

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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November 25, 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 November 5, 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 1:15 p.m.

2. **Roll Call.** Present were Chair Sean Randolph, Vice Chair Halsted, Commissioners, Baird (represented by Alternate Vierra), Bates Chiu, Gibbs, Goldzband, Gordon, Jordan Hallinan, Hicks, Lai-Bitker, Maxwell, McGlashan, McGrath, Moy, Nelson, Shirakawa (represented by Alternate Carruthers), Smith, Wagenknecht, and Wieckowski.

Not Present were: Sonoma County (Brown), Department of Finance (Finn), Contra Costa County (Gioia), Association of Bay Area Governments (Lundstrom), Solano County (Reagan), State Lands Commission (Thayer) and San Francisco County (Vacant).

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

Mr. Jesse Sabin, Bay Area resident, voiced his support of the Save The Bay position regarding the development of the Cargill Salt Ponds in Redwood City. A development of this sort would require permits from BCDC, as it would involve filling areas that are protected salt pond that are under the jurisdiction of this Commission.

I've taken the time to read the Bay Plan on the Commission's website and see no way that permits could be granted that are so inconsistent with the stated goals and policies of this agency.

Not only because it would fill 1,000 acres of salt ponds, which are considered valuable in their current state and as potential estuary, but because it threatens to frustrate the operations of its adjacent neighbor, the Port of Redwood City. That opinion is articulated in a daily news editorial by Mike Jacobs, Vice President of the Pacific Merchants Shipping Association.

The Bay Plan states that some filling may be justified for purposes providing substantial public benefits if these same benefits could not be achieved equally well without filling. Some elements of the Salt Works Plan may qualify as substantial public benefit but none of these benefits require the amount of filling that is essential to the proposal.

The majority of the filling will be for the purposes of residential and commercial units -- units that are not included in the Bay Plan's list of public benefits.



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When it's time for the BCDC to decide on this issue there may be a large amount of support from groups and individuals around the Bay Area that the project goes through. This would be due largely to the fact that there has been an admirable effort on the part of the developers to appeal to the environmental values of the Bay Area by including parks, open space and restored wetlands in the design.

However, this is no reason to forget our principles or lower our standards. For almost half a century we have managed this bay according to its unique qualities as a wild habitat and as commercial waterway. Approving this plan would be a most unfortunate step backwards.

Ms. Ramona Ambrozic, resident of Redwood Shores, stated that she had heard that in September there was going to be a talk and a tour sponsored by BCDC regarding the potential impacts of rising seas on bayside communities and businesses, and she attended.

It was an excellent tour, and at the end I asked Mr. Travis what BCDC's position was relative to the Cargill proposal to build homes on the Saltworks in Redwood City. I was surprised by Mr. Travis' response. He said that BCDC will not oppose the Cargill plan because "half a loaf was better than none" -- "half" meaning the proposal to allow half the area to be returned to wetlands.

He went on to say that, since there was no money for restoration, 50 percent of the land returned to wetlands was "about as good as we could expect."

I am here today because I don't want to believe that this is BCDC's position. Every environmental group on the peninsula has opposed the Cargill plan. The Port of Redwood City opposes the Cargill plan. Menlo Park has formally opposed the Cargill plan. Atherton has groups of citizens mobilizing against the Cargill plan. The major newspapers have opposed the Cargill plan, and ordinary citizens like me expect BCDC to stand up for what is right for the Bay and for the peninsula. We're depending on you to lead the fight to save all 1,400 acres from development and to see that this area is returned to wetlands to help all of us in the fight against global warming and against rising seas.

4. **Approval of Minutes of October 15, 2009 Meeting.** Chair Randolph entertained a motion to adopt the Minutes of October 15, 2009.

MOTION: Commissioner Wagenknecht moved, seconded by Commissioner Halsted, to approve the October 15, 2009 Minutes. The motion carried unanimously with Commissioners Vierra, Moy, Nelson and Goldzband abstaining.

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

a. **Election Results.** In Tuesday's election former Commissioner Jose Cisneros was re-elected Treasurer of San Francisco -- which isn't a surprise since he was running unopposed -- and Commissioner Joan Lundstrom was re-elected to the Larkspur City Council. I'm sure the Commission joins me in congratulating them.

b. **Next BCDC Meeting:** The MetroCenter in Oakland is not available for our next regularly-scheduled meeting on November 19th. Therefore, our next BCDC meeting will be in four weeks on December 3rd. At that meeting, which will be held here at the Ferry Building, we will take up the following matters:

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(1) We're planning to vote on two planning matters on which we're holding hearings today. The first vote deals with revisions to our San Francisco Waterfront Special Area

Plan to accommodate a proposal to relocate the Exploratorium to Piers 15 and 17. The second matter we may vote on deals with the Bay Plan revisions our staff will be proposing to address climate change.

(2) We will hold a public hearing and vote on a recommendation from our Enforcement Committee to address violations in Alviso Slough in the South Bay.

(3) We will hold a public hearing and vote on a permit for the upgrade of the shoreline trail in Mill Valley.

(4) We will receive a briefing on the latest improvements to our computerized permit tracking system.

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

c. **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 point.

Commissioner Gordon received a correspondence on the Redwood City levees from the Mayor of Redwood City.

Commissioner Carruthers received correspondence from Save The Bay about climate effects.

Commissioner Nelson received the same letter.

Commissioner McGrath also received this letter, and assumed that it was received from everyone and thus was not ex parte communication. (Executive Director Travis confirmed that this was so.) He also received the same information in a letter from the Planning Commission

6. **Report of the Executive Director.** Executive Director Travis provided his report, as follows.

a. **Oil Spill.** As was reported extensively by the media, last Friday, October 30th, between 400 and 800 gallons of fuel oil spilled from the tanker *Dubai Star* during a fueling operation at Anchorage 9, south of the San Francisco-Oakland Bay Bridge. Twenty-four response vessels deployed 54,900 feet of boom, and over 5,825 gallons of an oily-water mixture were recovered.

Oil spill containment and recovery are rarely completely effective so, as expected, some of the spilled fuel reached the Bay shoreline in Alameda and particularly at Crown Memorial Beach. To prevent human exposure to the spilled oil, Crown Beach, Encinal Beach, an adjacent jetty and Alameda Point were closed in Alameda, as was Middle Harbor Shoreline Park in Oakland.

The Oiled Wildlife Care Network received 36 live birds, 11 dead birds, and two birds that died or were euthanized. It is expected that there will be additional wildlife impacts over the next several days. To accommodate safe capture of impacted wildlife, the public pathway along the western shoreline of Alameda between Broadway Street and the Bay Farm Island Bridge remained closed to the public through Wednesday.

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The East Bay shoreline between the Bay Bridge and the San Mateo Bridge was closed to fishing and shellfish harvesting. Fish and shellfish caught from waters outside the spill area remain as safe to eat as before the spill. However, health officials have requested that the public stay away from shore areas until cleanup efforts are fully completed.

If you want additional information, please contact Linda Scourtis of our staff who was involved in the response effort.

b. **Bay Bridge.** The emergency repair work on the San Francisco-Oakland Bay Bridge that closed the bridge for nearly a week was carried out under a permit we issued over twenty years ago. That permit authorizes repairs, reconstruction and replacement of structural and related bridge elements. Therefore, no further BCDC authorization was needed for this emergency work.

c. **Delta Legislation.** As I'm sure you know, yesterday the Legislature passed a package of bills aimed at protecting and restoring the Delta and meeting California's long-term water needs. Some Bay Area legislators, environmental organizations, and local governments support the package. Others oppose it. To assist the Governor in determining whether to sign these bills, the Natural Resources Agency asked for our staff's analysis of the key bill, SBX7 1, by the end of the day yesterday. Our analysis focused on whether that bill would be consistent with the Commission's mandates and policies and would advance an overall improvement in the management of the Delta. We concluded that it would and, therefore, we recommended that the Governor sign SBX7 1 into law. If you have any questions about our analysis or the Delta in general, Steve Goldbeck can answer them.

d. **Personnel.** Alice Chung has joined our staff as a volunteer intern in our planning and regulatory units where she will be working on design issues. She holds bachelor degrees in both economics and studio arts, has a master of landscape architecture from the University of Pennsylvania, is licensed as a landscape architect in California and Massachusetts, and has more than a decade of professional experience, including work on design projects in the Bay Area that have won national awards. Obviously, we are very fortunate to have her in the office.

e. **Documentary Series.** As I informed you by e-mail, if you want to purchase a DVD of the KQED documentary "Saving the Bay" you can order copies through BCDC at a cost of \$20 each. If you want a Blu-ray version, the cost is \$40 each. Please let us know by November 16th how many copies you want in what format and send us a check made out to BCDC.

f. **Acting Executive Director.** I will be attending a conference in New Orleans the week of November 16th at the expense of the conference hosts. Caitlin Sweeney will be serving as acting executive director during my absence.

Regarding the comment that was made during the Public Comment period, I apologize if there was any confusion. I have tried repeatedly to explain that on the Cargill Project there are two diametrically opposed views. I tried to summarize what they are and explain that both Redwood City and the Commission will be facing a very interesting public policy choice. I have never, and will never, attempt to say what the Commission will do.

7. **Commissioner Consideration of Administrative Matters.** Executive Director Travis noted

that the administrative listing was sent on October 23rd. It has only one item on it, and that item has been temporarily withdrawn at the request of the applicant who is working our staff to address a public access issue at the project site. If you have questions, Jaime Michaels can answer them.

Commissioner McGrath asked for a copy of the staff's recent analysis on the Bay-Delta bill that was sent to the Governor's Office. Executive Director Travis responded that staff can provide the factual analysis and will do so. He clarified that the bill does not deal with the bonds; it deals with governance.

Commissioner Gibbs asked for a brief overview of the organizational rules that allow staff to provide an analysis of a bill before the legislature to the Governor when that analysis is not provided to the Commission.

Executive Director Travis responded that staff always likes to bring legislation to the Commission, but to do so in this matter would have required a notice of it 10 days before the legislature acted. If it were put on the calendar in time for the next meeting the Commission would be taking a position on it a month after the Governor decided what to do.

So what staff did was focus solely on the Commission's adopted policies and the mandates of law to see what elements of the bill were consistent or inconsistent with adopted Commission policy and came to the conclusion that it was totally consistent.

Commissioner Gibbs stated that he was actually asking why an analysis can go to the Governor on a piece of legislation and Commissioners are not eligible to see that analysis. Executive Director Travis responded by stating that BCDC is sort of a part of the administration but is independent of the administration. It tries to be a part of the administration when it can do so but also maintains the Commission's independence to operate in a fashion that may be contrary to the directives of the administration.

In this case, as one of the state departments provided an opportunity to do an analysis, they provided that analysis. It is an internal document that is part of the administration and should not be released to the general public.

The same issue appears with the budget. Changes to the budget are not public information but staff tells you about it as part of our executive report. We try to remain faithful to both "masters."

Commissioner Nelson suggested that a briefing about the governance aspects of that bill would be helpful, as we are really talking about governance of our sister agencies that govern the other half of the Bay-Delta estuary and there is an artificial distinction between the Bay half of the Delta estuary and the Delta half. It makes sense for the Commission to have an understanding of how the governance is going to evolve, assuming that the Governor signs it, which seems apparent. Executive Director Travis responded that they would definitely try to do that.

8. Public Hearing and Vote on Report on the Governance and Financing of Bay Management.
Executive Director Travis provided background on the item, which came about as a single line
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revision in the May edition of the Governor's budget, suggesting that BCDC be eliminated as a state department and its functions realigned to a regional entity.

BCDC staff then explored exactly what that meant. Where did BCDC belong on the governmental organization chart – should it be a state agency or a regional agency or something else, and how should it be funded? They suggested to the legislature and the Governor that this issue be studied.

The legislature subsequently provided full funding for BCDC for this year, as did the Governor.

There is no requirement that this study be done. However, staff turned to the San Francisco Planning and Urban Research Association (SPUR) and the Bay Area Council Economic Institute and asked them to look at the issues of governance and financing. They did so, and held two meetings with virtually all the stakeholders involved, who generated the report being provided today.

Staff recommends that the report be endorsed and transmitted to the Governor and the legislature for their consideration.

Gabriel Metcalf, SPUR, stated that they were asked to research whether BCDC should become a regional, rather than state, agency. SPUR focused on the governance side of that issue, and their answer was no.

He cited seven reasons for their “no” response.

- (1) BCDC is not broken; it is working. Thus, there is no compelling reason for a change;
- (2) The state has a significant interest in the Bay. It actually owns the Bay and the Bay's role in both economic and natural systems is critical for the functioning of the state;
- (3) As BCDC is increasingly called upon to deal with climate change and sea level rise, the state powers derived by BCDC as a state agency are likely to be useful;
- (4) The governance model of BCDC, which bridges successfully from local, regional, and state perspectives, is actually a key to its success and is something that other regional entities probably need to emulate, rather than the other way around. The particular governance solution utilized by this Commission seems to be quite effective;
- (5) The federal consistency authority means that, as a state agency, BCDC is able to obligate with essentially delegated federal authority. This authority would not exist in a regional agency, absent a significant piece of federal legislation;
- (6) There is no apparent net cost savings to making BCDC a regional agency;
- (7) BCDC does not cost very much out of the general fund.

Chair Randolph added that the “short story” is that there really isn't any identifiable cost savings if BCDC were to be converted to a regional agency. In terms of its productivity, it operates on a very small budget and is very effective at what it does.

The last time BCDC looked at this, in 1995, many of the issues looked at then are very similar to today. Then, BCDC staff concluded that there wasn't any clear option that wasn't highly complicated and had the potential to generate the kinds of revenues that BCDC would need to generate.

A couple of possibilities were closely looked at. One was a state-imposed regulatory fee to support BCDC, and the other a state-imposed benefit assessment district. Both were interesting and potentially feasible but also potentially complicated to achieve -- politically, legally, and practically.

Thus, the bottom line conclusion on the funding options that is that there isn't any clear path for alternative funding beyond the general fund right now that isn't fraught with a lot of uncertainty. Of course, all possible options could not be pursued in their entirety, although we noted that we were open to pursuing those in the future, given enough time, money and interest.

The Commission was fortunate to have a couple of outstanding fiscal experts involved, including Fred Silva, who is one of the leading state budget experts. It also drew outside resources, from a technical standpoint, into the conversation.

Mike Wilmar, working on behalf of SPUR and all of us, put in a lot of time and engaged a number of stakeholders, and I want to acknowledge his efforts.

Chair Randolph then opened the Item for Public Comment.

Ms. Ellen Johnck, Bay Planning Coalition Executive Director, stated that they respectfully dissent from concurrence with the report. She clarified that members of their coalition are not dissenting from the positive work that was done; rather, their perspective is from a position of what was not done, and the failure of the group to meet the Governor's request.

The Bay Planning Coalition was concerned from the beginning about the potential conflict of interest because the organizations leading the studies have representatives who are BCDC appointees. That is why we recommended from the beginning that an independent body, the Little Hoover Commission, conduct the study.

We wrote a lengthy letter to BCDC on September 17, 2009 which contained our recommendations for the study. It is unclear as to whether that letter ever got to some of the Commissioners. The letter is our roadmap for the study.

We saw the realignment study as a serious opportunity to achieve the Governor's objective of cutting the costs of state government in the same way that every single public and private entity in the state of California has had to tighten their belts and adjust to current fiscal realities.

The Governor requested that BCDC investigate realignment as a regional administrative organization and identify essential functions and alternative sources of funding other than the state general funding. We acknowledge that the final report identifies our input to the study, based on our recommendations in the September letter. It is listed as the 10th of the 11 major conclusions listed in the staff report. I did meet in teleconference with Mr. Wilmar and Chair Randolph about our recommendations. But we still feel this response was very inadequate in

light of the Governor's request.

So, in conclusion, we remain very concerned that no meaningful action was taken in BCDC's realignment study to meet the Governor's overall goal in downsizing the budget and belt-tightening, and that BCDC did not really meet its part to provide for a more sustainable California.

Chair Randolph then opened the Item to Commissioner comments and questions.

Commissioner McGrath noted that he did sit in this process as an observer, and Ellen Johnck is correct that the process never delved down deeply into the regulatory process and its inefficiencies. But the reason was that there really wasn't much savings to be had and it wasn't really the question that was raised by the budget proposal, which was just that it be looked at as a regional agency rather than a state agency.

With that background, I'd like to ask Ms. Johnck a couple of questions. We have in place an LTMS and quite a bit of dredging is being done. Most of the material is still going to the Alcatraz disposal site, but there's some thought about what needs to be done next. We never reached that question in this report. What do you think BCDC should do and could be done next?

Ms. Johnck responded that their recommendation was to be investigated and looked at, whether one state lead agency could be identified for maintenance. This is not new work. The whole dredging planning question -- BCDC still has an important role in that.

The one state lead agency which to us made sense was the Regional Water Quality Board.

Commissioner McGrath asked if that recommendation could be done under existing law. Right now, is BCDC not required to act on administrative permits for new construction?

Chair Randolph responded, "yes, we are." Commissioner McGrath followed up by asking if any change in that, that would streamline the process -- would that require either legislation or regulatory modification?

Chair Randolph stated that that was correct.

Commissioner McGrath remarked that this was then perhaps beyond the scope of this particular study?

Chair Randolph responded that, again, they were trying to respond to what the Governor's proposal was in the budget, which didn't involve that at all.

Commissioner McGrath talked about indications that sand mining in the Bay may have some sediment budget problems and there is a need to look at that. Is the sand that's being mined important to Bay habitat? That is the unresolved question that we need to answer to figure out what to do on the regulatory perspective.

Ms. Johnck responded that the permitting and planning for sand mining could be more effectively rolled in to the long-term national strategy for dredging, particularly as we look at issues related to sediment deficit in the Bay, and of course sand is a part of that sediment. That would be one solution. Overall, what we're really saying isn't there a way -- could we come up

with a more streamlined process?

Commissioner McGrath stated that it is his understanding that some ongoing sand mining is still allowed while the long-term studies on the implications for sand budget are being conducted. So right now there are no permanent permits for the ongoing sand maintenance but it also hasn't been stopped. The historic rates of sand mining continue on.

Some new information has come up and the ongoing solution is to let the activity go on until we know for sure. So, on that one I can't say we need to streamline that process; we need to let it go on for now.

Commissioner Smith added that, from the perspective of the EPA, it's important that day-to-day operations in maintenance dredging permitting are handled through the Dredging Material Management Office, which is a national award-winning, intergovernmental, standing organization which strives to streamline the permitting process and has proven to be extremely efficient in doing so. And BCDC staff has been enormously important in helping EPA staff in management of this office through which the decisions are largely made.

I don't see any gain in terms of financial efficiencies should BCDC be removed from that role. If some decision were made through statutory change to remove those functions to the Water Board we'd simply have to pay Water Board staff to do it as opposed to having to pay BCDC staff to do it. So I don't see that there is an efficiency to gain here, especially in a process that is already recognized as being a good example of how to streamline governmental permitting.

Ms. Johnck responded that Bay Planning Coalition was instrumental in helping the governmental organizations form that, in 1990. Now we're in 2009 – isn't maintenance dredging fixed? What else can be done?

Your comments are well taken. In terms of belt-tightening and what can we do on our part to reduce costs, is there anything that can be done? Maybe there isn't. But we wanted that to be looked at.

Commissioner Bates stated his appreciation for the dialogue but thought it was off point. BCDC is needed. It's been a successful commission. It has balanced the interests. If we move its functions to someplace else we're not going to save any money. It seems to me that it's the best bargain in town.

Commissioner Jordan Hallinan asked about the differences between the ways a state versus a regional agency might generate a fee or a benefit assessment district.

Chair Randolph responded that there is a benefit, although it's hard to quantify it sometimes, to a healthy and vibrant Bay. And property taxes could go towards supporting BCDC -- although it gets into issues there, as to who are the beneficiaries. Is it people on the Bay, a pretty narrow group, or the people with a view of the Bay; is it the whole region; or is it the entire state?

Commissioner Jordan Hallinan asked about the direct benefits derived - how does that differ?

Executive Director Travis responded that the difference is that there is a different set of rules that apply with state or local agencies.

The advice we got from the experts was "no matter what you do, plan on being sued." Each one of these new approaches to trying to raise revenues runs counter to the political thrust of the anti-tax groups, who want to make sure this is constrained as much as possible.

We very quickly found we got into a real morass of law, and the provisions of Prop 218, and which ones apply if we change to being a regional agency, and how much of a vote does it take, and so on.

The report suggests that if someone in the legislature wants to pursue some of these other ideas it means a great deal of research and, again, at the end of the day, if you put something new in place don't plan on getting any revenue soon because there would be a series of lawsuits and appeals.

Commissioner Nelson added that there any number of funding sources that are conceivably available. For example, any geographic district could impost a tax on itself to pay for the activities that BCDC does. But it requires an incredible amount of work to generate those locally-generated revenue sources for such a relatively small amount of money.

If in the future the responsibilities of BCDC change and if serious money has to be generated for raising sea level walls all around the Bay, for example, if that's being done by this agency, new funding sources may be required. But the amount of work to do all that seems totally disproportionate to the tiny size of the agency.

Commissioner Carruthers added some corroborating detail about benefit assessment districts. He stated that just recently in Santa Clara County the Open Space Authority lost a case at the state supreme court.

There were two substantial outcomes of that suit - first, that we would be tested by the anti-tax community to prove that we had a very specific definition of what the benefits of the

tax are. As Chair Randolph described, that's a difficult thing to do in terms of the region, as opposed to the state.

Secondly, the assessment of each district, or that each property pays, has to be demonstrably proportional to the benefit that it employs. So the benefit enjoyed by property at the edge of the bay could be legally shown in court to be substantially different from that of a resident in Walnut Creek, for example.

Under this decision the assessment would have to be proportional mathematically to what that benefit is. So you can see the quagmire in constructing something like this. It isn't that it couldn't be done but, as everyone is saying, it is difficult.

Commissioner Nelson added that it is absolutely true that, given the small size of the Commission's budget and the difficulty of establishing a nexus between benefits and the various Commission programs, the Commission is a lousy case study for this issue.

It's also important to note that -- given the structural problems in the state budget, the end of which is not in sight and is not the result of our economic problems -- these structural problems, without fundamental change, are going to be with us for decades to come. The only way we would be able to save some state programs is to be moving toward some fee-based program, absent a different structural fix.

This debate is going to be an important debate for the state to have in saving essential services. State legislators, in particular, should think about where the best case studies are for trying to find opportunities to make sure that the very real beneficiaries of some state programs are contributing to the very same state programs that are benefitting them. I think there are plenty of examples of that but we are not the best example of that.

Chair Randolph noted that -- as they recognized at the very beginning of this process -- the issue is not going away, even if the report is concluding that there is not an immediately feasible option at this moment, other than the general fund. The whole budget is what it is; it's not going to get better soon. This does not close the conversation, by any means, about alternative funding sources.

Commissioner Goldzband remarked that he was struck by what Commissioner Nelson said. As he looks at this report he has sympathy for what Ms. Johnck is saying, but at the same time the Bay Planning Coalition, for all the good it is doing, is looking at the wrong question. This process was set up due to essentially a footnote in the May revised Governor's budget, which later turned out to be essentially irrelevant to the entire process.

So, I'm sure there's an old story somewhere that's right on point to this, but the lesson of that story would be "you have to ask the right question at the right time." And I think this question is not asked either correctly or at the right time and therefore we got an answer that is correct, given the question, but the question is not correct.

I would argue that BCDC should suggest to the Secretary of the Natural Resources Agency that the Little Hoover Commission actually take up BCDC, in both governance and finance, and try to figure out whether it is a case study for the future, and try to figure out what the proper role of regional versus state type of governance really is, absent all this stuff -- which is a lovely little footnote in history but doesn't really provide the answer that Ms. Johnck is looking for.

It may not provide the kind of answer that our state legislators are looking for -- if indeed they are looking for that -- but could provide the state with a lesson about how regional government can and should work or can't and shouldn't work. I would argue that -- I have no problem with this report but, candidly, to me it's almost meaningless. I think that maybe we ought to think about how to make something meaningful.

If this Commission is serious about looking at this issue, we should do it in a serious way. I don't think this is a truly serious way of looking at the larger issue; it simply answers a question that was asked at 12:03 a.m. by somebody.

Executive Director Travis agreed with those comments and added that, if you look at all of the natural resource protection and environmental resource protection programs, it's all about 2.5 percent of the general fund. But if you go the legislative hearings, you see that it takes up about a third of the time.

If we could get that 2.5 percent off of the general fund then the legislature could spend all of its time dealing with the 97-98 percent of the budget that really matters -- health and welfare, prisons, and education.

I believe where we should be going in the long run with BCDC is -- there is a bridge toll increase that is being considered right now. That increase, if approved, is all needed to retrofit the Dumbarton and Antioch Bridges.

But if you look at the bridge tolls in the Bay Area over the last decade or so, they keep rising every now and again, sometimes by direction of the legislature, sometimes by direction of the Bay Area Toll Authority, sometimes by a regional vote.

I think that it is likely there will be a proposal for another increase for another dollar in another few years. I think if a few cents of that went to BCDC we would be more than fully funded. If there is a campaign for a popular vote to increase bridge tolls in the next four years or so for another dollar, if four cents of that dollar was going to protecting San Francisco Bay I think it would have such a positive impact on the campaign that the people who want the other 96 percent would say "we'd be more than happy to have you in."

So that's where BCDC should be looking in the long run, and if this issue remains alive in the legislature in essence we would ask for bridge financing until we could get bridge financing. We'll stay on the general fund for awhile but we have a way to get off it in the long term.

Commissioner Goldzband remarked that that is half the issue; the other half is the governance issue.

If we take the administration to heart by saying "we ought to take a look at whether this should be regional" then there's no reason why a bridge toll that goes in four years couldn't be directed to a regional agency. But the question is -- is there an actual governance issue here? And if we're serious about asking that question we need to be very serious about answering that question.

Commissioner Bates added that the Metropolitan Transportation Commission (MTC) -- which Commissioner Halsted and I both sit on -- is in the process of raising the tolls. And MTC doesn't need a vote of the people; it has that power. And it is now considering congestion

pricing and what the base should be. The options are out there and I would invite people to address it.

I did raise the issue at the last MTC meeting of at least looking at the possibility of having perhaps a \$5 charge -- which would mean all the bridges would be the same price -- and then having a congestion price for maybe \$7 two or three times, during the peak hours, and that would generate more revenue than all the other issues.

It is possible that we could generate more revenue than is needed for the retrofit of the Dumbarton and Antioch Bridges. And then, in addition to that, the overall traffic of the bridges is actually declining, so it's not just the retrofitting of these bridges.

But it is possible to have some excess funding. In some ways -- we don't have the money to operate the bus system, we don't have the money to operate BART -- there are other demands.

Chair Randolph asked Commissioner Bates about the suggested incremental funding of the bridges. If that were on the table right now, what's the likelihood that BCDC could be wrapped into the increase being considered now? Commissioner Bates responded that it would be very difficult.

Commissioner Halsted added that there are two more scheduled public hearings on this subject and people who have an interest in expressing themselves are welcome to come to the MTC in the next two months. But the issue of including BCDC has been raised internally and hasn't been received so well. So it's unlikely, but it's not to say it couldn't happen.

Commissioner McGrath stated that, regarding the recommendation before the Commission today, he would like to move forward with that. Once that is done, perhaps a moment of discussion on the guidance to give staff for the next budget would be appropriate, because there will be more cuts -- and at that point weighing all options and also looking at the efficiency issue would be a good direction. But as far as the question of does this make any sense, I think the recommendation before you is the right one and I would like to see it voted on.

MOTION: Commissioner Bates moved, seconded by Commissioner McGlashan, to approve the staff recommendation. The motion carried unanimously, by hand vote, 19-0-1, with Commissioner Jordan Hallinan abstaining.

Commissioner McGrath remarked that there is an effort to move some of the state parks budget offline, and that effort is ongoing. It may be appropriate for the Commission to designate a member to work on something like that, or ask the staff to do so. Perhaps the direction would be as simple as to make sure that the staff is attending to all possible options to make sure that the budget cuts don't decimate the agency.

Chair Randolph responded that, as was mentioned earlier, the issue of the state budget is far from closed and it would be well worth it for the Commission, through staff, to continue to be engaged on these alternative options, because we know it's going to come back at us again, sooner or later.

9. Commission Briefing and Possible Action on the Redwood Shores Flood Control Project.
BCDC MINUTES
November 5, 2009

Executive Director Travis provided the background. He introduced a letter from Congresswoman Jackie Speier. BCDC staff has been working closely with her office. This issue has arisen because the Federal Emergency Management Agency (FEMA) is going around the country certifying levees to ensure they provide adequate protection. If they do not, then homeowners need to get very expensive flood insurance. This is the situation in Redwood Shores.

There are four different applicants involved; each proposed amendment is for a different amount of work; and we need to determine if the levee appears to qualify for administrative permits. Relative to the rest of today's agenda, none of this is taking into account sea level rise. FEMA does not take sea level rise into account in its certifications and standards. So what is done to protect the community now will need to be done later when there is some acknowledgment of the reality of sea level rise.

For these reasons, staff thought it would be helpful to bring all of this together as one project, so the Commission can understand it. If Commissioners choose to give staff direction and concur with the approach we want to take here, which is to handle this administratively, we understand that and we can proceed with confidence. We can also provide the public with a broader understanding and an opportunity to speak to it if they choose to.

Ms. Karen Weiss, staff Coastal Program Analyst, stated that she would overview the four permit amendments for the Redwood Shores Peninsula. All four amendment requests have been put to staff but are not complete as yet, so the Commission cannot take action on any of these four amendments today. Due to the size, scope and various approaches of these projects, staff is seeking guidance on how to process these four amendments.

The proposed levee improvement project would occur along approximately five miles of shoreline. There are five different approaches to raise the levees, which include:

- (1) Placing earth material along the existing levee.
- (2) Creating earthen berms at the bayward edge of existing levees.
- (3) Installing a vinyl sheet pile wall along the bayward edge of one existing levee.
- (4) Installing a concrete wall at one levee.
- (5) Deploying a temporary device, similar to a water-filled rubber bladder, during 50- to 100-year storm events.

The overall project goal of improving the levees would be achieved through amending four separate Commission permits for these individual projects:

Project One - The City of Redwood City and Keech Properties, LLC propose to place earth material along an approximately 3.5 mile-long section of shoreline adjacent to three of the sloughs at the project site.

Project Two - The South Bayside System Authority proposes to install a five-foot-high, 1,538-foot-long vinyl sheet pile wall at the bayward edge of an existing levee and place approximately 6 inches of earth material at an approximately 13,842-square-foot area of a levee maintenance road within the 100-foot shoreline band.

In 2004, due to the presence of the endangered California clapper rail, the salt marsh harvest mouse, and other special-status species, the area where the sheet pile wall is proposed was closed to public access. The applicant has stated that, if the endangered species were ever delisted, it would provide public access along the levee via an elevated boardwalk, which would allow the public to view the Bay over the proposed sheet pile wall.

Commission staff is determining if this portion of the levee is located within the Commission's Wildlife Refuge Priority Use Area designated in Bay Plan Map No. 6. If the levee is within the Priority Use Area, staff will consult with the U.S. Fish and Wildlife Service in order to better understand the potential impacts of the sheet pile wall on nearby wildlife. The applicant did initiate a consultation with the U.S. Fish and Wildlife Service earlier this year, which stated that the proposed project may adversely affect the California clapper rail and the salt marsh harvest mouse.

Project Three - San Mateo County proposes to utilize three different approaches to raise the levees at the San Carlos Airport to meet FEMA standards. The project includes raising a 4,400-foot-long section of the levee by up to 30 inches, installing a low concrete wall and temporarily deploying a portable closure device along a 500-foot-long section of the levee

during 50- to 100-year storm events. The temporary bladder is proposed in order to avoid impacts to the existing airport runways. This section of the levee is adjacent to the airport and there is no public access on this section of the levee. U.S. Fish and Wildlife is reviewing potential impacts of the proposed project on special status species.

Project Four – Located on a section of the levee that is owned by the City of San Carlos and the EOP Trust, it proposes to place fill on an approximately 660-foot-long section of the levee in the shoreline band and to raise sections of the levee by up to 18 inches, or to construct a one to four-foot-high berm. Once completed, the project would not affect the width and length of the existing BCDC required public access.

Staff recommends that each of the four proposed permit amendments be listed in the Commission's administrative listing, once the applicant's files are complete. This would provide the Commission and the public with the opportunity to review and comment on the projects before the amendments are issued.

Staff also recommends that, if the U.S. Fish and Wildlife Service determines that any of the projects would adversely impact threatened or endangered species under the Endangered Species Act, these projects should be processed as material amendments, requiring a public hearing and Commission vote. Further, if Project Two is located within the wildlife refuge in this area or U.S. Fish and Wildlife determines that the project may impact threatened or endangered species, we believe that this project should be processed as a material amendment as well.

Again, staff is seeking guidance from the Commission on their approach.

Chair Randolph noted that there is no Public Hearing scheduled on this, but if any members of the public would like to speak, please do so now.

Ms. Laura Thompson, San Francisco Bay Trail Project Manager, noted that there are an increasing number of projects coming before the Commission to structurally alter the edge of the shoreline to protect communities from future flooding and stream surges.

And I want to emphasize the importance of conserving, enhancing and even expanding shoreline public access in support of these projects, and I want to encourage the Commission to work towards ensuring public access. In the future, when reviewing these projects, it would be helpful to have simulated photographs from the perspective of trails, to better understand the visual impacts of the projects.

The San Francisco Bay Trail has stressed its recommendation at this moment to include public comment prior to the issuance of the amendments. If the U.S. Fish and Wildlife Service determines that there will be a detrimental impact to endangered species, we would appreciate the opportunity to speak.

Projects One and Two, the alterations to the shoreline and levee, will definitely alter the shoreline landscape. We wish to encourage BCDC and the applicants to take another look at this area and consider opening the levee to public access.

On Project Three, we have had discussions with San Mateo County about possibly opening this area also to the public, since the changes to the levee may actually begin to address

the issues. As you review this project I would encourage the Commission to require public access along this stretch of levee.

In conclusion, I'd again like to emphasize the importance of observing quality shoreline and public access on these projects. I believe we can accomplish both and work towards completion of the Bay Trail.

Ms. Libby Lucas reminded the Commission that these levee improvements are not due to sea level rise; rather, it is driven by FEMA criteria in regards to flood insurance rules. Also, the levee reconstruction needs to consider the endangered species wildlife that reside in the levee marshes, particularly the California clapper rail, and the wastewater treatment plant area where there are several chicks coming over the levee from inboard and outboard of the marsh.

And that is the challenge - if you impact one side of a levee, you then do away with the habitat. This is a very serious consideration.

Another suggestion would be to employ some biologists who you know are very good about marsh reconstruction and see if you can find one, two, or maybe three solutions that are environmentally sustainable for the wildlife that's involved. A really good advisory on how to do this is needed. Also, please consider the fluvial flooding as well; it needs to be tied in.

Mr. Peter Verametsanti, City Engineer, City of Redwood City, first thanked Ms. Weiss for her help in bringing this matter before the Commission. It is very important that the City get this project into construction within the next few weeks to a month.

We are in such a rush because of FEMA constraints, coupled with the fact that we really want to respect the environment and the endangered species issue. We would like to get all the construction of this levee project done by the end of January, which is the beginning of the nesting season of the California clapper rail.

Also, we would like to stress that our design incorporates all the impacts that can be mitigated. We purposely want to stay on top of the situation to minimize impact to the environment.

Our proposed improvement does not preclude any current or future public access. We have always tried to make public access available on our exterior levee and it has been a continuous effort.

The project not only affects Redwood City, but also San Carlos, Belmont and the County, and we are trying to spearhead this for the larger group of people. It is funded strictly by the local communities; it does not have any grant funding or any state or federal funding.

Commissioner Carruthers asked if, as the sea level rises, are the improvements now being designed and installed susceptible to being raised, when the sea level goes beyond FEMA's current requirements? How are they adaptable?

Mr. Verametsanti responded that the current design does not have any provision for sea level rise.

However, when a levee is designed we always allow for some sediment and for some sea level rise, although we cannot afford to raise the levee to more than just a few inches beyond

what FEMA requires. We do our best to add to the elevation a little and still have a significant amount of topsoil on the levee so that a future increase would be possible.

Commissioner Carruthers remarked that accommodating future sea level rise is something that the Commission has to really address.

Commissioner Jordan Hallinan noted that, for many reasons, "you are rushing us." The Commission would like to get a report from Redwood City on what it has done to actually further public access.

When I left office in Redwood City six years ago there was a committee in place. Since then, the Commission hasn't seen a whole lot about what this committee has done with regards to more public access. What has happened to the clapper rail population since the levee has been closed for the last 8-9 years out by the sewer treatment plant? Have the clapper rail populations increased, and if so by how much? We need to see that kind of information to better understand what our responsibilities are going forward regarding protecting the Bay and the birds and the mice and the public's access to the Bay.

Commissioner Nelson commented that it is important that the Commission, as has been suggested, pay attention to both sides of the levee. If the FAA rules make it clear that public access cannot be allowed at this time, there is little it can do about that at this point.

The question for staff is whether it would be possible, as a condition of reopening, to make it clear that, should the FAA reach a different conclusion in the future, the Commission wouldn't lose the leverage that it has now, that it could reopen the permit and require the applicant to come back at that point and then make an affirmative determination about how much public access would and should be provided.

At this point it's something we don't have the ability to do, but if we have that ability in the future we don't want to lose that.

Commissioner Gordon asked about timelines. If the Commission were to put this on an administrative listing, it has to come back for a Commission meeting. If the applicants had their applications in tomorrow, completed, what is the timeline as to when an administrative decision could be reached?

Executive Director Travis responded that if they had them in tomorrow staff could have them for the next meeting, but they don't have any of them filed.

He also noted that what staff is addressing through its expeditious review is all of the issues that are of concern to the Commission.

We wanted to call this to your attention now. The issues that are being raised are entirely legitimate. We will handle them in a fashion we think is reasonable but we will let you know what that is so that you can double check us before we go ahead.

Commissioner Carruthers asked when there is a desire for public input, how does that work? People come here and express concerns; at what point will they be able to provide input on these potential amendments, if that's something they want to do?

Executive Director Travis responded that when the administrative listing is put out they

can then comment in writing. They can also appear during the public comment period. If there is a matter on an administrative listing and the Commission believes it should not be approved administratively, by a majority vote the Commission can take that off the administrative listing, and then staff will start all over.

Commissioner Carruthers asked how they provide comment, and how do they learn what the substance of the issues are and then comment on them?

Ms. Weiss responded that staff will advertise that there is an application onsite for the public to comment on, and then her name and number is listed on that notice, so comment can be provided that way.

In terms of the administrative listing, it does include everything that staff is authorizing within BCDC's shoreline band and bay jurisdiction. So it outlines all the activities that are occurring and the public can come to the Commission meeting and/or they can provide comments to staff.

Executive Director Travis added that the additional offering today is a supplement to that process.

Commissioner McGrath commented that this is a wonderful illustration as to why they need a Bay Plan Amendment on climate change. When the Commission approaches a development it will know what it is getting into.

It is a good thing that FEMA is pushing these improvements. During the storms in the winter of 1982-83 the water in the Bay came up three feet from the different forcing factors. So having an accurate mapping of the flood protection will give us a pretty good idea of what will happen up front.

But it's kind of like "death by a thousand cuts." If you've got a reflective wall it erodes the marsh, but we had to build the levees up higher . . . So it's an indictment of our past development practice and an argument for doing a better job. I have no objection to putting us on the administrative calendar if, in staff's judgment, it qualifies and there are no cumulative impact issues. I share Commissioner Jordan Hallinan's concerns that, if at all feasible, we should have public access.

And I would like the staff to look carefully at the erosion and reflective wave issues on that small segment of Project Two on the outward edge, because it is very close to the Bay and it's probably got some pretty good wave energy there.

Commissioner Jordan Hallinan pointed out the last time -- eight years ago -- BCDC was rushed into doing something with the theme of "it's for the community." In terms of people in the community knowing what's going on, what will occur there?

Ms. Weiss responded that staff will provide its standard public notice that goes out for any amendment or permit request. It will go out near to and along the site, as close as possible, and staff requires the applicant to sign a form saying that it has been posted. In this case we can require them to post it multiple times along the levee.

Ms. Weiss added that she will follow up on the closure in 2004 that occurred on this

section of levee, which was done with additional consultation with U.S. Fish and Wildlife, who pushed for that closure.

Commissioner Jordan Hallinan added that a consultant was brought in to help find a solution to open it as soon as possible, and this is what we want to know about.

Mr. Verametsanti stated that they also put their article in the locally circulated paper and they report, almost on a weekly basis, to the homeowners association, which is paying close attention to this issue.

Also, I sense that you feel that we have some leverage in terms of negotiating the opening of the access there, and I need to report that that may not be the case. I am here to speak as the proponent of the project and the Airport is not. And obviously this is much more important to Redwood City than to the Airport.

Chair Randolph suggested that, in the interest of time, the Commission should move on to its next agenda item. He noted that no vote is needed on this item at this time.

MOTION: Commissioner Wieckowski moved, seconded by Commissioner Chiu, to close the Public Hearing.

10. Public Hearing on Revised Preliminary Recommendation on San Francisco Bay Plan Amendment No. 1-08 Concerning Climate Change. Chair Randolph noted that this is the Commission's fourth Public Hearing on revisions to the Bay Plan to address climate change. He introduced Mr. Joe LaClair, BCDC staff, who presented the staff report.

Mr. LaClair noted that this was a revised preliminary recommendation. He detailed the materials provided to the Commission thus far, including recently mailed information and letters received on the subject. He stated that, at the July 16 Public Hearing on this subject, the Commission directed staff to engage local governments and get their input on the proposed plan changes and to make revisions based on the feedback from the Commission, the public workshops and the Public Hearings.

Staff conducted three public workshops in September -- in Vallejo, Palo Alto and San Francisco. The workshops were well attended by a mix of local government officials, NGO staff, developers, advocates, contractors and members of the public. At the workshops staff presented the preliminary recommendations with some of the proposed revisions and responded to questions and recorded comments, which were summarized in the materials mailed to the Commission on October 1.

The staff's revised recommendation relies on the vulnerability assessment it conducted using the data provided by the USGS and is summarized in the background report [Living With A Rising Bay](#). Analysis shows that substantial shoreline development and infrastructure are vulnerable to sea level rise and storm surge, including several priority use areas designated in the Bay Plan and much of the public access that the Commission has required in permits over the last 40 years.

The vulnerability analysis also identified impacts to Bay wetlands from sea level rise. In the Suisun Marsh it was determined that diked and tidal wetlands in the Marsh are vulnerable to levee failure and high salinity in freshwater wetlands; warmer water temperatures; loss of

species, such as the delta smelt; insufficient settlement from marsh accumulation; erosion of tidal wetlands in sub-tidal areas; and the spread of invasive species. All are potential effects from climate change.

Sea level rise will cause problems sooner than we think. Assuming a 16-inch rise in sea level by mid-century, today's extreme flood event is about the same as the projected daily high tide in 2050.

The vulnerability analysis also assessed the adaptive capacity of our government institutions to address sea level rise. We found that there are 46 cities and nine counties operating beyond capacity because of budget cuts, staff shortages and the current workload that they confront; and over 20 state, federal and regional agencies – none with direct authority to address sea level rise.

However, the research also showed that regions that can respond with a solid, coordinated framework built through partnerships are most likely to be effective in dealing with this challenge.

Staff began this work three years ago, and the importance of updating the Bay Plan was elevated last November, when Governor Schwarzenegger issued an Executive Order requiring all state agencies to develop climate adaptation plans. Our intention is to have the work that BCDC is doing serve as a component of the statewide climate adaptation strategy. The Governor's Executive Order calls on the National Academy of Sciences (NAS) to advise California on the range of sea level rise that we should be using in our adaptation planning. It will be about a year and a half until NAS delivers its recommendations.

We could wait for that report, but there are two problems with this option. First, it's unlikely that future projections will be anymore definitive than current ones are. All projections will be based on assumptions and show a range of possibilities, and have a degree of uncertainty. If history is any guide, future sea level rise projections will continue getting higher than the last one. In other words, the longer we wait, the worse the problem will get.

Over the next several years we will see increasing evidence of the damage from sea level rise. Pier one-half, just north of San Francisco's Ferry Building, is a prime example. It was used for parking but had to be red-tagged because of structural damage. The damage didn't result solely from age -- although that was certainly a contributing factor -- it was also helped along by higher waves slamming the underside of the pier and damaging the structural integrity of the pier. Ignoring the problem or waiting are not realistic options.

I'd like to now summarize the changes staff has made in the preliminary recommendation. We propose adding a climate change finding, recognizing that many adaptation strategies are untested and that innovation, testing, and refinement within an adaptive management framework will be needed to improve our ability to respond to the rising seas in a dynamic estuary. Also, some of the strategies will need to be tested on a large scale.

Staff also proposes a finding that provides a definition of adaptive management and acknowledges the utility of this approach in complex environmental systems, characterized by high levels of uncertainty about system processes and the potential of different ecological,

social, or economic impacts from alternative management options. Effective adaptive management will require monitoring the results of management interventions and integrating this information into decision making going forward.

Proposed changes acknowledge that insufficient funding may be available to protect all vulnerable developed areas and some developed areas may be suitable for ecosystem restoration if development is removed in the future to allow the bay to migrate inland.

Proposed finding "M" was added to recognize the important role that infill development can play in a regional climate strategy and to define infill as urbanized land already served within a structure, such as Treasure Island. The finding states that the most risk-averse for minimizing the effects of sea level rise in a storm is to discourage new development and remove existing development in areas that are vulnerable to sea level rise.

However, some existing developed areas, such as Mission Bay and San Francisco, that are low-lying, need to be protected because they can accommodate additional infill development near fixed transit. Some sites are small and in the midst of other developed areas and will probably be protected, and it may be possible to develop some of these areas in ways that can be integrated into a regional or sub-regional flood protection system.

We added a finding because the McAteer-Petris Act establishes a very specific role for the Commission in managing shoreline development. Proposed finding "P" was added to acknowledge the limits of the Commission's authority to effectively respond to sea level rise and to recognize the important role the Commission can play in guiding shoreline development decisions that are in areas vulnerable to inundation.

We proposed adding a climate change finding to define sustainability, because it is one of the characteristics or criteria that development in low-lying areas must adhere to, as provided in proposed climate change policy 3.

Revised climate change policy 1 would require that a conservative, high estimate of sea level rise be used in the range of scenarios to assess risk and to develop measures for addressing the future effects of climate change. The policy still provides that this risk assessment be based on the current 100-year flood level that also takes sea level rise into account.

Policy 2 still calls for a joint policy committee to collaborate with the Commission on the preparation of a sea level rise adaptation strategy. The policy has been updated to incorporate input from the Commission and the public. The revised policy now states that a regional strategy should identify those areas that should be protected, those areas where development should be removed, and those areas where the bay should be allowed to migrate inland.

The proposed regional strategy would still provide for protecting important infrastructure -- neighborhoods, commercial areas, and natural and recreational resources that are valuable to the community but vulnerable to sea level rise and storms. The strategy would also emphasize protecting the bay by prioritizing wetland restoration, creating buffers to allow wetlands to migrate landward, and developing a regional sediment management program to ensure that our wetlands can sustain themselves and us.

As requested by flood control agencies, permittees, and the Commission, revised climate

change policy 3 provides that minor repairs of existing facilities in small projects that do not increase risk to public safety are not required to prepare a risk analysis of sea level rise nor would they be required to incorporate these considerations into the project design. They would, however, be encouraged to do this.

Establishing a policy for development in low-lying areas is clearly a complicated undertaking. We've received comments that policy 1 in the original recommendation inappropriately discouraged development in low-lying areas and we also heard that development in these areas should be prohibited.

Proposed policy 3 establishes criteria for development in low-lying areas, both within and outside of the Commission's jurisdiction. These policies would apply, for example, in the Commission's salt ponds and managed wetlands jurisdictions. The policies would also be used to make recommendations on development proposals for vulnerable areas outside of the Commission's jurisdiction.

Clearly, it will be much harder to figure out how development along a rising bay should be planned and regulated than it would to simply ban development in all low-lying areas. We tried to develop a more flexible approach that works with existing policies that would allow development in these areas, but establishes new criteria that reflects our growing awareness of the risks associated with sea level rise.

We believe that the region should consider innovation in planning for these areas. To generate innovative ideas, BCDC just held an international design competition and we are continuing to explore the feasibility of some of the ideas generated and refining others as we move ahead.

Proposed policy 3 intends to set high performance measures for creative proposals that meet our expectations. We must insist that any proposal to build in an area that is vulnerable to sea level rise has a definitive strategy for dealing with rising water; achieves long-term environmental sustainability, such as consistency with our regional focus program goals, where most new residents will be transit riders; incorporates adaptive management to deal with uncertainties; and must include a financial strategy to ensure that the public is not burdened with the cost of protecting the property in the future.

Climate change policy 3 retains the Commission's longstanding policy of encouraging development that is set back from the edge of the shoreline, above the 100-year flood level that takes future sea level rise into account.

Policy 3 also includes the addendum, sub-paragraph E, that was mailed to Commissioners a few weeks ago. This policy would discourage development in undeveloped areas that will require new bay fill for structural shoreline protection at any time during the life of the project, especially where no shoreline protection currently exists. Although the Commission cannot prohibit development relying on this policy, it can prohibit future bay fill to protect such development.

Proposed climate change policy 4 promotes protection of existing shoreline areas that sustain diverse habitats and species, or possess conditions that make them especially suitable

for natural resource enhancement, such as wetland restoration. The policy also encourages public purchase of these areas for ecosystem restoration or enhancement.

In the Safety Of Fill section staff proposes reviving policy 6. This policy encourages local government and special districts to assure that their requirements and criteria reflect future relative sea level rise and to assure that new structures and uses attracting people are not approved in flood-prone areas, or in areas that will become prone to flooding in the future. Structures and uses that are approvable should be built at a stable elevation above projected sea level to ensure long-term protection.

Changes to the tidal marsh and tidal flats findings and policies address the need for marshes to migrate landward as sea level rises, including the provision of buffers.

New projects will have to demonstrate that the public access they provide will be resilient for the life of the project. In other words, if you build a project and provide public access and sea level rises, the design must accommodate modifications to the public access so that it can be retrofitted to withstand a rising bay.

There were other minor changes made to the public access and shoreline protection sections to clarify intentions, but no substantive changes were proposed. Staff has endeavored to craft a revised recommendation that incorporates the thoughtful input of the Commission and the public. We recognize that these policies represent an interim response to a challenge that requires a broader regional approach.

Once we have broad regional policies in place they have to be applied along the 1,000 miles of shoreline around the bay in a plan that identifies those areas that must be protected; where development should be removed; which natural areas should be protected and enhanced; and which low-lying areas can be developed and how they should be planned and managed.

Chair Randolph then opened the Hearing to Public Comment.

Ms. Gwenyth Scove, speaking on behalf of Friends of Redwood City, first acknowledged their appreciation of BCDC staff responses to all of their comments and the incorporation of suggestions into the climate change policies.

Friends of Redwood City would like to make the following additional comments:

(1) Climate change policy 3C(1) allows for new development in areas vulnerable to flooding, if it will “provide significant regional benefits and meet regional goals by concentrating employment or housing near existing or planned transit service sufficient to serve the project.” Public safety an overarching goal, outlined in policy 2A, should trump other significant regional benefits. Public safety dictates that new communities shouldn’t be placed in low-lying areas vulnerable to sea level rise. True smart growth near transit does not require putting new development in a FEMA floodplain.

A recently published map, “Grow Smart Bay Area,” created by the Greenbelt Alliance, shows numerous locations on the peninsula for high density housing along existing transit corridors. The areas shown on the map for additional housing in Redwood City do not include building on salt ponds, where extensive fill and construction of new levees would be required.

(2) Climate change policy 3C(iii) states that “new development must provide a permanent financial strategy that will guarantee that the public will not be burdened with the cost of protecting the project from any sea level rise or storm damage in the future.”

As you are well aware, Redwood City has a significant number of bayfront residential neighborhoods and businesses behind shoreline levees. Approximately five miles of perimeter levees protecting Redwood Shores Peninsula now must be raised and certified to comply with FEMA flood protection requirements.

In 1964 the City formed a General Improvement District (GID) to collect funds from Redwood Shores developers to cover all costs of infrastructure projects, including levees. As it turns out, the remaining GID funds may be inadequate for this additional levee improvement project.

All the citizens of Redwood City realize the importance of protecting our existing communities. Residents are understandably leery of assuming additional financial liability for future levee improvement associated with any new development in unprotected areas vulnerable to flooding from sea level rise. For this reason, the best precautionary approach would be to disallow development in areas vulnerable to sea level rise, particularly if these areas are suitable for bay wetland restoration.

Today we urge the Commission to seek immediate interim permitting authority, through legislation, over areas vulnerable to sea level rise -- rather than waiting for the regional sea level rise adaptive strategy to become completed. Developing a regional strategy could take years.

In the meantime, cities will continue to make individual, shortsighted land-use decisions that will further tax the Bay Area’s ability to address the impacts of climate change on our existing communities and the bay ecosystem.

Mr. David Lewis, Save The Bay Executive Director, noted that in previous comments they have suggested that the Commission take an ambitious and bold approach and, for a combination of reasons, the current staff draft is not going in that direction.

We want to remind you and encourage you to continue the leadership the Commission has already shown in elevating the sea level rise issue, to seek additional authority, as the previous speaker asked, and to address climate change in other parts of the Bay Plan, not just in the sections that were noticed.

Our letter dated November 2nd, notes that the policies that are suggested today are trying to provide interim guidance until there is a regional strategy. I hope that happens soon, but in the interim, if you’re going to adopt interim policy guidance then it really should follow a precautionary approach as much as possible. You don’t want to permit things that a regional strategy would later find are bad ideas, or permit things in places that a regional strategy later decides are not the right places for new development.

There are several things in the staff report, in the draft California Climate Adaptation Strategy, and even in this draft proposal, that underscore the value of a precautionary approach.

Our suggestion for a change in policy 3 is actually just trying to follow and implement that

precautionary approach by saying if you're going to encourage innovation and you're going to contemplate development in any vulnerable areas and use all of the limits that are limited in policy 3, then maybe you should consider doing that in areas that already have development, or in infill areas that are defined as places that already have infrastructure that can support development. But not in undeveloped areas on the shoreline that are vulnerable.

If you develop in undeveloped areas, they are no longer undeveloped areas, and that precludes the possibility of recognizing that they should be undeveloped areas and either preserved empty or restored with all the benefits that we know.

Secondly, it presumes what's going to come out of a regional strategy and the places that a regional strategy might encourage you to preserve or restore. So we've suggested a modest change with the fewest words possible that we think incorporates and follows the principles that you are trying to articulate and does it in a very straightforward way.

The community, including the development community, deserves that kind of clarity, and the policy should not be unclear on that. There are limits to BCDC's authority, but you've already decided that you're going to encourage things outside of your jurisdiction, so we're also encouraging you to discourage things that are outside your jurisdiction.

Commissioner Gibbs asked Mr. Lewis about the Save The Bay letter of May 7, 2009, which outlined an ambitious agenda and encouraged BCDC to seek interim zoning power of areas threatened by climate change – could you elaborate on exactly why you think that is appropriate and how BCDC would go about effectuating that?

Mr. Lewis responded that they thought it was appropriate at the time. The May 7 letter draws the analogy to the situation that BCDC faced in 1965, when it was originally established, but not yet a permanent agency. It was given interim authority over bay fill projects at that time so that bay filling could not go on unlimited and unregulated while the Commission studied where and when bay fill should be allowed.

And then in 1969, the Commission got its Bay Plan approved and became a permanent agency, and then it was clear what guidance the Commission could give on bay fill.

Similarly, our argument in May was, “where you've identified where the vulnerable areas are -- and some of them are in BCDC's jurisdiction and some of them are not -- BCDC's policies, even within its jurisdiction, might need to change.”

So the precautionary approach would be to give BCDC some interim regulatory authority while that regional plan was developed. BCDC has not asked for that authority and in the current legislative environment there are a lot of good reasons not to suspect that it could happen any time soon.

Commissioner Gibbs followed up by asking for clarification – Save The Bay doesn't believe that it's legislatively feasible?

Mr. Lewis responded that they did believe, and still do believe, that if BCDC is adopting policies for the Bay Plan that not only say what they should do now but what else should happen on this issue, then it would be appropriate for those policies to say “we should get interim permitting authority.” That doesn't mean BCDC should do nothing or change nothing

about its' policies while it tries to get that authority, but right now the draft – I think that the Commission is deciding to proceed in stages and not articulate as much about what the second and third stages are going to be, as we were suggesting it should.

Commissioner Gibbs noted that he found Save The Bay and Mr. Lewis' argument and analogy of 1965 to be compelling. Could the Executive Director lay out for us what would be involved in seeking the interim permitting authority that Save The Bay has recommended?

Executive Director Travis responded that it's simple. We get a law that says BCDC has interim authority over everything that's vulnerable to flooding. That's it.

Recall, though, that the Commission took up this policy option a few months ago when staff asked how the Commission wanted us to proceed -- that is, work with our partners to develop the regional plan -- and then, once that plan and strategy is developed, then you sort out who has responsibility and who can best do what.

And the Commission's policy decision was "let's go that way, let's not seek authority now." So, we've already faced this issue and we're following Commission direction.

Mr. Andrew Michael, Bay Area Council, began by congratulating the Commission for its leadership in bringing the sea level rise issue and climate change to the public discussion and remarking that the Bay Area Council does want to keep working with the Commission in addressing this issue.

However, we don't think that now is the time to adopt these amendments, for a couple of reasons. First, as you mentioned, findings are going to be coming out and should be incorporated into the discussion about where development should and should not occur. We appreciate the amendments that have been made but also want to be sure that others are made.

It doesn't mean that we have to stop doing what we're doing, it means we would like to see a pathway for an inclusive process to develop the regional plan that you talked about, so that all the private sector developers are included, as well as public sector, regional, local, city governments that have land-use authority, state, and federal. All included so that we can get to a plan of certainty rather than depending only on interim plans.

We want to make sure that we develop a process that is not redundant of permitting authority but relies on existing operations and expands authority when needed to do that. We want to be helpful in that process and make sure that we make the right steps here.

We ask that you not accept the plan yet; we need to make sure there is a clear pathway forward with clear decision making that's laid out, so we can get to a bay regional plan that makes sense for all of us and do it effectively.

Executive Director Travis remarked that Mr. Michael's testimony generally the idea that a regional strategy is needed. He asked Mr. Michael what specifically should be deleted or changed about the staff recommendation.

Mr. Michael responded that, specifically, in terms of how a regional plan can be developed, the Bay Area Council doesn't have all the answers. Acknowledging that we need to integrate with federal policy committees and regional agencies is a good step in maybe being

more specific about that and about how we include local authorities in the discussion, so that we can come up with a bay plan that makes sense in a decision making process as well as a permitting process, so we're not creating redundancy.

Some of the writing that I've read may lead to possibly prescriptive actions down the line, and that may not be the most effective for the Bay Area.

Ms. Ellen Johnck, Bay Planning Coalition, stated that she is glad we're not yet at a decision making stage because we really need to do more work on this. Bay Planning Coalition recommends a more inclusive approach, bringing in all the components of decision making that are going on now.

We have the Bay Area flood control managers looking at this, and all the local districts around the bay. There are the airports, the businesses – all of business and industry around the bay are looking at this, at sea level rise, and they are evaluating it.

We're spending time and this has commanded our attention. We think this guideline process needs to be more efficiently governed. The National Academy of Sciences study . . .

We need to spend a few more months on this. The regional strategy is good. I do think the guidelines in this strategy should be considerate of not being redundant. How can this aid the local flood control districts and not be redundant of it.

We are concerned that the process, at the moment, looks like it may be imposing additional permit requirements that may be more burdens and obstacles than solutions. The guidelines should be facilitating permit applications and not just be obstacles.

Overall, we think BCDC is moving in a good direction, but it needs to have a more inclusive approach with the entities that are already regulating and are responsible for coming up with adaptation strategies and risk aversion. The Army Corps and FEMA are also very important people to include here.

Commissioner Nelson asked for additional clarity. We should give our staff direction and say to our staff "go off and talk to all those other agencies that are critical parts of regional strategy and figure out a regional strategy."

To me, it seems to make much more sense to say "here's some initial guidance that we don't expect is going to be final guidance. It's broad policy guidance that's consistent with our limited permitting authority in some parts of the bay." We're giving our staff some guidance to go off and participate in the regional strategy and come back with recommendations, both regarding a more comprehensive and regional strategy and recommendations about how to operationalize that strategy.

I think we may revisit some policies and findings and recommendations but I don't think we should tell our staff to go off and enter into a regional process without giving them any direction to help them to provide input to that process.

Ms. Johnck responded that providing direction is good, but the question is whether this direction is actually mandates or regulations versus opportunities. We still think this document is straddling that.

Commissioner Nelson added that the Commission could say that it thinks it should develop in undeveloped areas -- although frankly it has very limited jurisdiction in some of the areas -- and send that off to a regional process.

The conclusion might be a recommendation back saying that it's the wrong policy. It might be that it's the right policy but here's how it needs to be qualified and constrained. Or, it might be that it's the right policy but we're the wrong people to operationalize that, we're the wrong people to carry that out. But it seems to me to be perfectly appropriate to give some policy guidance at the front end of that regional planning process.

Commissioner McGrath stated that he thought the speakers were seeing prescriptive intent in the draft policy changes that he simply didn't see.

I see the words "collaboration with local governments"; I see "adaptive management approach." I know the flood control issues and one of the Commissioners tried to make sure that there were policies, which were rewritten to make crystal clear that this doesn't preclude maintenance of flood control facilities.

I need something very specific from you. I'm hearing the idea that we recommend a regional approach. We can't mandate it, we don't have that authority. But I want from you exactly what it is you want changed. I need more detail.

Ms. Johnck responded that there is more clarification in the letter and she'll leave it as it is. The Bay Planning Coalition is quite a consortium of people around the bay and she is representing a broad group of people, just as the Bay Area Council is.

Chair Randolph asked Mr. LaClair to state again the connection between interim guidance of the Bay Plan and the legal and regulatory implications of changing the Bay Plan, and how that flows into the regional plan.

Mr. LaClair responded that what staff has proposed is an amendment to the Bay Plan that would change the findings and policies that the Commission would use in evaluating permit applications. It would also be used to advise local governments, permit applicants, and the general public about development in areas that are outside the Commission's jurisdiction. In those areas those recommendations would have no binding force or effect.

But within the Commission's jurisdiction, within its salt pond, shoreline bay and managed wetlands - the various jurisdictions that the Commission has - these policies would apply as they are intended to only in those areas for permit applications.

Regarding the idea of "interim," the reason we have injected that concept into our presentation, is because we believe that a regional strategy is needed. The Commission's authority and its approach are very limited in its ability to address this challenge.

In order to have an approach that is effective we need to work with the regional agencies, with local governments, with landowners, with contractors, basically with the range of people with the ability to help us achieve the crafting and subsequent implementation of an effective regional strategy. A regional strategy needs to be undertaken immediately, but in the meantime we can at least do these things to address sea level rise going forward.

The connection of the Bay Plan to the regional strategy is unclear. When the Commission considered additional authority in June it determined that it would be desirable to put that decision off until a regional strategy is crafted.

As Commissioner Nelson was saying, who is best positioned to operationalize that strategy? Those determinations would be made at the conclusion of that process. An appeal would be made to the legislature to change authorities of whatever actors would be best positioned to implement the strategy, including the Commission, local governments, the other state agencies, perhaps even recommendations to the federal government for changes to federal law to achieve what it is we develop in the region for responding to sea level rise.

Executive Director Travis noted that, as is indicated in the draft policy, BCDC staff sees the joint policy committee (JPC) as the core of the development of that strategy. The JPC is working with BCDC, with MTC, with ABAG, and with the air districts, and together we're trying to do two things at the same time, which are in some cases diametrically opposed to each other.

One is we're trying to deal with a bay that is getting larger and we want to retreat from that bay, and at the same time we're trying to reduce greenhouse gases, which means clustering more development around existing infrastructure, much of which is in that vulnerable area around the bay.

So that's why we've laid out what we think is an interim approach to dealing with the reconciliation of those, and then the JPC, we hope, can come up with a regional strategy; and then again we can sort out who should have responsibility for doing what to implement that.

Commissioner Gibbs asked what kind of consultation involvement did FEMA and the Corps of Engineers have in the staff recommendations?

Mr. LaClair responded that they have been working very closely with FEMA to understand what sort of information they're using to assess and to better understand their approach to developing base flood elevations.

As BCDC staff crafts its policies we're relying on FEMA's 100-year base flood elevations as sort of a ground floor upon which to factor in sea level rise so that, in designing response strategies that are resilient to sea level rise, we are looking at current flood conditions and then base our design on that plus projected sea level rise.

We have been engaged with the local office of the Army Corps, here in the region, as well as in Washington, and we believe that the policy approach we've developed is consistent with the interim guidance that the Corps has recently published, which calls for the consideration of a range of sea level rise projections in designing projects, and that's exactly what's called for in our findings and policies. We've coordinated closely with both FEMA and the Corps in developing what we've come up with.

Executive Director Travis added that an indication of the coordination that BCDC staff has had with the Corps is that last week the Society of American Military Engineers invited him to be their keynote speaker at their California Water Conference, because they see that what BCDC

is doing here in the Bay Area is a model for the rest of the country.

Commissioner Carruthers confessed that he has had some problems reading through the document and seeking to distinguish which of the policies would apply to permit applications and which are, in a sense, recommendations to the regional process to develop the governmental complimentary policies -- like with the water districts and so on.

That is something that is still confusing to me - which policies would BCDC apply on an interim basis to permits that come in the week after it might adopt them, and which of the policies are, in a sense, BCDC's input of recommendations to what the JPC would be doing?

Executive Director Travis responded that they work within the limits of their jurisdiction and everything else is our advice, suggestion, admonition to everyone else who is dealing with the same problems, who have far more jurisdiction than BCDC does. That -- for the most part -- is the 55 local governments around the bay, and then there are any number of flood control districts and other special districts.

Mr. Henry Hilken, Bay Area Air Quality Management District, stated that the proposed amendments really do move the ball forward and set up a process for creating the regional adaptation strategy. The Bay Area Quality Management District has found the joint policy committee to be a very effective venue for collaboration between agencies and it seems a sensible way to proceed. Much work is obviously going on at the local level but the regional leadership that you provide and that we provide will be essential. We urge adoption of the amendments and we look forward to working with staff as we move forward.

Chair Randolph reiterated that the Commission is not voting today and welcomed a motion to close the Public Hearing.

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

Chair Randolph commented that the point that Commissioner Carruthers made, and the Executive Director's response, were important in going to the issue that Ms. Johnck and Mr. Michael raised - the implications from a regulatory standpoint of BCDC's adoption of these amendments, and how much authority does it actually have and how much of it is ultimately advisory.

Commissioner Nelson remarked that he felt that the Commission made the right decision in not recommending that it expand its authority. It's a very complicated question and it makes sense to look at that regionally.

Also, I think the staff is right to talk about a precautionary approach, but a precautionary approach should talk both about what should be discouraged and how you move ahead with projects that do move ahead. Right now, the staff recommendation only talks about half that equation. I think it's appropriate for the Commission to say where development in the low-lying areas should move forward and here are the ways we should do that, cautiously and responsibly. It's equally appropriate to say that the Commission should discourage development in low-lying areas.

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The analogy is very similar to the discussion of bay fill. The Commission has a policy of discouraging bay fill. That doesn't mean bay fill never happens. It means that it doesn't happen for some uses, it does happen for other uses. Where it does happen we move forward in a cautious way.

And I'm not suggesting that we necessarily have jurisdiction over these areas. But I think it's entirely appropriate to say that we think a similar approach -- discouraging development in low-lying areas -- makes sense. And where it does move forward that should be done cautiously as well.

What's missing here is the other half of the precautionary approach and it's important to note that these are policies that reflect our very limited jurisdiction but would be useful guidance going into a regional discussion.

Chair Randolph stated that, regarding the issues of adaptation and strategy, those have been joined at the joint policy committee level. It is a very robust conversation and probably the central conversation underway in the JPC now. So, I don't mean to say that there is a lack of dialogue between the agencies through the JPC.

Commissioner Jordan Hallinan asked what the Commission would do to discourage a developer who wanted to develop in a low-lying area.

Mr. LaClair responded that, on behalf of the Commission, staff would notify the developer of the risks associated with developing that area. A developer may be able to construct adequate shoreline protection. It depends on the durability or longevity of that intervention from the standpoint of how many years it would be viable, given the rate of sea level rise, and what impacts it may have on outboard habitats.

We would ask that those things be considered in the design of such a development proposal, recognizing that there are limited resources available to provide ongoing shoreline protection, and we would discourage development in that area, if that were the policy of the Commission. It would not have the force of law; it would be an admonition.

Executive Director Travis added that if the Commission has no jurisdiction, it would be public policy advice. As BCDC has said many times, it wants to have sustainability and resiliency in whatever is built along the shoreline -- but we don't know what that looks like.

So we've said "how do we capture the innovation that the Bay Area is known for?" And what we've tried to do is set out a general policy of "for crying out loud, don't put more people in harm's way. Stay out of these areas that are vulnerable." And then we've said "however, . . . it may make sense to develop in these areas because you're trying to achieve other regional goals, and let's set not high-performance standards but high-performance goals. Do this in a way that you have a strategy for achieving sustainability and resilience; you design it in such a way that the public doesn't get stuck with it if you're wrong" and a whole variety of things we put in there.

And then we thought we should take advantage of what worked for BCDC when it was first established, where it was given regulatory authority while it was doing planning, so that

the plan reflected what was learned in the regulatory experience. And all of that information would be reflected in the regional strategy that is put together.

Commissioner Nelson commented that that is BCDC's primary value. It has very limited jurisdiction. It does not have the ability to say to an applicant "we are not going to permit your development." But it's an important direction going into a regional discussion.

Commissioner Wieckowski remarked that the Commission shouldn't discount its "bully pulpit" and the attention that people are focusing on it to come up with some guidelines for sea level rise.

I represent a jurisdiction that is, at maximum, 57 feet above the bay, but there are a lot of half-baked ideas out there. The economic environment is such that people can't build stuff, but a lot of people are trying to get permits now and they are going to these local agencies, including City of Fremont or whatever jurisdictions are there, and we need to do something, perhaps bold, in 2009.

I commend staff for the recommendations that have come forward and I think that, although we can always amend it, there is certainly a benefit of saying "okay, this is the plan." Let everybody look at it, send it to all 55 jurisdictions, and see what's out there. Let everybody criticize it, open it up.

BCDC is a little tiger with limited jurisdiction, but we have that bully pulpit and I don't think that we should discount that.

Commissioner Nelson said he would definitely like to see some language from staff in the discussion of the precautionary principle -- number 3 -- regarding not just what approach should be taken to development that does move forward, but where it makes sense to discourage development. Commissioners McGlashan and Goldzband concurred with that request.

Commissioner Goldzband also implored staff to work with the Bay Area Council and the Bay Planning Coalition in finding out very specifically what they are so concerned about, so the Commission can be convinced that it is addressing whatever needs to be addressed.

Commissioner Gibbs suggested that -- as the Commission has been meeting only once a month instead of twice and it seems that there are still a lot of questions among interested parties about how this will go forward -- maybe this is something that deserves an entire meeting all by itself at some point in the next 2-3 months, to give staff a chance to work with the various interested parties and to give Commissioners a chance to digest this and give the public the chance to come back and comment again. The last thing we want is any questioning about the methodology or the access that went into whatever recommendations we go on to make.

Executive Director Travis responded that they will do that. BCDC staff will meet with the interested parties and make sure there is adequate time for Commission discussion.

One of the problems over the next few months is that the Metro Center isn't available in November and December so we're going to have only one more meeting this year. But we will not be rushing this. We will bring it back to you when it's all fully baked. Chair Randolph also stated that it would be helpful to have that kind of focused conversation on this subject.

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Commissioner McGrath pointed out that the draft climate adaptation program for the state didn't even mention sediment, so relying on others and not worrying about it is not a solution. In the Bay, we are going to need sediment to adapt to sea level rise, so that's why I've recommended some changes.

Also, without good economic information about what the risk is and what it would cost to fix it, we don't know whether to protect or to fix. So these things are very important to be done in the regional action plan and I don't want to preclude or decide anywhere where we should automatically not develop or automatically protect.

We need the good economic and environmental information that says "this is what it's going to cost, and this is the remaining risk." And it's a good strategic choice for us to not seek any more authority, so our recommendations could actually be heard.

Chair Randolph suggested that this meeting be adjourned to committee so the Commission could move on to its remaining agenda item for today.

MOTION: Commissioner Smith moved, seconded by Commissioner Chiu, to adjourn the meeting to committee. The motion carried unanimously by voice vote.

11. Public Hearing for Proposed San Francisco Waterfront Special Area Plan Amendment 1-09 Concerning Fill Removal Requirement between Pier 15 and Pier 17. Ms. Lindy Lowe, BCDC staff, provided the presentation. The Exploratorium, a California not-for-profit corporation, and the Port of San Francisco have applied to amend the San Francisco Waterfront Special Area Plan (SAP) to allow the retention of a portion of the valley and non-historic shed additions between Pier 15 and Pier 17, located and owned by the Port of San Francisco.

In 2000 the Commission adopted a comprehensive amendment to the San Francisco waterfront that allowed greater flexibility on the types of land use permitted in the Port of San Francisco's northeastern waterfront area, from China Basin to Pier 35, and removed the 50 percent rule, in exchange for a package of public benefits.

The package of public benefits included the removal of deteriorating piers that pose a threat to navigation and public safety, the restoration of significant areas of open water to enhance the ecological health of the bay and to facilitate public recreation access opportunities, completion of a waterfront-wide, integrated public access network, and an implementation program to fund and construct public plazas and pier removal; the enhancement of bay views; and opportunities to enjoy open water areas adjacent to the Embarcadero; preservation of historic resources; and the development of new resources to enable public enjoyment of the waterfront, including life safety and seismic improvements.

It was determined by the Commission in 2000 that these benefits would not be possible with the Commission's existing laws and policies, which constrained the types of uses that could be located on port lands and required that each project developed be consistent with the 50 percent rule.

The amendment was approved by the Commission with the finding that the amendment was necessary for the health, safety and welfare of the Bay Area. The plan contained a series of implementation requirements to ensure that the public benefits required by the plan would

have the funding necessary and be provided in a certain timeframe.

Since the 2000 amendment a number of public benefits required by the plan have been provided or are in the planning process; with the exception of the removal of 14,000 square feet of Pier 24, the public benefits to be completed at the time of this staff report have been completed, including the removal of Pier 34 and the listing of the Embarcadero historic district on the national register.

The port has also received funds and is planning for a number of other benefits required by the Special Area Plan, such as Brannon Street Wharf, Northeast Wharf Plaza, and Pier 36 removal.

The amendment proposed by the Exploratorium and the Port of San Francisco requests that one of the requirements of the plan, the removal of non-historic fill between Pier 15 and Pier 17, is modified to allow for the retention of more of the non-historic fill between these piers.

The Special Area Plan currently requires that the non-historic valley and shed additions between Pier 15 and Pier 17 be removed, approximately 153,000 square feet. The removal was meant to provide an open water area between the piers that could be enjoyed by the public, improving views to and from the bay, and bringing the bay closer to the Embarcadero.

The amendment requests over 100,000 square feet of the fill to be retained in order to allow the project planned by the Exploratorium, which includes seismically upgrading a deteriorating pier sub-structure, bulkhead, and shed buildings; providing public access; creating an outdoor exhibit area that highlights the bay; and the development of a museum that will ultimately fill both Piers 15 and 17.

The Exploratorium concluded that the project could not be accommodated unless the fill removal is less than what is required by the Special Area Plan but that the project could and would accommodate a smaller open water area.

Staff felt that the removal of fill at another location and the provision of open water at the site would not result in a fundamental shift from what is required in the Plan. While the proposed amendment would still fulfill many of the public benefits at the site that are required by the Plan, it was recognized by staff that off-site fill removal would be necessary to ensure that all of the public benefits required by the Plan would remain intact. The fill not removed onsite would be removed offsite.

The proposal would provide a number of public benefits onsite that the 2000 amendment to the Special Area Plan was designed to achieve. These benefits include the provision of a smaller open water area between the piers that would bring the Bay closer to the Embarcadero and allow the public to move around most of this open water area on public access provided adjacent to it; open up views to and from the bay; provide a bayside history walk; improve the seismic safety of the historic structure; and locate a use along the waterfront that would draw the public to the San Francisco waterfront.

Working with stakeholders that were part of the 2000 process, including Save The Bay, San Francisco Tomorrow, and the Telegraph Hill Dwellers, BCDC, Port and Exploratorium staff and representatives worked to develop an offsite fill removal proposal that was agreeable to all

parties involved.

The stakeholder proposal to BCDC, the Port, and the Exploratorium was designed to provide incentives to remove fill closer to the project site and sooner than what is currently required by the Plan. To that end the stakeholders proposed that if the offsite fill was removed from the northeastern waterfront then the offsite ratio would be one-to-one within ten years of certificate of occupancy for a major project at Pier 15.

If the fill was removed south of the northeastern waterfront then the fill would be removed at a ratio of two-to-one within ten years, with a reduction to 1.5-to-one if the fill was removed within five years.

The offsite fill removal proposal developed by BCDC, the Port, and the Exploratorium is consistent with the stakeholder proposal and is agreeable to the Port, Exploratorium and BCDC staff. It will provide the same or greater amount of fill removal as currently required by the Plan and ensure that the same amount of deck structure that was to be removed under the Plan will be removed as part of this Plan amendment.

If the fill was removed within the northeastern waterfront the ratio will be one-to-one plus the square footage for seismic safety improvements at Piers 15 and 17. The fill will be removed within ten years of certificate of occupancy for a major project at Pier 15 and it will be the same type of fill – pile-supported deck structure. The potential site that has been identified in the northeastern waterfront is a portion of Piers 30-32. If the fill is removed south of the northeastern waterfront the ratio will increase to two-to-one if the fill is removed within ten years of certificate of occupancy for a major project at Pier 15. This ratio will drop to 1.5-to-one if the fill is removed within five years of certificate of occupancy. At least one-to-one of the fill removal, must consist of pile-supported deck structures. The potential sites for removal are Pier 70, Pier 98 (Last Pier), Carmen's on China Basin Channel, Pier 64, and Islais Creek.

As previously described, the offsite fill removal proposal is designed to provide incentives to remove the fill sooner and closer to the project site, while ensuring that the same amount and type of fill that is required by the Plan is removed at another location along the San Francisco waterfront.

The potential fill removal sites were identified by working closely with the Port and stakeholders. As the photos of these sites show, the removal of fill in these areas would result in the removal of blighted areas that are also navigational safety hazards. Some of the sites, such as those along Islais Creek, would also result in the removal of creosote-treated piles, resulting in improvements to water quality and a reduction in exposure to Bay species from this toxin.

All of these sites are in locations adjacent to existing or proposed public access, ensuring that the public would enjoy the benefits of the removal.

In summary, the proposed amendment to the SAP would allow the retention of some of the non-historic fill between Pier 15 and Pier 17 that was required to be removed by the Plan. The proposed amendment would require that a portion of the fill be removed; that views from and to the bay be provided; and that fill not removed onsite be removed offsite, with incentives

for this fill to be removed sooner and closer to the project site.

In working with the stakeholders, the Exploratorium and the Port of San Francisco, staff feels that the resulting amendment retains the balance of public benefits with the development opportunities and that the amendment will improve the health, safety, and welfare of the Bay Area by improving public access, removing fill, improving Bay views, improving seismic safety, preserving historic resources, providing a use that will draw the public to the bay, and contribute to the bayside history walk to increase the public's appreciation of the bay and its history.

The offsite fill removal will potentially remove navigational safety hazards, improve public access, remove blighted areas from the waterfront, and improve water quality, while achieving the ecological and recreational benefits of open water.

The proposed amendment is necessary in order to realize all of the benefits associated with the Exploratorium project while ensuring that public benefits required by the Special Area Plan are also implemented. As previously described, the amendment would result in the provision of public benefit at Piers 15 and 17 and at the offsite fill removal location.

Mr. James Suh, the Exploratorium Development Manager, stated that the Exploratorium does support the amendment language to the Special Area Plan and that there will be tremendous public benefits that will be realized because of this amendment.

The Exploratorium's plan to provide up to two acres of new public access area and additional public access uses supports the Exploratorium's public mission of scientific learning and teaching as well as the goals of the SAP.

When the waterfront was being planned no one envisioned a project such as the Exploratorium at this site and, since the Exploratorium cannot accommodate its program without retaining a portion of its current area, we endeavored to find a balance between maximum removal of onsite fill and the creation of a dynamic, public place that can become a showcase learning environment.

In order to accomplish this, most of the non-historic shed additions and a portion of the valley do need to remain. The valley that remains will be sculpted to set up opportunities for interesting views, promenades, and various types of gathering spaces for exhibit activities or quiet contemplation. We will also commit for offsite fill removal to offset what is not removed onsite. This will provide substantial benefits to other areas of the waterfront. And an added benefit is that the fill removal will be completed earlier than the SAP currently requires.

Other important public benefits do include saving these two piers, which are on the national register of historic places, through rehabilitation, seismic retrofits, and adaptive reuse. We are transitioning this site from a parking lot to a pedestrian-oriented environment, which will work to draw people out to the bay by opening up a 60-foot wide view corridor to the east bay and provide views of the Bay Bridge, the east bay hills, and also provide a public museum/café at the east end.

We'll also be providing free science and waterfront history displays throughout the site

and we will be retaining and enhancing facilities for maritime uses, such as Bay-Delta tug and tow operator currently on the facility, a water taxi dock, and continued berthing.

We'll also be increasing visitorship from around the Bay Area by being within walking distance to a major transit hub. Currently about 40 percent of our visitors come from the surrounding Bay Area outside of San Francisco. Hopefully this number will increase by being closer to this hub.

Finally, we will take an active role in the struggle against climate change by pursuing the ambitious goal of a net zero energy building. We will be producing the energy that we need on demand.

This project furthers multiple goals of the SAP in ways that no other project can achieve. It is truly a unique project, with tremendous potential to transform this waterfront and the whole Bay Area.

I want to specifically thank your staff for working with the Exploratorium, the Port, the community groups, and the stakeholders, and reaching the recommendation that you have before you today.

Ms. Jennifer Sobol, Port Project Manager for the Exploratorium Project, reported that the San Francisco Port Commission and the San Francisco Board of Supervisors both recently approved the lease and transaction documents for the Exploratorium relocation project, which is a very exciting step towards the museum's realization of its move to the San Francisco Waterfront at Piers 15 and 17.

The Port of San Francisco is the co-applicant, with the Exploratorium, on the application to amend the Special Area Plan. Port staff met with BCDC staff, the stakeholders, and the Exploratorium in this amendment process. We have briefed the port commissioners concerning the proposed amendments and the Port is agreeable to these proposed amendments. We understand the requirement for the offsite fill removal, which we think will provide benefits to the entire region in addition to the wonderful benefits that the Exploratorium project will provide at the site.

I would like to thank the excellent BCDC staff, the stakeholders, and the Exploratorium for their hard work and their vision, commitment and cooperation in reaching agreement on these proposed amendments. On behalf of the Port Commission we request your recommendation of these amendments at your meeting on December 3rd.

Ms. Jennifer Clary, San Francisco Tomorrow, stated that their group was one of the stakeholders that worked on the process, and one of several groups that spent four years, from 1995 to about 2000, working on the Special Area Plan, thanked the BCDC staff, the Port Commission, the Exploratorium folks and particularly Supervisor Chiu for developing a workable amendment to this Plan.

I'm happy that we did it and that we figured out a way to implement it and I'm endorsing it. I would like to say that when we were developing this plan we had to balance a lot of things - historic preservation, view corridors, fill removal, neighborhood concerns, open space - and it was extremely difficult. One of the things that we were sensitive about when we did this was

the idea that we did not want a single development dictating what happened on the waterfront, and one thing that I've learned in my years of being an activist in San Francisco is that public benefits are a great sales tool for a project.

I'm a little concerned that we opened up an adopted plan for a project. So, if we feel things have changed on the waterfront – and it's been ten years, maybe they have – if we feel things have changed and it's time to change the plan, then let's change the plan. I don't really like the idea of a development being the trigger for changing a plan that we worked very hard to make “developer-proof” so that we had benefits independent of the development.

Mr. Alec Bash, San Francisco Ports Northeast Waterfront Advisory Group member, stated that there have been many presentations of this proposal and, as Ms. Clary said, one does not like to see a single development project driving a plan amendment like this. But this is an exceptional case. Nobody ever dreamed, as was indicated earlier, that, at these piers that were joined together 50 years ago in an effort to modernize the piers into a maritime future that did not last very long, nobody thought that there would be some reason in the future to keep the piers partially joined together, as is now proposed in these plans.

It seemed pretty clear to us, with all the testimony we had, that Piers 15 and 17 did need to work together in order to enable the full potential of the Exploratorium to be there. So this is truly an exception to what anybody would have thought about.

I think BCDC staff has done an excellent job working with the other people involved to find a way to bring about the reduction in fill that we all thought was going to happen in 2000, while still enabling a project of this importance – not only to San Francisco but to the whole Bay with its vastly improved transit access. So I'd like to commend those who have worked on this and thank you for your consideration.

Ms. Helene Fried, public art and animation consultant, stated that her office is in San Francisco and she has worked on many projects and sees many familiar faces around the room.

Most recently she conducted the international design competition for the Oklahoma City Memorial as well as for the Flight 93 Memorial and currently has the privilege of working on the Hunters Point Shipyard Public Art Plan for Phase One.

I have always been part of the early planning and it's always been my privilege to hear those ideas and to try to work with others to make them happen. The Exploratorium is a place that I go way back with. I want to talk today specifically in support of this amendment.

I worked a long time ago for the Port on something called the Waterfront Pedestrian Plan, which was a plan to suggest to the Board what could happen. What can you imagine could happen? And we imagined a museum, although we didn't imagine something as great as the Exploratorium. It's kind of as good as it gets and we're so lucky to have it in the Bay Area and our children and our children's children can go to it.

I also served on the board of the Fort Mason Foundation for nine years and in the last year I brought to the Board's attention an Exploratorium outdoor water project that was funded by the national Science Foundation, and it is still at Fort Mason. It is a little bit of a preview of what will happen when the Exploratorium comes to the Port. I wish you well and I support the

amendment.

Chair Randolph then asked for a motion to close the Public Hearing.

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

Commissioner Chiu stated that this is a project in his district that has been long in coming. He is very happy to support the recommendations that staff has made. This institution has been a gem in San Francisco and we know will be an amazing gem along the waterfront. I congratulate all the different stakeholders that worked together and hopefully we will be able to move this through next month. We look forward to the groundbreaking as soon as possible.

Commissioner Halsted expressed her gratitude to the stakeholders for working together and concluding that this wonderful opportunity can happen. It is delightful that we could come up with a solution that can work for the Bay, for the Exploratorium, for the Port and for the neighbors.

Commissioner Lai-Bitker stated that she couldn't contain her excitement as she was listening to the presentation and she is looking forward to bringing her grandkids there.

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

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

14. **Adjournment.** Upon motion by Commissioner Vierra, seconded by Commissioner Nelson, the meeting adjourned at 4:45 p.m.

Respectfully submitted,

WILL TRAVIS
Executive Director

Approved, with no corrections, at the
San Francisco Bay Conservation and
Development Commission Meeting
of December 3, 2009

ANNE HALSTED, Vice Chair

BCDC MINUTES
November 5, 2009