and December 17th because this room, where the meetings would be held, has been booked for other events. Therefore, it is likely that our last meeting in 2009 will be on December 3rd.

d. **Ex-Parte Communications.** 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 moment.

Commissioner Hicks reported a conversation she had with members of the Napa-Solano Audubon Society about the Tubbs Island Project.

Commissioner Lundstrom had a conversation with Stewart Siegal about the Tubbs Island Project.

Commissioner McGrath had a discussion with Bob Mendel of U.S. Fish and Wildlife Service and Barbara Salzman about the Tolay Creek Project.

Commissioner Kato had conversations with the Audubon Society regarding the Lower Tubbs Island Project, as well as members from the Exploratorium regarding the Exploratorium Project in San Francisco.

6. **Report of the Executive Director.** Executive Director Travis stated that his Report today is brief, and deals with reports and television.

As to the reports, I want to call to your attention five of them we sent to you.

The first three are dated October 1st. The first deals with amendments to the San Francisco Waterfront Special Area Plan.

The second with amendments to the Bay Plan concerning climate change, as Vice Chair Halsted told you, we will be holding public hearings on both of these amendment proposals at our November 5th Commission meeting. Therefore, please review these documents over the next few weeks and bring them with you to our November 5th meeting.

The third report dated October 1 describes the public workshops BCDC staff held to provide local decision-makers and officials with additional opportunities to comment on the proposed Bay Plan amendments concerning climate change. Joe LaClair is available if you have any questions about those workshops.

The final two documents are dated October 8th, and both respond to objectives in BCDC's strategic plan dealing with public access gap data and regional issues. Brad McCrea and Joe LaClair can answer your questions about these two reports.

Documentary Series. Regarding television, I hope all of you saw the first two episodes of Saving the Bay on KQED-TV last Thursday night. The last two episodes will be shown tonight (10-15-09) at 8 p.m. The last hour, from 9:00 to 10:00, is the story of how BCDC was created. As you recall, BCDC helped to underwrite this production. I hope you agree that it was a very good public outreach investment.

Commissioner McGrath remarked that he talked to Brad McCrea about the access gaps, and was shown that there is now a database that enables a person to drill down in any particular area to what the public access is. It's actually a marvelous tool and a significant accomplishment. He expressed his appreciation for what the staff has done and is doing and hopes the other Commissioners will take a look.

Executive Director Travis echoed that remark, and stated that the tool is actually called the Bay Resource Assessment Tool (BAYRAT). A briefing will be provided on BAYRAT in December.

7. **Commissioner Consideration of Administrative Matters.** Executive Director Travis noted that the administrative listing was sent to the Commissioners on October 1st and Bob Batha is available to respond to any questions Commissioners may have about matters on the listing.

8. **Vote on Material Amendment No. One to Consistency Determination No. CN 11-93, U.S. Fish and Wildlife Service, for the Lower Tubbs Island/Tolay Creek Marsh Enhancement Project, Sonoma County.** Vice Chair Halsted noted that the Commission had held a Public Hearing on this proposal at its last meeting.

Mr. Max Delaney gave the staff recommendation, which is that the Commission should approve the Lower Tubbs Island/Tolay Creek Marsh Enhancement Project.

The project will enhance approximately 65 acres of tidal habitat by creating and enlarging channels and breaching the Lower Tubbs Island levee in two locations to improve tidal circulation.

The project will also place approximately 2,200 cubic yards of fill in approximately a four acre area in order to elevate the marsh plain and raise depressions, and to improve drainage and reduce ponding. Reducing ponding will improve habitat and minimize vegetation die-off, and will also reduce mosquito production as well as the need to apply chemical pesticides in the marshes.

The chief issue raised by the project was whether or not it provided adequate public access. Based on the feedback and concerns expressed by the Commission at the Public Hearing, the Fish and Wildlife Service has modified its public access proposal for the project. The revised proposal will install two approximately seven-foot-wide by 25-foot-long prefabricated bridges across the two breaches in the Lower Tubbs Island Levee to maintain the continuous loop trail around Lower Tubbs Island.

In addition, in order to preserve the usability of the existing public access along the Lower Tubbs Island Levee, the Fish and Wildlife Service will perform modest maintenance activities -- such as patching potholes, fixing ruts, raising small sections of levee, repairing eroded areas, and maintaining the two bridges. In addition, they will perform mowing on the trail on a regular basis, all in an effort to maintain usable public access area along the entire length of the loop trail.

Maintenance of the loop trail will continue until Fish and Wildlife has developed, and the Commission concurs with, a public access plan for the San Pablo Bay National Wildlife Refuge. The Fish and Wildlife Service will also develop and maintain for public access use a new 2,000-foot-long trail along the Tubbs Island setback levee immediately east of the enhancement area, and will install an interpretive panel at the east end of this trail.

In evaluating whether a project provides the maximum feasible public access consistent with the proposed project, the Commission typically considers the project's size, cost, potential impacts on existing public access, and usability. Each project presents a different set of issues to consider in the evaluation of whether the public access is sufficient to make this required finding.

The Lower Tubbs Island/Tolay Creek Project is relatively modest in cost - approximately \$478,000 - while providing habitat benefit to a fairly large area. Existing public access is remote and lightly used yet it provides the only existing access for the San Pablo Bay National Wildlife Refuge and provides a beautiful and unique experience for the public.

The staff and the Fish and Wildlife Service have explored a number of possible public access options in this area, including a trail on top of the Tolay Creek levee; a bridge across Tolay Creek; or a new, alternate loop trail. But all these options would involve the cooperation of other land owners and would likely cost far more than the proposed project.

The staff recommendation, therefore, requires the Fish and Wildlife Service to continue to maintain their existing public access until they develop a public access plan for the Refuge that the Commission finds consistent with their Coastal Zone Management Act responsibilities.

And, to also provide access on the 2,000 foot Tubbs Island setback levee.

The staff believes that the Fish and Wildlife Services Project, as conditioned, is consistent with the Commission's laws and policies and should be approved.

Five comment letters were received for today's meeting. The first was sent out from the Bay Trail Project, along with its recommendation letter. The other four are from U.S. Fish and Wildlife Service -- a correction letter from a comment from a public hearing; and letters from the Ohlone Audubon Society, the California Audubon Society, and Ms. Leora Feeney.

Staff also attached three exhibits to the mailed recommendations. Exhibits B and C were provided in response to requests for additional information on the condition of the levee trail and the locations of Bay Trail segments, both existing and proposed, within the vicinity of the project.

Ms. Christy Smith, Fish and Wildlife Service, stated that she had reviewed and agreed with the staff recommendation.

Commissioner McGrath remarked that he had the good fortune to go to the site, with Commission counsel, last Sunday. It is truly a spectacular area. He expressed appreciation for the staff work and will vote for this but he thinks it is important to provide the Fish and Wildlife Service a bit of guidance for their future reference and he will endeavor to do that now.

It is a spectacular ring trail and is essential to get to the Bay but it may not be feasible in the very long term to preserve access exactly the way it is. He is strongly committed to a rigorous demonstration of what is/is not feasible and a rigorous analysis of restoration.

First, there are signs there of erosion but it's hard to figure out what's going on. There are, of course, established techniques for reviewing -- aerial photos, historic charts, etc. -- to see to what degree erosion will be a problem projecting into the future. That's the kind of work that needs to be done. This shoreline is highly modified and some of it is stable and some of it is not.

In walking and bicycling the perimeter they saw all the culverts. Without question, in some cases it would be better to have a wider breach or a bridge but there were some culverts that were fully exposed, at a relatively modest tide level of 3.3. Also, there were a couple that were high and dry and a couple that were completely submerged. Looking at the degree to which better or bigger culverts might resolve the problem is part of the analysis.

Again, it is a great solution and he encourages the parties involved to go forward in preparing a long-term look and to bring these points into consideration.

Ms. Smith clarified that it is her understanding that, weather permitting, work will begin November 1st and should take no more than two months to complete. The loop would be closed for that period of time. Also, because of existing issues on the trail, the loop is now temporarily closed; it will be open again when the work is done.

MOTION: Commissioner McGrath moved, seconded by Commissioner Reagan, to approve the staff recommendation for Consistency Determination No. CN 11-93.

VOTE: The motion carried with a roll call vote of 15-0-0 with Commissioners Bates, Gibbs, Goldzband, Gordon, Lai-Bitker, Lundstrom, Maxwell, McGlashan, McGrath, Reagan, Carruthers, Kato, Wagenknecht, Wieckowski, and Vice Chair Halsted voting "YES", no "NO" votes and no abstentions.

9. **Public Hearing and Vote on the Recommended Enforcement Decision Involving Proposed Stipulated Civil Penalty Order No. CCD 1-09; Donald Krohn, Rozzi Inc.** Vice Chair Halsted introduced staff member Tim Eichenberg, who gave the presentation.

The alleged violation involves the failure to maintain a public access way at a Chevy's Restaurant in Emeryville, required by Special Condition 2B4, to Permit M84-37.

The Respondent, Donald Krohn, the Managing member of Rozzi, LLC, appealed the initial standardized fine of \$6,000 to the Chair and Executive Director of the Commission in November 2007. The fine was upheld by the Chair and Executive Director in December 2007. On September 24th of this year the enforcement committee met and approved an offer to settle the alleged violation with Rozzi, LLC.

The Respondent stipulated to civil penalty order number CCD 1-09, on October 1, 2009. The civil penalty order requires the respondent to pay a \$10,000 penalty within 30 days of the Commission's action. If the payment is not made within 30 days the respondent is required to pay a \$29,000 civil penalty for the additional cost to the state in pursuing the enforcement action, as provided under Section 66641.9 of the McAtter-Petris Act.

Although the respondent initially refused to pay the standardized fine, he made the repairs to the access way within 116 days of the date that the Commission sent the violation notice, has resolved the violation, and no longer owns the property. Therefore, the enforcement committee and the staff believe that a fine of \$10,000 is a reasonable settlement and recommends that the Commission approve the attached civil penalty order.

Vice Chair Halsted opened the Public Hearing and asked if there were any speakers. Seeing none, she asked for a motion to close the Public Hearing.

MOTION: Commissioner Wagenknecht moved, seconded by Commissioner McGrath, to close the Public Hearing. The motion carried unanimously by voice vote.

MOTION: Commissioner Bates moved, seconded by Commissioner Wieckowski, to approve the staff recommendation.

VOTE: The motion carried with a roll call vote of 17-0-0 with Commissioners Bates, Gibbs, Goldzband, Gordon, Hicks, Lai-Bitker, Lundstrom, Maxwell, McGlashan, McGrath, Reagan, Carruthers, Smith, Kato, Wagenknecht, Wieckowski, and Vice Chair Halsted voting "YES", no "NO" votes and no abstentions.

10. **Closed Session on the Recommended Enforcement Decision Involving Proposed Stipulated Civil Penalty Order No. CCD 1-09; Donald Krohn, Rozzi Inc.** As the Commission voted publicly and unanimously on the proposed order, a Closed Session was unnecessary.

11. **Public Hearing and Vote on the Recommended Enforcement Decision Involving Proposed Stipulated Civil Penalty Order No. CCD 2-09; JMA Waterfront Properties.** Vice Chair Halsted introduced staff member Adrienne Klein, who gave the presentation.

BCDC issued permit number 4-05 to JMA Waterfront Properties and the Port of San Francisco on November 30, 2005 for two restaurants along the San Francisco Waterfront and a 3,500 square foot public access area with six sets of tables and chairs for public use.

On February 4, 2008 staff notified JMA that the legal document guaranteeing public access had not been submitted and approved prior to commencing construction of the project, as required by the permit. During a site visit four days later staff found that public chairs and

tables had not been installed as required, even though both restaurants were open for business. Staff also noted that JMA had not yet submitted a notice of project completion.

On May 28, after 15 weeks of trying to voluntarily secure compliance with numerous site visits, calls and e-mails, staff issued an enforcement letter informing JMA of these permit violations, and the standardized fines that would accrue if they were not corrected within 35 days. The public access guarantee was the last of three permit violations to be resolved, and was submitted to and approved by staff on October 31, 2008.

Between May 28th and October 31st JMA accrued a standardized fine of \$16,800. That is, \$9,100 for the agreement, \$1,000 for the late installation of the public tables and chairs, and \$6,700 for the notice of completion. JMA appealed the standardized fines to Chair Randolph and Executive Director Travis on December 19, 2008.

One month later Chair Randolph and Executive Director Travis concurred with the staff recommendation to reduce the fine from \$16,800 to \$6,700. The \$9,100 fine for failure to submit an approvable public access guarantee was reduced to \$6,700 by reducing from 156 to 132 the number of days it took to secure the final approval of the legal instrument. It was officially approved on October 31st, but a very good draft was submitted on October 7th.

Chair Randolph and Executive Director Travis also waived the \$1,000 penalty for failure to install the public tables and chairs, and the \$6,700 penalty for failure to submit the notice of completion.

On January 27, 2009 JMA was informed that the standardized fine had been reduced to \$6,700. However, JMA declined to pay the fine, which led to the need for a civil penalty order.

On September 24, 2009 the enforcement committee held a public hearing and subsequently voted to adopt the following recommendation: the enforcement committee recommends that the Commission assess a civil penalty of \$15,000 to be disbursed as follows: JMA shall spend approximately \$6,000 to purchase and install additional public access improvements at the site within four months of Commission action on the order; JMA shall pay a civil penalty of \$9,000 over a period of five months, beginning five months after your action on the order; and \$2,000 of this \$9,000 penalty would be stayed in exchange for full compliance to the terms of the order. JMA has stipulated to these terms.

Vice Chair Halsted opened the Public Hearing and asked if there were any speakers. Seeing none, she asked for a motion to close the Public Hearing.

MOTION: Commissioner Wieckowski moved, seconded by Commissioner Lundstrom, to close the Public Hearing. The motion carried unanimously by voice vote.

MOTION: Commissioner McGlashan moved, seconded by Commissioner Carruthers, to approve the staff recommendation.

VOTE: The motion carried with a roll call vote of 18-0-0 with Commissioners Bates, Chiu, Gibbs, Goldzband, Gordon, Hicks, Lai-Bitker, Lundstrom, Maxwell, McGlashan, McGrath, Reagan, Carruthers, Smith, Kato, Wagenknecht, Wieckowski, and Vice Chair Halsted voting "YES", no "NO" votes and no abstentions.

12. **Closed Session on the Recommended Enforcement Decision Involving Proposed Stipulated Civil Penalty Order No. CCD 2-09; JMA Waterfront Properties.** As the Commission voted publicly and unanimously on the proposed order, a Closed Session was unnecessary.

13. **Public Hearing and Vote on SB 375 Implementation Policies.** Vice Chair Halsted noted that this is a Public Hearing and vote on ratifying some policies the Joint Policy Committee

(JPC) recently adopted. She introduced Ted Droettboom, the JPC Regional Planning Program Director, who provided background on the issues involved.

Mr. Droettboom started with a discussion of some of the premises underlying Senate Bill 375, which was passed by the state legislature about this time last year and signed by the Governor. It has come into effect with that signature. It is based on some fundamental premises:

a. **Climate change is a big deal.** There are many potential impacts on the Bay Area which, on a per capita basis, has a very large climate footprint. The Bay Area produces about three times the amount of carbon as the average world resident.

b. **Transportation is a big part of the Bay Area's footprint.** About 41 percent of the greenhouse gases come from the transportation sector, and about 80 percent of that number comes from cars and light duty trucks. Thus, most of it comes as a result of the kind of driving people do in this region.

c. **Transportation is going to be a big climate challenge for the Bay Area.** There is scientific consensus that if the Bay Area is to avoid most of the catastrophic consequences of climate change it needs to reduce greenhouse gases to 80 percent of 1990 levels by the year 2050. To do that, it needs to start now.

We probably won't be able to do that with technology alone.

A more modest level, set forth in AB 32, sets greenhouse gas targets for the year 2020. It is projected that, if we don't make significant changes, there will be about a 55 percent increase in vehicle miles traveled between 1990 and 2020. CO2 won't increase quite as fast, because of more efficient vehicles and etc. The Pavley emissions law will get us down to about 120 percent of the 1990 level.

We effectively have about ten years to meet the emission requirements. Emission standards are not in place and more is needed to meet the relatively modest 2020 target, much less the more aggressive 2050 target.

One of the fundamental premises of SB 325 is that one of the many ways we can begin to deal with transportation CO2 is to look at the location of development in this region and other regions of California. Location actually makes a huge difference in the amount of CO2 produced per household from the transportation sector. Some areas produce roughly a third of other areas within the Bay Area.

Comparing compact, focused growth to the "sprawl" alternative results in about a 40 percent reduction in VMT. Of course, across an already built-out region those numbers decline significantly, but there is a huge opportunity over the next several decades to make a difference with the distribution of growth.

Finally, there is the premise that the old saying "drive until you qualify" is just not acceptable in a climate-driven world. Projected increases include 120 percent in Silicon Valley; and 90 percent between the Bay Area and San Joaquin County. These increases are due largely to people driving long distances to homes that they can afford; and this will not work in the 21st Century.

The first significant thing is that in September 2010 the California Air Resources Board will give the Bay Area two targets for reducing greenhouse gases from the automobile and light truck sector – a target for 2020 and a target for 2035. The Regional Target Advisory Committee is considering giving these targets on a per capita basis that will be uniform across all regions of the state, and that the regions be given an opportunity to argue regional differences amongst

those targets.

We will have those targets by this time next year and we will need to further our planning process, which has already begun with planning discussions and modeling of CO2 impacts. This will result in the Bay Area producing, in about 2013, a Sustainable Community Strategy.

A Sustainable Community Strategy (SCS) is an integrated land-use and transportation plan for the Bay Area which shall accommodate all the projected growth in population in the area within the region. By law we will be required to designate areas within this region to accommodate all our population growth for all economic segments of the population, rather than building in some “spillover” to other regions.

The SCS will be required to be adopted as part of the Regional Transportation Plan, which has significant implications. First, by federal law, everything within the Regional Transportation Plan (RTP) has to be internally consistent. You cannot have transportation investments in the RTPs that are inconsistent with the SCS; they must be supportive of the SCS or at least neutral.

The second major implication is that, again by federal law, everything within the RTP must be judged to be realistically attainable over the period of that plan. The federal government does not want regions assuming away air quality issues with unrealistic land-use assumptions in their plans.

Thus, the SCS has to be judged as actually being achievable over the next 25 years. The principle criterion which is applied to achievability is are local governments “bought in” with their land-use plans with this land-use allocation?

What that means for the Commission is that SCS can't be a strategy that is simply produced by the regional agencies. It can't be ABAG's, or MTC's or even BCDC's; it has to be the Bay Area's sustainable community strategy, and that means it has to be a strategy to which most local governments have agreed in some way. This is a big, significant requirement.

In addition to being part of the RTP, and being consistent with the RTP, the regional housing allocation process will now be an allocation of units to local governments in the Bay Area and also be consistent with the SCS; and the allocation must be made simultaneously with the adoption of the RTP.

What starts the clock ticking, in terms of the local housing elements, will be the adoption of the next RTP. With the adoption of that RTP, local governments will have 18 months to bring their local housing elements, that portion of their general plan that deals with housing, in conformance with the regional housing allocation. They then have three years to put in specific zoning implementing those local housing elements.

So there is a very tightly integrated relationship now between the RTP and the regional housing needs allocation and there are increased enforcement tools in place to also require local governments to do substantive actions in support of their regional housing plans.

There is some assumption in the law that it may not be possible to simultaneously accommodate all the region's growth and meet CO2 objectives in a manner that everybody can agree to. The law, therefore, allows an escape hatch if that can't happen; if those CO2 objectives cannot be met. That escape hatch is called the Alternative Planning Strategy. The Alternative Planning Strategy looks exactly like the SCS, except it is not adopted as part of the RTP and therefore does not have to be consistent with transportation investments, nor does it have to be

realistic.

The Alternative Planning Strategy is the classic "paper plan" -- it's what you'd do if you had your druthers but it's not what you're actually going to do.

It has two purposes: 1. It serves as a way of communicating with the state what additional authorities or resources or actions would need to be taken to actually achieve those greenhouse gas reduction targets; and 2. Like the SCS, it will provide some access to limited CEQA assistance for housing projects and mixed-use projects that are either consistent with the SCS or consistent with the Alternative Planning Strategy.

If you are consistent then you can skip some steps in the normal environmental review process; generally, steps having to do with the transportation aspects and greenhouse impacts. And, if you meet a whole bunch of special conditions, you can actually be exempted from CEQA -- but those we don't expect will happen much at all.

In the Bay Area it's important to recognize that this is not absolutely new. We have been taking a number of actions, since the start of this decade, under the rubric of "smart growth" or "focused growth," which moves the region in the same direction as required by SB 375 and is required in this new SCS. It will be really important, as we move forward, that we don't look upon this as some entirely new mechanism and an entirely new requirement but basically as a continuation of the momentum we've established.

The policies that we've put before the JPC and before the Commission today talk about continuing that momentum as well as achieving a number of other essential qualities.

One of those essential qualities is the recognition that, if we are to have a successful SCS then it has to be built as a partnership. The reality is that land use remains a prerogative of local governments. Regional authorities have some limited control over things like transportation investments, but as an integrated transportation and land-use plan it is going to have to be done as a partnership amongst the levels of government in this region.

There are high expectations attached to SB 375, to the SCS, to this entire process. Those expectations are going to be very hard to meet, particularly in the land use arena. The Bay Area is growing at about one percent per year, at least until the recessionary period, so in one year about 99 percent of this region is a given. Our ability to achieve major changes in land use is limited by our growth rate, but over several decades we can make a difference. It's important to recognize that.

Going forward we need to recognize that there are a whole bunch of things that we have to start building on now, but which will not have impacts for several years.

There are, however, things that we could undertake immediately, like beginning to change the manner in which we charge for parking in this region, which could have significant impacts on driving behavior, which could also contribute to some of those long-term land use changes. But we've got to think about this as a process unfolding over time, not just as an end state. If we don't think about it as a process unfolding over time and starting now, we won't get there.

And there is no silver bullet. We've looked across the literature. There are many debates about whether technology will come and save us or whether land use is more effective than congestion management and various other things.

It is our conclusion, looking at the literature, that we're going to have to do it all. We're going to have to have technology in place, we're going to have to have mechanisms that optimize speed on our freeways to achieve the sweet spot in which CO2 is reduced and we're going to have to have significant changes in the way this region develops. To get down to that 80 percent below 1990 by 2050 is going to require a huge, multi-sector, multi-initiative, comprehensive effort.

Which leads me to the policies that we have before us. Those policies are basically designed to pursue these essential qualities that we think our sustainable community strategy needs to have:

There has to be a significant challenge to the status quo; a recognition that if we continue to do things as we have in the past, that if we continue to pursue business as usual, we will not get there. It simply will not happen. The magnitude of this issue, the urgency of it, is such that we've got to think about radical changes from where we have been.

It is going to require unprecedented integration of planning and action activities across this region. It all has to come together in a way that we have not yet seen in this region. It won't happen unless all the people that are affected by this are included in the process.

The most significant inclusion, of course, is local government, because they have a huge amount of say about what happens in the Bay Area. We've got to build upon what we've started. We can't continue to have a cyclical process where every five years or so we reinvent the wheel because we've let the wheel kind of wear down and run flat. This needs to be something that builds over time.

And finally, it's got to be real. It's got to have an actual impact on emissions if we are to treat this thing seriously and actually make it happen. We've got to identify initiatives that we can confidently and actually implement, put together, and have working on the ground. Policies are intended not to get us there but to start us on the path of those qualities.

Vice Chair Halsted then moved the item to public comment.

Mr. Steve Lowe stated that he just came from a meeting of the West Oakland Toxics Reduction Collaborative, which is not a local government but is a local group that thinks that local government might respond to it. It's important to include local groups, instead of having all the dialogue be between the regional agencies and the local governments, because often local governments are divided by their political stance and by lobbying and other things and it really needs to have more local participation from groups.

Part of this Collaborative participated in the Maritime Air Quality Improvement Plan that the Port of Oakland undertook, to figure out how to stop all the bad air in West Oakland, much of which drifts down into the Jack London District.

We've noticed that there have been initiatives in front of the Port before to deal with cold ironing. As you know, ships in the bay at anchor create a lot of pollution and it seems like we're not going to have cold ironing until 5-10 years from now, depending upon how fast PG&E can electrify the docks. And yet we have generators that burn LNG and Compressed Natural Gas that can significantly deal with the problems we have at the Port.

I don't feel that the regional agencies are participating as much in compelling the Port and the City of Oakland and Chevron and other areas where ships dock and belch out all their stuff into our communities -- only because it's a little bit cheaper for the shipping companies to convert to LNG at the dock.

We need to figure out a way for the people that are going to provide for this service to use the technologies now, rather than wait five years. And we'll be very happy to work and see that as part of the seaport plan instead of just saying, "gee, that's quality management's problem," or "it's MTC's problem;" it really has to be a unified voice coming in if you expect to have a unified vision in place, as Mr. Droettboom has been talking about.

MOTION: Commissioner Wieckowski moved, seconded by Commissioner Carruthers, to close the Public Hearing. The motion carried unanimously by voice vote.

Commissioner McGlashan noted that there is a lot of very good thinking going on and it is vital that the JPC connect to local governments. There is a lot of talk going on right now within the congestion management agencies about how to connect up to this and offer local thoughts about managing local land-use policy in the different counties. There are a lot of good trends in the offing.

Relative to the public commenter, I believe there is a public advisory committee being formed where group input will be fed into the process as well. So it's off to a good start. The SCS is going to be a challenging thing to create but is very, very important to the region.

Commissioner Carruthers stated that of course this is something we have to do and it is tremendously challenging.

One of the problems he has is the way in which the material is communicated is very challenging. If we're going to be dealing with planning commissioners and city councilmen and supervisors from 90 local governments around the Bay Area, we're going to have to do a better job of communicating. I was overwhelmed by the acronyms in the slideshow. I felt like this was written by the people who know what it's all about to talk to each other. It was not written as a way to communicate to people outside the circle what it's all about.

The minimum would be some kind of glossary sheet. There are a gazillion acronyms in here. It's not like a document that has a few and you can remember what they are; the number is overwhelming from my point of view. I'm a retired public official and, believe me, I was swamped.

One thing that really confused me, I think there's a misprint. The paragraph that talks about the advisory committee and its responsibility has a delivery date of recommendation to the CARB in September 30, 2009, yet today I thought I heard you say September 2010.

Mr. Droettboom clarified that the Regional Target Advisory Committee has delivered its' recommendation on a methodology for setting targets. The California Air Resources Board, now has a year to actually set those targets. I fully empathize with your confusion; there is clearly a translation process that needs to go forward.

Commissioner Carruthers asked what the process is for public input on this mammoth undertaking? Mr. Droettboom responded that what they hope to do is have public input which is jointly solicited by them and by local governments.

One of the things they learned came out of the regional livability footprint project, which culminated in 2002. One of the things it did was talk directly to a lot of folks around the region, then -- only in the later part of the project -- began to talk to local governments. At that point local governments said "who are these people who met in some community hall on the weekend and decided to put all this housing into my community without talking to me first?"

So, in this process, we think it's very important to talk to local governments first and then go out jointly, with those local governments, and talk to their constituents. Up until the point where we get some of the targets from the state, we need to be talking an awful lot to local governments about how we can then talk to our constituencies together.

Mr. Droettboom also stated that effectively what SB 375 says is, if you have a housing and mixed-use project that is consistent with a Sustainable Community Strategy (SCS) -- and "consistent" is not defined -- but let's say that the density of that project and its location is consistent with where projects of that sort are allocated in the SCS, then you don't have to include in your EIR some things that would otherwise be included -- like cumulative transportation impacts and CO2 impacts. Also, you cannot be forced to mitigate your impact by reducing density.

So there are those kinds of streamlined things that are designed to facilitate projects that are consistent with the SCS. However, the vast majority of the CEQA process would still hold, except for those projects that qualify for the transit priority project classification. But the qualifying criteria for that is so stringent that most developers will find it easier to go through the standard CEQA process.

Commissioner Carruthers stated that this is a powerful instrument for the preservation of open space and agricultural land because by defining where development will go it also will define where development will not go, and that will presumably relieve some of the development pressures on our metropolitan agricultural lands.

Commissioner McGrath asked for a "cliff notes" version of this, which he described as "dense and thick." Is there a way to communicate this in a "cliff notes" version and make the message understandable?

Executive Director Travis stated that the issue is not nearly as simple as it is currently portrayed; it is a very complex law.

He added that it is also important to understand BCDC's limited role in the implementation of this. This is largely going to be done by ABAG and MTC, but as a member of the JPC the Commission has committed to work with the other two agencies, and the Air Resources Board and the air districts, to ensure that we are all coordinating things.

Regarding the importance of land use control, BCDC is the only one of the four agencies that actually has regulatory land-use authority. BCDC has a lot of authority over a small area.

The recommended policies on climate change show that we have worked very hard to make those policies for what happens along the shoreline of the Bay -- even in areas that are vulnerable to sea level rise -- complementary with this effort; to try to have more development in already urbanized areas near transit with mixed use.

Mr. Droettboom has done a very good job of taking something that is extraordinarily complicated and boiled it down in a way that works very well for the agencies that are going to do the major work in carrying it out. His synopsis today explains the overall picture and we'll

be tying in at our next meeting with how BCDC can play a role in this.

Vice Chair Halsted echoed her concerns about the complicated nature of the bill, and expressed her hope that some energy will be put into the translations and include some simple positives that people can act on; maybe even setting up ways to reward municipalities that do well under some of these things and provide motivating things for them rather than sticks and controls and etc.

Executive Director Travis stated that he will work with Mr. Droettboom to help with the communication of the ideas.

Commissioner Reagan stated that, as his county has not yet acted on or adopted the document, he didn't think he had the guidance from his peers that he needed to vote on this yet and he would abstain from voting at this time.

Executive Director Travis clarified that the law already exists; and this document merely lays out how the regional agencies will go about implementing the law.

MOTION: Commissioner McGlashan moved, seconded by Commissioner Carruthers, to vote for the staff recommendation, which is to ratify the action of the Joint Policy Committee, which had previously approved the document as a whole. The motion carried unanimously with a hand vote of 17-0-1, with Commissioner Reagan abstaining.

14. **Consideration of Strategic Plan Status Report.** Executive Director Travis remarked that excellent progress has been made in carrying out the strategic plan and there are no changes needed this month.

He also noted that the next Strategic Planning Workshop has been scheduled for Thursday, April 29, 2010 and asked that the date be put on Commissioner calendars.

Vice Chair Halsted noted that the next JPC meeting is November 6th, NOT the 10th, as was erroneously reported in some venues. She then entertained a motion to adjourn.

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

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

17. **Adjournment.** Upon motion by Commissioner Wieckowski, seconded by Commissioner Goldzband, the meeting adjourned at 3:40 p.m.

Respectfully submitted,

WILL TRAVIS
Executive Director

Approved, with no corrections, at the
San Francisco Bay Conservation and
Development Commission Meeting
of November 5, 2009

R. SEAN RANDOLPH, Chair