SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
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December 23, 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 December 3, 2009 Commission Meeting

1. **Call to Order**. The meeting was called to order by Vice Chair Halsted at the Ferry Building, Second Floor in San Francisco, California at 1:03 p.m.

2. **Roll Call.** Present were Vice Chair Halsted, Commissioners, Baird (represented by Alternate Vierra), Bates (represented by Alternate Balico), Chiu, Gioia, Goldzband, Gordon, (represented by Alternate Groom), Hicks, Lai-Bitker (represented by Alternate Johnson), Lundstrom, Maxwell, McGrath, Moy, Nelson, Reagan (represented by Alternate Kondylis), Shirakawa (represented by Alternate Carruthers), Smith, Thayer (represented by Alternate Kato), Wagenknecht (represented by Alternate Caldwell), and Wieckowski (represented by Alternate Drekmeier).

Not Present were: Sonoma County (Brown), Department of Finance (Finn), Speaker of the Assembly (Gibbs), Governors Appointee's (Randolph and Jordan Hallinan), Marin County (McGlashan), and San Francisco County (Vacant).

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

Mr. Hashim Anderson, Manager of the High School Explainer Program at the Exploratorium, stated that theirs is a youth docent program that hires high school youth to serve as docents on the museum floor and to interact with the public.

The proposed Exploratorium movement (see Item 8 below) will allow them to work with many other youth in the city that unfortunately can't get to them at their current location. Moving along the waterfront will allow more accessibility for kids working or living in the southeast corner of the city. Those kids will be able to hop on the "T" line, come down to the Embarcadero, and make it the Exploratorium's new location.

Therefore, this is an exciting move. Many of the youth that we want to have in our program currently just can't spend so much time on the bus, coming to the Exploratorium to work a six and a half hour day.

They would really appreciate the Commission's support for Item 8 and hopefully the Exploratorium will be able to get out and work with many of the underserved communities that can't currently work at their present location.

4. **Approval of Minutes of November 5, 2009 Meeting.** Vice Chair Halsted entertained a motion to adopt the Minutes of November 5, 2009.

MOTION: Commissioner Carruthers moved, seconded by Commissioner Smith, to approve the November 5, 2009 Minutes. The motion carried unanimously by voice vote, with five abstentions.

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

a. **Next BCDC Meeting**: The MetroCenter in Oakland is not available for our next regularly-scheduled meeting on December 17th so this will be our last meeting this year. Our first meeting in 2010 will be five weeks from today, on January 7th. At that meeting, which will be held here at the Ferry Building, we will take up the following matters:

(1) Depending on the outcome of our workshop today on the Bay Plan amendments dealing with climate change, we may vote on those proposed amendments.

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

(3) We will hold a public hearing and vote on amendments to some of our region-wide permits.

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

b. **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.

Commissioners Kato and Chiu reported that they had had meetings with the Exploratorium staff and the Port of San Francisco.

Commissioner Groom reported that she had participated with San Mateo County officials and City of Redwood City officials on the FEMA along the shoreline.

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

a. **Redwood Shores Levee Improvements.** As you know, at our last meeting we briefed you on a series of levee improvement projects that are needed to meet FEMA requirements for flood protection of the Redwood Shores community. You agreed that our staff could process the applications for those projects administratively unless the Fish and Wildlife Service determines that endangered species would be adversely impacted by one or more of the projects. In that case, we would process the applications for the affected segments as major permits so you and the public will have an opportunity to offer your views on any mitigation measures requested by the Fish and Wildlife Service.

The Service has not yet released its biological opinion on the projects. Therefore, it is unlikely we will be able to act on any application for a major permit before February. As you may recall, the project construction has to get underway within the next few weeks to meet FEMA's deadlines.

To deal with this dilemma, if the Fish and Wildlife Service releases its biological opinion within the next few days, and if the applicants are willing to undertake the mitigation measures the Service prescribes, and if the measures will have no adverse impact on public access, we propose to process the applications administratively, but to also provide you with an expanded

description of the measures and impacts in a supplemental administrative listing that we will send to you on December 10th so that you will have an opportunity to let us know if you are comfortable with our moving ahead with the approval without a public hearing.

Clearly, we don't want to circumvent the Commission's ability to independently make an important public policy decision. But neither do we want to expose the residents of Redwood Shores to any unnecessary additional insurance costs or flooding danger. Therefore, we've tried our best to balance these two objectives. Please let me know if you have any objections to the approach we're taking.

b. **Climate Strategy.** Yesterday we joined Governor Schwarzenegger on Treasure Island when he released California's Climate Adaptation Strategy. We've provided you with the executive summary of the strategy. Our staff served on the team that prepared the ocean and coastal resources component of the strategy, which draws heavily on the research and analysis we've used in preparing the Bay Plan climate change amendments you'll be considering later today. The Governor used BCDC's sea level rise maps to illustrate the impacts that flooding from global warming can have in the Bay Area.

To implement the Governor's adaptation strategy, state agencies, such as BCDC, are called upon to adopt the type of implementation measures contained in our proposed Bay Plan amendments, which are fully consistent with the overall state policies the Governor released yesterday. Needless to say, we believe BCDC can be proud to be at the forefront in integrating California's greenhouse gas reduction measures with these new adaptation policies.

c. **Personnel.** We've added two new interns to our staff. Craig Orbelian is working on projects in the regulatory division. He graduated from UCLA in English, and has experience as a coastal advocate at the Sierra Club and the California Environmental Law Project. He'll be with us for nine months and will enter law school next fall.

Paul Muse will be an intern in our planning division for the next three months. He graduated from UC Santa Barbara with a degree in geography and an emphasis in GIS.

d. **Award.** I'm most pleased to inform you that Caltrans has honored Brad McCrea of our staff for his work in the design of a public access project. Each year Caltrans conducts a competition as part of its Excellence in Transportation Program, which recognizes outstanding transportation design, construction, traffic operations, maintenance, planning, and improvements throughout California. Brad was part of a team that won the 2009 award for making a small public access area at the western end of the Richmond San Rafael Bridge particularly attractive, practical and highly popular.

e. **Reports.** I would like to call to your attention two reports we recently sent to you.

The first is our annual Maritime Cargo Monitoring Report. This report is rich in details, but the bottom line is that the global recession is continuing to impact Bay Area ports. Overall, the amount of cargo moving through the region's ports declined eight percent last year. This decline, along with other factors, means that there will be sufficient port capacity to meet the region's needs at least through 2030. If you have any questions about the report, please direct

them to Linda Scourtis of our staff.

The second report deals with the Delta. It provides both a general update on Delta issues and the analysis of the Delta and water legislative package, which you requested at our last meeting. Jessica Hamburger can answer any questions you may have about this report.

7. **Commissioner Consideration of Administrative Matters.** Executive Director Travis noted that the administrative listing was sent on November 25th. If there are questions, Bob Batha can answer them.

Commissioner McGrath stated that he sent an e-mail to Executive Director Travis and BCDC staff that was brought to his attention by the Bay Trail staff and by the water trail staff for the Coastal Conservancy. It is a proposal by the Coast Guard to list an area of the San Pablo Bay for some level of restrictions for public access.

The copy sent did not appear to have any analysis of the Coastal Management Program, or a consistency determination. It appears clear that any abridgement of navigational access of an area of San Pablo Bay would directly affect the coastal zone.

Executive Director Travis responded that BCDC staff does routinely get those federal register notices. This one seemed to be a bit more expansive in its implications and BCDC staff is looking into it.

8. **Vote on Proposed San Francisco Waterfront Special Area Plan Amendment 1-09 concerning Fill Removal Requirements between Piers 15 and 17.** Vice Chair Halsted noted that this is a vote on revisions to the San Francisco Waterfront Special Area Plan (SAP) to accommodate a proposal to relocate the Exploratorium to Piers 15 and 17. BCDC held a public hearing on these proposed revisions at its' last meeting. Lindy Lowe will present the staff recommendation.

Ms. Lowe stated that the staff recommendation to the SAP would allow the retention of a portion of the non-historic fill between Pier 15 and Pier 17. The amendment is being proposed by the Port of San Francisco and the Exploratorium and, if approved, will allow the Exploratorium to relocate the Exploratorium Museum initially to Pier 15 and ultimately it will grow into both piers.

On November 5th the Commission held a public hearing on staff's preliminary recommendation on the proposed amendment. At that hearing staff presented the process and findings that must be made to amend the SAP, and described the ways in which the proposed amendment was consistent with that process, and the necessary findings.

Briefly, the SAP that was approved in 2000 was designed to provide more flexibility on land use and fill removal in exchange for a package of public benefits and implementation requirements. In order to amend that SAP the balance of public benefits must be consistent with the development opportunities provided in the plan and the Commission must find that the amendment is necessary to the health, safety and welfare of the Bay Area.

The amendment proposed by the Exploratorium Museum and the Port of San Francisco

requests that one of the requirements of the plan – fill removal between Pier 15 and 17 – be modified to allow for the retention of more of the non-historic fill between these piers.

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

The amendment requests that over 100,000 square feet of the fill be retained in order to allow the project planned by the Exploratorium, which includes seismically upgrading the deteriorating pier substructure, bulkheads, and shed building; 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 SAP, but 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 mean that the amendment would not result in a fundamental shift from what was required in the SAP.

However, while the proposed amendment would still fulfill many of the public benefits at the site that are required by the SAP, it was recognized that off-site fill removal would be necessary to ensure that all of the public benefits required by the Plan would be provided and that the package of public benefits required by the plan would remain intact. This meant that the fill not removed onsite would have to be removed offsite.

At the public hearing on November 5th staff described the public benefits associated with this amendment. The proposal would provide a number of public benefits onsite that the 2000 amendment to the SAP 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 the 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 a historic structure; and locate a use along the waterfront that would draw the public to the San Francisco Waterfront.

As described in the public hearing, the offsite fill removal proposal was 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 navigational safety hazards. Some of the sites, such as along Islais Creek, would also result in the removal of creosote-treated piles, resulting in improvements to water quality and reduction in exposure to bay species from these toxins. All of the sites are in locations adjacent to existing or proposed public access, ensuring that the public would enjoy the benefits of the removal.

Working with stakeholders that were part of the 2000 amendment 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 was 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 is 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 is 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, the Exploratorium and BCDC staff. It will provide the same or greater amount of fill removal as currently required by the plan, and assure the same amount of decked structure that was to be removed under the plan will be removed as part of this plan amendment.

If the fill is removed within the northeastern waterfront the ratio will be one-to-one, less the square footage of 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 decked structure.

The potential site identified is a portion of Piers 30 and 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 on Pier 15. This ration 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 will consist of pile-supported deck structures.

The potential sites identified are Pier 98, Lash Pier, Carmen's on China Basin Channel, Pier 64, and Islais Creek.

Three people spoke in support of the amendment at the public hearing and the Commission proposed no changes to the preliminary recommendation. Since the public hearing, BCDC staff has added one sentence to the proposed amendment to ensure that the onsite benefits associated with the smaller open water area will occur regardless of the project that locates at Pier 15.

Staff recommends that the Commission adopt the amendment text provided in Resolution 09-01, which would allow the Exploratorium to retain a portion of the non-historic fill between Pier 15 and Pier 17 and provide for both onsite and offsite public benefits that have been previously described in this presentation and the staff report.

As stated in the resolution, the package of public benefits included in this amendment supports the Commission making the finding that the revised public benefits and revised development entitlement would be in balance and that the benefits required by this amendment would be sufficient to provide the revised balance of public benefits and private benefits that are necessary to the health, safety and welfare of the entire Bay Area.

Vice Chair Halsted invited a motion to put the staff recommendation on the floor.

MOTION: Upon motion by Commissioner Chiu, seconded by Commissioner Carruthers, the Commission put the staff recommendation on the floor.

Commissioner Drekmeier asked if the stakeholders approved of the amendment. Ms. Lowe responded that they had. She mentioned one concern, identified in the staff recommendation, about amending the SAP for a particular project. BCDC staff's feeling is that, the way that the amendment has been crafted, it works regardless of whether or not the Exploratorium were the project to go on the site; i.e., the Exploratorium aspect is not the integral aspect of the onsite and offsite benefit package.

Commissioner Drekmeier asked if this might set a precedent that the Commission will need to come back to in the future. Ms. Lowe responded that the Port and BCDC, along with the involved stakeholders, in determining whether or not to reopen the SAP and do a more holistic amendment, felt that this particular amendment didn't require that, based on the onsite and offsite public benefits being consistent with the 2000 Special Area Plan amendment.

Executive Director Travis added that, when the Commission adopted the SAP, there was some anticipation that there would be a need for amendments like this one. BCDC staff doesn't see this as opening the door to a series of special exemptions or exceptions.

Commissioner Chiu remarked that this is a project in his district and he helped shepherd it through. As everyone knows, the Exploratorium is a great institution and they are trying to make it even better and create a gem along our waterfront.

He thanked the different stakeholders, who worked through months of negotiations to come up with a fairly elegant solution in how we deal with the issue of adequate and timely removal. The environmental groups, the neighborhood groups, the Port, BCDC, and the Exploratorium worked through a lot of these issues.

He noted that there is a possibility that this amendment could be a model for the future, it's a pretty good model. And certainly it's a good example of what they should be doing here.

Executive Director Travis added that "if it's bad and they do it again it's a terrible precedent; if it's good and they do it again it's a model."

Commissioner McGrath commented that, whether it is a precedent or not, it looks to be a visitor-serving facility on the shoreline that will help maintain one of the wharfs. It is economically viable and supported by the stakeholders. He wished all projects were developed this well. Vice Chair Halsted agreed.

VOTE: The motion carried with a roll call vote of 19-0-0 with Commissioners Vierra, Balico, Chiu, Gioia, Goldzband, Groom, Hicks, Johnson, Lundstrom, McGrath, Moy, Nelson, Kondylis, Carruthers, Smith, Kato, Caldwell, Drekmeier, and Vice Chair Halsted voting "YES", no "NO" votes and no abstentions.

9. **Public Hearing and Vote on the Recommended Enforcement Decision Involving Proposed Cease and Desist and Civil Penalty Order No. CCD 3-09; John M. Asuncion, Blue Whale Sailing School.** Vice Chair Halsted noted that this is a public hearing and vote on an enforcement decision recommended by BCDC's Enforcement Committee to address violations in Alviso Slough in the City of San Jose. Adrienne Klein presented the staff recommendation.

Ms. Klein stated that the record for this Item includes the recommended enforcement decision, the proposed order, and the violation report. The violation report is the factual background on which the proposed order is based. The recommended enforcement decision provides a summary and analysis of the background information and includes the relevant new information since the issuance of the violation report in May.

It is being provided with an errata page to correct a drafting error – on page two, section 2B(1), the first clause of the first sentence should read *"within 30 days of the effective date of the Order, or by January 3, 2010, remove all the unauthorized fill and uses from the property."* This change should also be reflected on page one of the recommended enforcement decision, under "number two." Finally, on page six of the recommended enforcement decision, "Finding U," the third sentence should be eliminated in full, and the word "also" be eliminated from the fourth sentence.

Ms. Klein noted that the history of this property is extensive and this presentation is a brief summary of the facts. (For an overview image of the site, please turn to Staff Exhibit 41 of the violation report.)

The violations alleged in this matter are located on four parcels at the foot of Catherine Street in the town of Alviso, which is part of the City of San Jose. One parcel is a water parcel owned by the State Lands Commission, located in Simmons Canal and Alviso Slough. The other three are adjacent upland parcels, one of which is owned by the Santa Clara Valley Water District, and two of which are owned by Mr. Asuncion. Together these parcels shall be known as "the property."

In March 2000, after being notified of unauthorized work at the property, Mr. Asuncion informed BCDC staff that he had placed gravel and concrete blocks on the property located adjacent to Alviso Slough, which he was then in the process of purchasing and at which he planned to run a sailing school and install an office trailer, boats, and other business-related equipment.

From March 2000 onward to the present, Mr. Asuncion continued to place fill on, and change the use of, the property. He installed a gated and locked gangway, boat docks that he rents to duck hunters for income, a port-a-let, a flagpole, fencing, and stored many boats upland and in the water. On multiple occasions he has also placed gravel across a portion of the property which spills into the bay.

In February of 2000 the staff informed Mr. Asuncion by letter of BCDC's jurisdiction, that he must apply for a permit to legalize these activities, and that he would accrue penalties if he did not do so. BCDC staff sent him three more letters in 2006 and 2007. These letters also notified Mr. Asuncion that if he did not resolve the allegations, either by removing the unauthorized fill and uses from the property or by obtaining the Commission's authorization to retain them, the staff would commence formal enforcement proceedings.

In the past nine years staff has conducted numerous site visits and received a large volume of evidence from the public and from sister agencies depicting the unauthorized fill and uses at the property, all of which is outlined in the violation report.

Mr. Asuncion has removed some of the fill from the site, such as an office trailer, a fence that was used to surround the three upland parcels, and many of the boats that were stored onsite.

However, Mr. Asuncion has not fully removed the unauthorized fill and uses from the property nor has he submitted an application to BCDC to legalize these ongoing uses.

As such, and pursuant to Chapter 13 of BCDC regulations, on May 14, 2009 the staff commenced a formal enforcement proceeding by mailing the violation report to Mr. Asuncion. Mr. Asuncion did not respond to the violation report by submitting a statement of defense form, as provided by the regulations. His only response was to twice ask for postponement of the enforcement committee hearing dates, the first of which was granted.

On October 29th the Enforcement Committee voted to adopt the following enforcement decision (Attachment 2). Mr. Asuncion did not appear at that hearing. Today, the Enforcement

Committee recommends that you adopt its enforcement decision to issue a cease and desist and civil penalty order, which would direct Mr. Asuncion to do the following five things:

(1) To cease from placing any fill in, extracting any material from, or making any changes in use of the property.

(2) Within 30 days of the effective date of the Order, or by January 3, 2010, remove all of the unauthorized fill and uses from the property or, within 90 days of the effective date of the Order, by March 4, 2010, submit a file-able permit application, including but not limited to a lease from the State Lands Commission, an encroachment permit from the Santa Clara Valley Water District, and, if required, discretionary approval from the City of San Jose to the Commission for the existing fill and uses at the property.

(3) Within 136 days of the effective date of the Order, or by April 20, 2010, obtain a Commission permit for existing fill and uses located on the property.

(4) If by March 4, 2010 Mr. Asuncion does not submit a complete, file-able permit application for the existing fill and uses located on the property or, if upon receipt of a file-able application the Commission denies any portion of the project, Mr. Asuncion shall remove the unauthorized fill and uses from the property within 30 days of March 4, 2010, or of the date of the Commission's denial.

(5) Pay a civil penalty of $30,000 no later than April 30, 2010, of which $15,000 would be stayed if Mr. Asuncion otherwise complies with the order.

Mr. Asuncion is not in attendance today. Staff of the State Lands Commission and the Santa Clara Valley Water District have reviewed and support this proposed Order. Eric Milstein, Staff Counsel of the State Lands Commission, is present if you have questions for him.

We received one letter in support of the order, from the chair of the Alviso Water Task Force, which has been provided to you.

Vice Chair Halsted invited Commissioners to ask questions or make comments.

Commissioner Smith commented that he acted as the Chair of the Enforcement Committee on October 29, when that committee acted on this matter. On behalf of the committee he noted that on September 24th the committee granted a postponement of this matter at Mr. Asuncion's request but, as mentioned by Ms. Klein, Mr. Asuncion did not appear at the October 29 meeting. Staff has given Mr. Asuncion ample opportunity to address this matter and he has failed to do so.

The committee believes that the cease and desist and civil penalty order is appropriate and it urges the Commission to concur with the staff recommendation.

Commissioner Nelson first acknowledged the hard work of the staff and committee on this case, which has gone on for many years. He requested that the staff explain how it goes about bringing enforcement actions against a tenant when they don't own the property, to make sure that BCDC is bringing the action to the correct party.

Ms. Klein responded that BCDC staff has been working with the Santa Clara Valley Water District and the State Lands Commission. However, the evidence absolutely points to Mr.

Asuncion as being entirely responsible for the trespass activities on those public properties. Commissioner Nelson added that he had read the public record and there is no indication to the contrary in all the responses from Mr. Asuncion. Ms. Klein added that the two agencies have worked hard to evict Mr. Asuncion from their properties and are in the process of doing that.

Mr. Drekmeier asked if the violator paid the fine and then forfeited the extra $15,000 would the case be closed and the fill remain or --? What would happen at that point? Ms. Klein responded that the issuance of this order would be the end of BCDC's administrative proceedings. If there are violations of the cease and desist and penalty order, BCDC staff would then refer the matter for litigation with the help of the Attorney General's Office. BCDC is much more interested in seeing the site cleared of the illegal filling uses than in the penalty, but that is a part of the solution as well.

Deputy Attorney General Alice Busching Reynolds added that the Order requires both removal of the fill and payment of the penalty; Mr. Asuncion can't pay the penalty and then leave the fill – that's not an option.

Seeing no other Commissioner comments, Vice Chair Halsted opened the public portion of the hearing. Seeing no other speakers, she asked for a motion to close the public portion of the hearing.

MOTION: Upon motion by Commissioner Carruthers, seconded by Commissioner Goldzband, the Commission unanimously voted to close the public hearing.

MOTION: Upon motion by Commissioner Smith, seconded by Commissioner Nelson, the Commission unanimously voted to approve the staff recommendation.

VOTE: The motion carried with a roll call vote of 20-0-0 with Commissioners Vierra, Balico, Chiu, Gioia, Goldzband, Groom, Hicks, Johnson, Lundstrom, Maxwell, McGrath, Moy, Nelson, Kondylis, Carruthers, Smith, Kato, Caldwell, Drekmeier, and Vice Chair Halsted voting "YES", no "NO" votes and no abstentions.

Commissioner McGrath commented that there are people in marinas who are prone to say that it is better to ask for forgiveness than for permission. However, this is one of the most egregious examples of that he has ever seen. He is disappointed that the Commission doesn't have a tool that would allow it to move more rapidly.

He further stated that he would go along with this, rather than press for the maximum, only because of the statement on page three of the staff report, where it says that it is readily susceptible to resolution and has not caused significant harm. On that basis, if the Commission stops the activity and can begin to proceed towards remediation... – but he noted with regret that this is a long time to bring an action and wished the Commission could move a little quicker.

Commissioner Carruthers complimented Ms. Klein and the rest of BCDC staff in dealing with one of the most demanding enforcement challenges BCDC has had. There is something about marinas that attracts people who are sort of on the fringe of the physical environment and in that way sort of on the fringe of society, and these are indeed challenging cases. For some

reason, Alviso seems to have more than its share.

Commissioner Carruthers also stated that he was pleased to report that work is beginning in the Santa Clara County Board of Supervisors to consider local ordinances regarding the regulations of live-aboards and abandoned vehicles, following the lead of Contra Costa County, which already has local regulation in this regard.

Commissioner Nelson requested that, since the Asuncions made some allegations regarding the South Bay Yacht Club and the Santa Clara Valley Water District, that -- regardless of the outcome here – staff appropriately investigate those accusations. Ms. Klein responded that part of the reason they are taking action now and not sooner is because there are a number of other violations, such as the two already mentioned, and those are now resolved.

10. **Closed Session on the Recommended Enforcement Decision Involving Proposed Cease and Desist and Civil Penalty Order No. CCD 3-09; John M. Asuncion, Blue Whale Sailing School.** Vice Chair Halsted stated that this Item is now no longer necessary, as action has been taken (see Item 9, above).

11. **Workshop and Possible Action Regarding Proposed Bay Plan Amendment No. 1-08 Concerning Climate Change.** Vice Chair Halsted stated that this is a public workshop to allow the Commission to better understand the proposed revisions to its Bay Plan to address climate change and to provide policy direction to the staff. Joe LaClair will facilitate the workshop.

Mr. LaClair, BCDC staff, began by noting that one letter was received following the initial public hearing on this item, which was on November 5th, and that letter is in the Commission's packet.

The workshop is being conducted to clarify how the proposed Bay Plan climate change policies would be implemented so the Commission and the public can better understand how they will apply to projects.

First, he summarized BCDC's jurisdiction. The Commission has five types of jurisdiction – bay, certain waterways, shoreline band, managed wetland, and salt pond. In the bay and certain waterways, the Commission has jurisdiction over land use and public access; it has authority over how much fill can be placed and in what configuration; it has policy authority to conserve fish, wildlife, other aquatic organisms and their habitats; it has authority over dredging and dredge material disposal; and it can require mitigation for projects that have impacts on San Francisco Bay.

In the shoreline band the Commission can only require that a project provide maximum feasible public access consistent with the project and -- within priority use areas -- that land uses be consistent with the Bay Plan priority use designation.

Within salt ponds and managed wetlands, for development projects, the Commission can require that the maximum surface water area is retained; that maximum public access consistent with the project is provided; that an appropriate guarantee of some of the water area that is retained is also incorporated into the project; and that a comprehensive planning process, with certain specified issues addressed, be conducted for the formulation of any project.

The bay jurisdiction extends up to the shoreline, which is defined as "mean high tide except in areas where there is marshland. In those areas the shoreline is located at five feet above mean sea level." That is a little higher in the tidal prism and shifts the shoreline band upland somewhat. The shoreline band extends inland 100 feet from the shoreline.

The Commission also has some limited land use authority in the shoreline band in those areas designated as priority use areas in the Bay Plan, such as ports, airports, water-related industry, wildlife refuges, and waterfront parks.

Salt ponds and managed wetlands are defined in the Act as areas that were used for these purposes in the three years prior to the amendment of the McAteer-Petris Act in 1969. Between the fall of 1966 and the fall of 1969 the areas had to be used for those purposes. They are marked on the Bay Plan maps as the gray areas and a typical salt pond is outlined in blue on the slide.

Based on advice received from the Attorney General, the Commission interprets its salt pond and managed wetlands jurisdictions as including the levees that form these salt ponds and managed wetlands. The Commission does not have shoreline band authority adjacent to salt ponds or upland of salt ponds. Typically, the water side of a salt pond is the bay or some tidal slough, channel or river.

Commissioner Gioia asked if there is some bay upland of the inland levee that the 100-foot shoreline around the bay would apply to? Mr. LaClair stated that that is correct. The 100-foot shoreline band would extend upland of that part of the Bay, unless that 100 feet extended into the salt pond. By law, there is no shoreline band jurisdiction within a salt pond. Rather, at that location there would be salt pond and/or managed wetlands jurisdiction, which differs from shoreline band jurisdiction.

Mr. LaClair continued by noting that in the bay there is land use authority and the ability to control, in a greater way, the amount of fill. There is an alternative upland test that is not available under salt ponds.

For example, if someone proposes filling in a salt pond it is not necessary to apply the test to ensure that it is the minimum necessary. The test there is to determine that the maximum amount of surface water area is being retained.

In the bay the question would be "Is this the minimum necessary to achieve the purposes of the project?" Also, the Commission would determine whether there is an alternative upland location – a test that would not be applied in salt ponds.

Mr. LaClair presented a hypothetical project and walked through how the climate change policies would apply to that. The hypothetical project is a 200-acres mixed-use retirement community consisting of 1,300 units of townhomes, garden apartments, assisted living facilities, 100,000 square feet of community-serving retail, a bus transit station, three acres of park land, a nine-hole golf course, and a bay trail corridor.

Assuming that the hypothetical project is located in the shoreline band, and that limited parts of the housing golf course, parks and trails would be located within the shoreline band, in

addition to current requirements to provide maximum feasible public access the hypothetical project would be required to ensure that public access would remain viable -- either by initial design or by redesign in the face of rising seas.

The proposed policies would require applicants to either design the public access at the front end to address the rising seas, or in some way ensure that retrofits could be made to address rising seas in the future.

If the site were in a low-lying area, unless there were bay fill, the Commission cannot require additional shoreline protection or other measures to reduce flooding risk. If the site were undeveloped, the Commission could condition the project under the new policies so that no future bay fill could be allowed for shoreline protection. But if it were an in-fill or redevelopment project the Commission could authorize fill in the bay in the future for shoreline protection.

In this hypothetical project scenario, if proposals were made to construct some type of shoreline protection device in the shoreline band, then the Commission would be looking at that through the lens of maximum feasible public access.

One policy that would be added is to ensure that shoreline protection devices do not add unnecessary physical or visual impediments to public access. That would be a criteria in the shoreline protection policies should the Commission decide to adopt the Bay Plan amendment as proposed.

Commissioner McGrath commented that -- if the 200 acres is not an infill situation -- a public access trail could be located behind or on top of a future levee, or there is the flexibility to do both, and there's plenty of room --. If the concept is to eventually build a levee, done over stages over the years, and it does not interfere with public access, that would be the nature of what the Commission would suggest? Mr. LaClair responded that that would not be inconsistent with the policies.

Commissioner McGrath further commented that the future location of the levee would have to be set far enough back; i.e., not in the current bay. How about in the future bay? We know that sea level is going to rise and at some stage it may actually reach the toe of the future levee and compromise some intervening values. Would that be an appropriate footprint for the whole project?

Mr. LaClair responded that there has not yet been a conclusive determination regarding the potential migration of the Commission's jurisdiction as sea level rises. Staff has reported that it might migrate upland. If there was fill needed in the bay to protect a project in the future as the sea level rose, and that wouldn't be fill in the bay when the project was originally approved -- there is some ambiguity about how that would be resolved.

Commissioner Kondylis asked whether, if this were a low-lying area not subject to inundation now, but projected to be, and a developer allowed for protection of infrastructure that exists upland but is still threatened, then that might be a powerful tool for a developer to use to get a project delivered; i.e., if it was going to provide protection for a good number of other properties. What would happen in that case?

Mr. LaClair responded that as long as the levee -- or the sea wall or whatever the shoreline protection device is -- is located within the Commission's shoreline band jurisdiction and the project can provide maximum feasible public access, then whether or not it protects inland development wouldn't be a Bay plan policy consideration. That would be similar to a public benefit that the Commission would typically look for in approving a Bay fill project, where the policies say that the Commission should look at the public benefits and detriments of a Bay fill proposal.

In the shoreline band those tests are not there – you are really looking at whether or not it provides maximum feasible public access. That's not to say that it shouldn't be considered, but it's not a Bay plan policy basis. It would depend on the configuration and a determination would have to be made on each case. But, as long as the Commission found that the project provided maximum feasible public access that would be consistent with BCDC law.

Executive Director Travis remarked that it is important, as the Commission looks at this issue, to determine what the Commission's jurisdiction is and also to realize what authority it doesn't have. One of the issues that was raised -- as it looks like these policies are sweeping and will greatly increase the Commission's authority over a variety of things around the bay -- is that this scenario shows that, if the project is along the shoreline and there is no proposal for fill, even though you have a huge project that is inland of the Commission's jurisdiction, the authority and decision as to whether to approve that is going to rest with the local government, as has been the case for anything around the shoreline in the bay.

Commissioner Kondylis noted that that is why there is a need for a comprehensive, regional approach to this.

Commissioner Lundstrom commented that when she thinks of new development, that can also mean roadways. For example, when Marin County was dealing with a new CalTrans intersection at the environmental impact stage – to protect the intersection from a 100-year flood, a 12-foot-high dyke would be required. Is a project like that a part of this discussion also?

Mr. LaClair responded that the vulnerability analysis that staff conducted demonstrated that there was a considerable amount of shoreline infrastructure that was vulnerable to flooding under projected sea level rise and, because they have selected a primarily residential project for

today's hypothetical example, it doesn't mean that the same policies wouldn't apply to a light industrial or roadway project or any other type of development that the Commission might see that is seeking a permit from BCDC. The same approach would be used, the same policies would be used to evaluate a roadway project as for a hospital or housing development, etc.

Commissioner Lundstrom noted that, because there are so many major highways within the bay region that are subject to rising sea level, storm surge and so on, it would be a good idea to have a discussion just about that. It's more likely that sea level rise will impact the transportation infrastructure of the bay as opposed to a new development or a hospital. That deserves analysis on its own; it's such an enormous factor.

Executive Director Travis remarked that this raises one of the general policies in the Governor's strategy, which recognizes that there is no one answer that applies everywhere. It must be looked at in a case-by-case basis. The Governor's strategy says ". . . *the most risk-averse approach for minimizing adverse affects of sea level rise and storm activities, carefully consider new development in areas vulnerable to inundation and erosion. State agencies should generally not plan, develop or build any significant structure in a place where that structure will require significant protection from sea level rise, storm surges, or coastal erosion during the expected life of the structure.*" That means you don't put new highways there.

Then it says "*however, vulnerable shoreline areas containing existing development that have regionally significant economic, cultural or social values may have to be protected and infill in these areas may be accommodated.*" So, in other words, it says "generally, don't put anything new there, but where you have stuff there already, recognize you have to protect it." And it's going to have to be applied on a case-by-case, site-by-site basis. In working on the Governor's strategy and working on our Bay Plan amendment, the two fit together.

So, as you walk through and see how this fits within the broader statewide policies, you'll see why we think that the next step on this is taking these broad policies and walking along the shoreline with local governments and applying them.

Commissioner Johnson commented that, under the climate change requirement, it says "*viability of public access in light of projected sea level rise.*" Would that allow, when sea level rise occurs, that public access wouldn't be viable so we're not going to worry about public access? Is that what that would allow?

Mr. LaClair responded that the intention behind the policy is that the Commission could condition projects to ensure that either as the public access is originally constructed or in the future as sea level rises, it could be retrofitted in some way to address sea level rise, so that the public access is maintained. The notion under the current policies is that public access, consistent with the project, means that it's there for the life of the project. So as long as the project is there, so should the public access be.

Commissioner Johnson followed up by noting that the language "*viability of public access*" would allow something different than that and perhaps that language needs to be looked at. Mr. LaClair responded that the specific language says that – from page 24 of the revised preliminary recommendation, under changes to policy number six – "*any public access provided as a condition of development should be required to remain viable in the event of future sea level rise or flooding.*" Commissioner Johnson agreed that that language does cover it properly.

Commissioner Carruthers asked if it is assumed that when we talk about infill it includes transportation facilities or is that made more explicit? Mr. LaClair responded that the finding

that defines "infill" refers to existing infrastructure as one of the criteria that is used to clarify what is meant by "infill."

Commissioner Carruthers followed up that, as this goes out, the Commission is not going to be there to explain what it really means. He would like to ensure that the draft policy is gone through one more time to ensure that it is clear to those who are not "in the club." Mr. LaClair responded that this is absolutely important, and it is also his hope that today's and future discussion will help to clarify the language as well.

Mr. LaClair continued, returning to the hypothetical project described earlier, and assumed that portions of the project, such as shoreline protection, public access, or recreational features like a fishing pier, were located in the bay. The Commission could require an assessment of the impacts of projected sea level rise and risks of development in the incorporation measures to avoid the identified impacts and risks, and those would be focused primarily on the elements that were within the Commission's bay jurisdiction. It doesn't extend the Commission's authority into the shoreline band but there is some gray area there in terms of how the development is assessed in the shoreline band with regard to flooding risk, when Bay fill is part of the project.

The Commission could require that the shoreline protection be designed to protect the project from flooding based upon a 100-year flood event that takes sea level rise into account. The Commission could also require that the shoreline protection not create significant impediments to physical or visual access and that it be integrated with adjacent shoreline protection systems.

Similarly, the Commission could require that public access and recreational features on bay fill be designed to withstand projected sea level rise.

Commissioner Kondylis remarked that one of the things that has bothered her over the last few years of contemplating this issue is that anything that comes out of this that could be approved which is designed to the current projects – what if those projections are way off, the way we are starting to believe regarding the new information coming out about acceleration of ice melt in Greenland and etc.?

Mr. LaClair responded that the proposed amendment does acknowledge that climate change adaptation is an iterative process and the Commission would need to, on an ongoing basis, evaluate the approach that it takes to evaluating projects.

Commissioner Kondylis speculated about what happens if in 20 years someone takes action to dike a certain section, for example, and they do it to accommodate whatever the projection is at that time, and that projection happens to be wrong. Then do you have to go back and rebuild it?

Mr. LaClair responded that the Commission has had a longstanding policy, adopted when the Commission adopted its' first climate change policies back in 1988, to make sure that if a levee or some shoreline protection device is being built, that there be enough landside right-of-way saved so that you can retrofit it going forward and essentially there is enough room to accommodate that. So, in evaluating a project, it would be up to the Commission to assess whether additional space might need to be set aside in a project, beyond what the project currently states, to protect public access and allow for the expansion of that facility.

Executive Director Travis remarked that one of the comments that are raised on the policies is that we've taken a very conservative approach. Given the projections that are out there, we have worked towards the conservative end. We think that it's more appropriate to hope for the best and plan for the worst.

And, while the Commission always charts sea level rise going out to 2100, sea level will continue to rise after 2100. So at some point, the model used is very much like what California does for seismic safety. Every time there's an earthquake our knowledge of earthquake safety doubles and we continually come back and retrofit projects and redesign them and fix them. And that's what's going to be necessary with sea level rise.

And at some time we may get to the point where we say "well, we just can't afford to protect this one anymore" or "it's reached the end of its design life" or "this is the wrong place for this." But we think that the approach that we're taking is both prudent and conservative and yet does acknowledge that we do have a future living here in the Bay Area.

Commissioner Kondylis agreed with those comments and asked if someone comes back to the Commission in the future and says "hey, this is what you told us to expect." Is there something that allows us to provide fair warning that this is really conservative?

Executive Director Travis commented that these policies will not make the Commission immune from making difficult decisions; in fact, they will invite difficult decisions. And at some point we may get to where someone says "we designed this using your policies and projections, and now we want to come back in and fill some of the bay to protect it." And the Commission will have to look at the project, decide what benefits it provides the region, and look at the equities and make the tough decision.

Commissioner Carruthers remarked that this suggests the possibility of putting conditions on a permit that would require future action, if and when certain future conditions are realized. Are we talking about that? Mr. LaClair responded that the Commission has actually done that, in the Loch Lomond marina project, where it looked at the threat of sea level rise and how that might affect public access in the future.

BCDC staff did the analysis and the Commission agreed that the proposal it put forward, essentially requiring some filling during construction to raise grades on the project site, would be adequate, but also to condition the project to require that, if retrofits are needed to protect the public access, then those retrofits need to be made. The Commission didn't evaluate the design of those retrofits but that was a condition in the permit. The Commission doesn't have a lot of practice with implementing this type of condition but it does have experience with some of the restoration projects that have been approved, where there is an adaptive management element to those.

And that's a theme that weaves through these climate change policies, the idea of recognizing the uncertainty that is embodied in all these projections of sea level rise and you're going to need an adaptive management approach in dealing with shoreline development so that, going forward, you can learn from changing conditions and integrate management

measures that address them. And those new measures have to achieve a number of goals – protecting the bay, maintaining public access, providing for public safety, and avoiding flood risk. All those considerations would need to be factored in.

Commissioner Johnson asked if there is a definition to what "regional benefit" is. That's an important thing to have guidelines on, or a definition. What's a benefit to one part of the region may not be viewed as a benefit to another part of the region. Last time she attended a Commission meeting a speaker was explaining why development in the bay is a benefit. He defined it as "infill," infill housing, because it was development in the bay. And he considered infill to be the entire region. So if that can be used as an example of benefit to the region, then anywhere you develop in the Bay Area is a benefit because it would be infill development. We need to be a lot clearer about what "benefit to the region" means.

Mr. LaClair responded that there is no precise definition. Executive Director Travis commented on why he thought that definition should not be done. He said that there are 27 Commissioners, and over the past 44 years the Commission has interpreted a law that says that every project has to provide maximum feasible public access to the bay and shoreline consistent with the project. And every developer that comes in wants to know what that means precisely.

And the Commission has resisted coming up with standards. What it has said is it depends on the project, it depends on the site, it depends on the conditions. And these are the sorts of things, where you're talking about what is infill, what is a regional benefit, there is also an override in your law where you can approve anything so long as you find that it is essential or necessary to the health, safety and welfare of the entire public in the Bay Area.

Commissioner Johnson commented that one thing that she felt was important to do was to say that any development in the Bay Area region isn't necessarily a regional benefit. Executive Director Travis agreed with that point.

Mr. LaClair continued with the salt pond or managed wetland jurisdiction. If the hypothetical project described earlier were located in a salt pond or managed wetland jurisdiction, in addition to providing maximum or substantial open water and public access, the Commission could require an assessment of impacts of projected sea level rise and risks to the development and the incorporation of measures to avoid identified impacts and risks.

Just as in your bay jurisdiction, in undeveloped salt ponds or managed wetlands the Commission could disallow new bay fill for shoreline protection and require that any new shoreline protection constructed in the salt pond or managed wetland to be integrated with adjoining protection where appropriate.

To clarify that, the Commission can authorize fill in a salt pond for a large levee to protect an undeveloped area but it could disallow new bay fill -- in other words, shrinking of the bay, to protect that development.

Commissioner McGrath asked if this means that the Commission has the same discretion over the footprint of fill that it could approve or not approve, and the amendment would add only a question of what would the safety of that fill be, which might go to either the seismic design or the elevation.

Mr. LaClair responded that the Commission has a different test for fill in the salt pond or managed wetland. In the salt pond the Commission has to determine that the maximum water surface area is preserved, and that would not change. In the bay the Commission would have the authority to say minimum necessary, alternative upland, and so on.

Commissioner McGrath asked if, in the salt pond, if it met that test, then the question would be the safety of the fill, which would go to seismic design and whether or not the fill elevation took into account, now, sea level rise. That would be the only substantive change.

Mr. LaClair concurred, and added that the subtext to that would be the effort to try and ensure that it was located and configured in such a way that it could avoid future bay fill so that you could set aside that right-of-way to make sure that any expansion of the facility could occur within the salt pond versus in the existing bay.

In response to a question from the Commission, Mr. LaClair said the proposed finding defines infill development as "*the economic use of underutilized or vacant land or restoration or rehabilitation of existing structures or infrastructure in already urbanized areas where water, sewer and other public services are in place.*"

Mr. LaClair noted that development in salt ponds and managed wetlands must also be consistent with proposed Policy 3C. The hypothetical project is consistent with part of Policy 3C in that it concentrates housing near regular, planned bus service sufficient to serve the project. Pursuant to Policy 3C the Commission could also require that the project include an adaptive management strategy that ensures that the project would be resilient to sea level rise and storm surge for the life of the project; that a permanent financial strategy be developed that ensures the public will not bear the cost of protecting the project from sea level rise and storm surge in the future; and that new bay fill for shoreline protection will not be part of the project if it is an undeveloped area.

Commissioner Nelson discussed the intersection between maximum feasible public access and potential future bay fill. In a lot of places it's entirely possible to imagine looking at a project through the Commission's previous lens that didn't consider climate change -- to look at it and find that it was perfectly appropriate. The Commission might look at entirely the same project consider climate change and recognize that projects that have constrained public access -- arguably in the past maximum feasible public access -- might commit the Commission to a path that requires bay fill in the future to provide shoreline protection.

There is an intersection here between decisions in salt ponds and managed wetlands, and on the shoreline band, where the Commission makes decisions about the footprint of projects and maximum feasible public access that may commit us to a path that requires bay fill in the future. I'm not sure that BCDC's existing or future policies allow it to consider that intersection. Is it maximum feasible public access if we're concerned that it may require additional bay fill in the future?

Mr. LaClair responded that it's interesting that 21 years ago, when the Commission adopted its' climate change findings and policies in the safety of fill section, there were policy statements that said that development should be set back far enough to be out of projected wave run-up from sea level rise. It's safe to say that, now that we think we know more about

what the projected rate of sea level rise is going to be, we may have allowed some development closer to the shoreline than was prudent in the intervening time, factoring in sea level rise.

There is a tension there, but also the Commission has allowed a lot of things to be developed in low-lying areas close to the bay, and it is going to be confronted with tough choices from here on out in terms of how to address those configurations. And there aren't going to be a lot of easy ones.

Executive Director Travis added that he thinks that one of the tests for Commissioners as they read the policies is to see if the Staff has achieved what the Commission wants it to do, in a broad objective. The Commission has priority use areas, and the purpose of the priority use area is to ensure that a portion of the shoreline that is suitable for use that the Commission can approve bay fill for isn't mis-used so that we're forced to have bay fill.

What staff has tried to do is to craft these policies in such a way that when we look at public access, we look at the uses, and we want to have implicit in this the idea of "don't come back and ask us to fill the bay later on if you haven't adequately taken sea level rise into account in your project planning." That's what we're trying to do.

At the same time we are also acknowledging that filling the bay for shoreline protection is a suitable reason to fill the bay if you're protecting what's already there. So we're trying to do both.

Commissioner Smith asked if the language on new bay fill in undeveloped areas would apply only to expanding the footprint of bay fill or would it also apply to additional placement of bay fill on areas that are already filled; say, for levees? Mr. LaClair responded that, in order for it to be considered bay fill it would have to expand the footprint. If you built a sea wall on a levee that was built in the bay, that's additional fill in the bay -- it's more volume but it doesn't at that point have much impact on the footprint of the bay. Of course we'd be looking at things like wave reflectivity and erosive impacts of the structure, and whether or not it would in some way impact adjacent bay habitat, so that would certainly be a consideration based on the existing and proposed changes that we are recommending for both the shoreline protection policies and tidal marshes and tidal flats policies, looking at the potential effects of shoreline protection on bay resources.

But, in terms of it being a significant policy consideration from a footprint standpoint, it would really depend on the configuration. So if it didn't expand out in the bay but sort of sat on top of existing bay fill the Commission would be primarily interested in looking at what impacts that would have on public access and adjacent habitats.

Commissioner McGrath added that there are policies in place now that call for making sure that the levee or the edge of development can be done consistent with Commission policies in salt ponds and out of the area of wave run-up. So that's part of the existing policy framework. So what this adds in, as I look at it, is a realization that any levees may have to tie in to adjacent developments.

Mr. LaClair responded that that is correct. It is a requirement but it's also difficult to implement in that, if the project proponent doesn't have control of the adjacent property -- it's difficult to achieve the kind of continuity of protection you want if you can't get your neighbor to build a similar facility.

Commissioner Gioia discussed a potential real-life example under the hypothetical scenario. For example, let's say there are existing salt ponds where there is proposed development on those salt ponds and filling for development; or there is an alternative project for wetland restoration. How would one think about that issue with these proposed policies? Let's say a project came forward with regard to development and it's also an area that's potentially a subject area for wetland restoration. And BCDC is looking at whether to approve that project.

Mr. LaClair responded that, first, we'd have to look at the existing policies with regard to salt ponds and development in salt ponds. As was pointed out earlier, Commission policy requires that the maximum surface area of the salt pond be preserved in open water and typically that would entail some kind of wetland restoration, whether it's managed ponds or tidal marsh. As a Commission you would seek to obtain that kind of public benefit out of the project.

How you go about determining what the maximum surface water is -- that is an art and not a science. So we would look at a variety of possibilities in terms of how much surface area would be retained in open water.

Executive Director Travis further clarified that the Commission currently has policies that

say that if the salt pond is going to be taken out of salt production, the first thing that should be done is to offer it for sale and government should try to buy it. And, in the case of the Redwood

City project, it was offered for sale and the government didn't have the money to buy it. So you could say that the Commission has met the first step. Others could say "well yes, but the price was too high and that never goes away." There should always be an opportunity, a chance, to buy it.

And the next thing is, it's not only maximum water area, it's maximum water area, consistent with the project. So the Commission looks at it and says "here's how much of the project site would be developed" and "here's how much would be retained and restored to water area" and the Commission would make the judgment of whether or not it is maximum water area retained consistent with the project.

The next thing after that would be to look at the design of the project and see how it was designed to address sea level rise and you either would conclude that it's high enough or broad enough or it's something that was designed in a fashion that future sea level rise has been taken into account and you could approve it. So you could have different steps along the way where you say "didn't meet that," "didn't meet that," "didn't meet that," or you could say "well, you've got two of the three" or "you've got all of them."

Commissioner Gioia referenced an earlier quote suggesting that state agencies "*should not plan, develop or build any new, significant structure in a place where that structure will require significant protection from sea level rise, storm surges, or coastal erosion during the expected life of the structure.*" For example, in a salt pond area where you will have potential impact from sea level rise you could build your way out of it, or not – this policy goes further than BCDC's climate protections policies as currently drafted, is my sense of it.

Executive Director Travis responded that to look at it case-by-case, by site, is the way to implement the policy. For example, say you have a low-lying area that already needs protection and you have a project that would provide that protection. The Commission could say "well, to provide this protection we're going to have to do this anyhow. So is this something that we would approve?"

We recognize that these are going to be very difficult policies to interpret and apply on a case-by-case basis, so I think to try and figure out at this broad level how they would apply everywhere to every specific case is probably not prudent.

Commissioner Gioia asked whether or not the Commission wants to consider policies that provide some direction as to what development we might want to support, where there would be potential and projected sea level rise – something that would require significant protection from sea level rise. In other words, if that project is going to require that level of protection from sea level rise, do we want to have a policy on that issue or not? We currently don't because, as I understand it, the state policy does.

Mr. LaClair responded that BCDC's policy states that in the low-lying areas the Commission and the region should take a precautionary approach to considering any development in low-lying areas, and the policy then lays out the criteria to be used for evaluating whether or not any development proposal was precautionary enough, in terms of reducing flood risk to those who would live in that development.

Executive Director Travis added that BCDC staff has tried to test out the policies but not draft them from the perspective of putting a particular project through and developing regional policy based on the lens of one project. If you look at these policies and look at the Redwood City area you could say that applying these policies there would lead to a different conclusion than if they were applied to Treasure Island or the western end of Alameda, even though they have very similar characteristics.

Commissioner Nelson concurred. It would be fraught with peril for the Commission to go around the bay and try to think about specific locations where these policies might be applied. The Commission might go through that exercise now and then find that the actual facts on the ground at some future time might not be what we assume they are today.

Commissioner Kondylis referenced a policy in the White Slough area several years ago. A dike protected the property of the owner, who built the dike. And it turned out that that dike also protected 20 or 30 blocks of the city with residences and commercial uses. The owner didn't maintain the dyke and nobody else wanted to because they didn't own it and didn't want to spend the money. The dikes broke and now it has reverted to wetlands -- which is a good idea, but we still have the problem of the flooding that happened in the other 18 to 20 blocks in the commercial and residential areas. So, will something be built into the policies regarding maintenance and protection over time?

Mr. LaClair responded that BCDC's current policies require that any facility the Commission permits to provide shoreline protection be designed by competent engineers to ensure that those kinds of future considerations are taken into account, and the Commission imposes maintenance conditions on permits for those kinds of facilities. He added that he can foresee situations where what happened in White Slough could occur elsewhere in the bay.

Executive Director Travis remarked that simply because BCDC is in existence that doesn't preclude someone from trespassing and putting something somewhere that shouldn't be there. The Commission does its' best to enforce the law but at the end of the day there's going to have to be some cooperation there.

Commissioner Carruthers noted that in Santa Clara County this is not hypothetical. The Corps of Engineers, the Coastal Conservancy, and the Santa Clara County Water District are in the midst of something called the South San Francisco Bay Shoreline Study. The so-called "Golden Triangle," where Intel and others are, could be subject to some inundation.

Up until now much of the flood control protection for that area has been the outboard dikes of what were the salt ponds. The restoration project calls for the breaching of some of those dikes. That part of the restoration project will include improvements of some of the outboard dikes, the ones that are nearest to the bay.

The major attention will have to be on what's called the inboard dikes, the dikes at the edge of the land before you get out to the salt ponds. Up until now the inboard dikes have been pretty minimal things and the outboard dikes that were built by the salt company are mostly just mud and have been sort of maintained over the years.

My understanding is that BCDC, under these policies, would be concerned with the

outboard dykes and presumably would want the improvement of those dikes to fall within the salt ponds and not extend out into the bay; and also might want them to require public access out there. Are the inboard dikes under BCDC's jurisdiction?

Mr. LaClair responded that, from what he's seen of the plans of that particular project, most of the inboard dikes would lie upland of the Commission's salt pond jurisdiction. There is some bay jurisdiction that extends up some of the creeks, drainage channels, sloughs and so on in that area so the Commission will be considering permit applications or consistency determinations, depending on who the project sponsor, is for some of those. But most of the inboard dikes would be outside the Commission's jurisdiction except for bits and pieces.

Commissioner Carruthers remarked that the streams would have to be diked as they get out to the bay. Mr. LaClair responded that that design is part of the consideration for the project – how much room to give the stream; how much flood plain to retain or create for the streams at flood stage; and how tall to build levees on either side so that, as the water comes down and the tide pushes back, you have room for all that. And that is all part of the hydrological design of that project.

Mr. LaClair added that the interesting thing about that shoreline study and project is that it provides a model that BCDC can learn from in planning for the rest of the bay shoreline and looking at ways that it can integrate wetland restoration or protection into a comprehensive shoreline protection design where appropriate, where the wave energy is such that it can be supported and achieve this idea of a living shoreline, where you have a wetland system in front of your big levee that provides a degree of protection and dampens some of the impacts of the bay coming in.

Commissioner Carruthers stated that there is another aspect of that study that provides a model and raises a question about how BCDC policies are going to be used. That study involves five cities – Palo Alto, Sunnyvale, Santa Clara, Mountain View, San Jose – as well as the counties. Those jurisdictions have widely divergent views regarding their concern about sea level rise, different items on their agendas that require their attention, and etc. I'm really concerned about adopting something that is so great but doesn't have the qualities or processes for how it's going to be used to actually bring about a successful outcome in a multi-jurisdictional context.

Commissioner McGrath asked that the Commission focus on one of the bits of guidance previously given to staff and why it was given, as Commissioner Carruthers' example fits in to that. Save The Bay asked us for more jurisdiction; specifically, jurisdiction to be able to say that we should have the authority to deny things that represent risk. And the Commission gave the staff guidance of "not at this time." And there were two reasons for that. One, it's not likely to occur. But more than that, it taints the benefit of having a series of good governmental recommendations made for other planning processes, such as the south bay flood control study, which is paired with the efforts to restore the salt ponds. So even though the Commission has no jurisdiction, the Commission's goals of restoring wetlands are fully integrated into that effort, as is sea level rise, through the Corps of Engineers work.

It illustrates the benefit of doing one of the things I'm trying to do, which is to convince the Bay Planning Coalition that there is not a lot of new stuff here. Instead, BCDC would make good governance recommendations to planning processes such as that one.

Commissioner McGrath added that the Bay Trail spine is integrated into those levees and the sea level considerations are being integrated into them, and that's a pretty good example of "we don't have to do it all ourselves, but if we make the right set of recommendations it'll get picked up." The Commission's influence is sometimes much more profound that its authority.

Commissioner Johnson stated that the Commission should consider incorporating language that is closer to the state's strategy. It really makes it a lot clearer, that significant new development shouldn't occur in low-lying areas where it doesn't already exist. And the

examples are the west part of Alameda and Treasure Island. Those are areas where development already exists. And that would help us keep development out where there is no development now.

Mr. LaClair summarized that most future development will likely be concentrated in the shoreline band, where the Commission currently has authority over public access and priority use consistency. Within the bay salt ponds and managed wetlands the Commission has greater authority to impose conditions. However, it is unlikely that much development will be proposed in these areas, except in limited areas such as Redwood City and/or Newark, and for bay fill for shoreline protection, public access, or to support the development of priority uses -- like ports and water-related industries, and so on.

For projects in low-lying areas outside the Commission's jurisdiction the staff would focus any efforts to comment on those projects, that could have an effect on San Francisco Bay. Under the Commission's consistency review authority, under the Coastal Zone Management Act, the Commission can influence projects in low-lying areas that would have an effect on the coastal zone, which is defined in your approved management program as the areas of your jurisdiction.

The proposed findings and policies also include a detailed description of a regional strategy for adapting to sea level rise. This policy statement is a call to action to the region to engage the Commission in developing a broad response that addresses the challenges we are likely to face along the shoreline from sea level rise and storm surge and we welcome your comments on this regional proposal – that is Policy 2 in the revised preliminary recommendation, starting on page 9 and extending through page 10.

In conclusion, the staff recommendation takes a middle course on a continuum of possibilities for implementing a precautionary approach to development in low-lying areas. The Commission could direct staff to craft a policy that would allow greater flexibility for considering development in low-lying areas. The Commission could take a more precautionary posture and discourage all development in low-lying areas. Or the Commission could modify the middle course that staff has proposed, and we welcome your comments and questions on the proposal and are anxious to hear more.

Vice Chair Halsted opened the floor for public comment.

Mr. David Lewis, Save The Bay Executive Director, began by stating his appreciation for staff's review of BCDC's jurisdictional considerations. It is very important background to keep in mind. At the last hearing Commissioners Nelson, Wieckowski, McGlashan, Goldzband, and probably others, encouraged the staff to refine the draft language in the direction of what Commissioners Johnson and McGrath just stated -- movement outside the jurisdiction and exercising the Commission's influence beyond where its authority lies.

Mr. Lewis stated that he wants to do that as well and wants to make sure that the Commission has in front of it the final language in the state climate adaptation policy, so he has distributed that today.

It's a strategy -- it's not a change in statute, it doesn't change BCDC's jurisdiction, and it doesn't change any regulations. But I view it as really strong. The bold language here is actually language that the state agencies working on this, including BCDC, have added since the draft policy was released. The added language does exactly what I hear several Commissioners suggesting and which Save The Bay has suggested in explicit language.

This language does two things. It says that especially in undeveloped areas – areas that don't fit with BCDC's definition of infill, they don't have streets, sewers, existing development already there – state agencies should consider prohibiting development of undeveloped, vulnerable shoreline areas containing critical habitat or opportunities for habitat creation.

So the salt ponds example that Commissioner Gioia was offering – BCDC has limited jurisdiction consistent with its salt pond policies, but these climate change policies could very appropriately -- and consistent with the new state adaptation strategy -- discourage development in those undeveloped areas.

The second thing these policies do more strongly than the draft did is to encourage restoration in undeveloped areas where that is a possibility. BCDC cannot require that an owner of a salt pond sell it or restore it to tidal marsh, but it can certainly encourage that, the way the state is doing.

So, I think the state has given you further encouragement to do what several Commissioners have already encouraged staff to do, and which we recommended a long time ago, having no knowledge of what the state would recommend in its policies.

Last, there is also a recommendation in the state adaptation policy for state agencies explicitly, including BCDC, to identify areas where their jurisdiction and authority should be clarified or extended as a way of managing sea level rise. So it's an indication of what BCDC is planning to do in phase two or three of this work, which is to say "we should have this kind of additional jurisdiction." That's new and I think that's encouraging.

Ms. Ellen Johnck, Bay Planning Coalition Executive Director, stated that at the last meeting she brought before the Commission a joint letter from Bay Planning Coalition and the Bay Area Council, and prior to that a joint letter between Bay Planning Coalition and Homebuilders Association. We said that there are many places in the proposal where, looking at it from a landowner-local manager perspective, some of the language looked like it was overly prescriptive and would actually impede local government from carrying out what it felt its responsibilities were under its risk management responsibilities, which includes risk averse, but risk management is a little different.

In an effort to provide you more direction on language in your proposals, Bay Area Council and Bay Planning Coalition, with the Bay Area Flood Control Managers Association, the League of California Cities, and the California Counties Association have formed their own task force. We are working towards discovering where your impediments, your obstacles that will further constrain what you are trying to do, are.

It's been slow but this is a complex and challenging subject. There are many factors at play here – the FEMA process for remapping, the FEMA bay tidal study, the whole issue of the adequacy of the existing protective devices and structures and their analysis, according to certain scenarios. There's the South Bay Salt Ponds Restoration Site, which I'm very much involved in. I'm trying to come up with some very practical things back to you and, if we can, get this done in January. That is our goal.

Commissioner Gioia commented that those of us on Boards of Supervisors know that we serve as the boards for our various flood control agencies and set the policies for flood control. The staff of the flood control agencies will be able to provide any technical information on flood control, but they are in no way in a position to recommend policy.

I want to be really clear on that. The staff of my flood control agency, the agency in Contra Costa, a great staff, will be able to help with technical issues but they're not going to set the policy. That policy is set by the Board of Supervisors in our county, which is the board for the flood control agency. And I think it's the same all around. Now, the Bay Area Council will make its policy recommendations -- it's a separate organization; and the Bay Planning Coalition. But the flood control folks should be making technical, not policy, recommendations.

Commissioner Lundstrom commented that she sits on a flood control district that recommends to the Board of Supervisors. However, she talked to the flood control engineers for Marin County and alerted them that they should at least analyze how any of these recommendations might affect them. So it's not just technical, but to say "I'm on the ground."

Commissioner Gioia clarified that they shouldn't be making recommendations about whether or not there should be development in an area. They can make technical comments about whether you can build things to protect areas. But the policy recommendation of whether there should be development or not is not up to a flood control engineer, that's up to the governing board. At least that's how it works in his county.

Commissioner Carruthers commented that in Santa Clara County they choose to be different; they have a combined water district and flood control district with its' own elected board and its' own funding base. So -- the Bay Area is a wonderfully complex place.

Commissioner Nelson remarked that -- to add on to comments from Mr. Lewis of Save The Bay -- the new adaptation language reflects how to improve a strong call for protection of undeveloped areas, and a call for support and restoration. At the same time, it recognizes that there will be a need to protect existing developed areas. This language calls for both protection and restoration of undeveloped areas and a recognition of the need to protect areas that are already developed.

Secondly, this document is quite similar to the climate policies we're working on here at BCDC because this document is not a legislative proposal, it's not a change in regulations; it's some broad policy language that provides some clear and strong and, in a number of cases, new guidance. And that's exactly the sort of thing we should attempt to do here. It doesn't resolve what's going to happen on the ground in a particular set of circumstances and it doesn't resolve some of the difficult issues that the Commission will have to wrestle with if anyone tries to change their jurisdiction – such as what's the definition of infill and so forth. I think that the language here is appropriate for the Commission to consider.

Mr. Andrew Michael, Bay Area Council, echoed Ms. Johnck's statement that they are working together to come up with appropriate language to help the Commission with the amendment.

Commissioner Smith expressed his concerns regarding timing; that timing is of the

essence and if something could be done in December that would be preferable to January.

Commissioner Kondylis mentioned that the Minutes referred to the definition of sustainability. Is it the standard definition used worldwide? Mr. LaClair responded that it is Finding Q on page 8 and it reads *"the principle of sustainability embodies conducting current activities in a manner that will avoid depleting natural resources for future generations and producing no more than can be assimilated through natural processes."*

Commissioner Carruthers noted that part of the anxiety that gets raised is caused by confusion over what policies BCDC will apply in its permitting processes in its jurisdiction, and what are the policies that are the basis for advocacy, where the Commission can't enforce policies but can take advocacy positions, in the community, and in regional processes. Is there some way to clarify that...? If people are read it and come to a different conclusion, we have to accept that as a fact and perhaps -- consider explaining, or modifying our language.

He added that he has been in the business for a long time and many times he or his staff would write something and think "it was clear and the public would say this seems to say something quite different" and we were shocked. Then we would have to clarify what we were trying to say. Then we would revise our proposals, after we've faced the challenge of other people not understanding what we meant.

Executive Director Travis responded that all of the policies in the Bay Plan are applicable in the areas where the Commission has jurisdiction, depending on what the jurisdiction is. And all of them are calls for good, thoughtful public policy in the area where we don't have jurisdiction.

Commissioner Carruthers added that one thing he pictured was a kind of preamble. The Commission is doing something here that is analogous to creating the Bay Plan in the first place and it's going to end up going through a process rather similar to what it did to get the Bay Plan adopted in the first place. In Santa Clara County we got all of the bay side cities to do a joint planning process while the plan was being created and that was very helpful. We did a conference. Along with Barbara Eastman, who was on this Commission long ago, we put on a conference for 650 people at Foothill College, at a day-long session on competition for the bay. There was a huge public information and education program that went on before the Bay Plan was adopted. Some of this is analogous to that, so I think the Commission has to accept some processes along the way that will make it impatient, but may be necessary in order to get out the other side with legislation or whatever.

Commissioner Carruthers continued by asking a question in a different area: There is Policy 2 on pages 9-10 – does staff have a picture of what that process will be? I want to ensure the cities and counties I represent, understand what this would mean for them" Are there any clues yet of how the Commission would go about making a regional plan? It would be helpful if we could somehow express briefly what that might look like.

Mr. LaClair responded that there are going to be a number of processes going forward to achieve what's articulated in Policy 2 and the Commission will be partners in some of them, it will be in control of some of them, and in some of them it won't be involved at all.

Mr. Carruthers wondered how the various cities that border the bay, who have the land use control now – will participants in whatever processes BCDC launches or stimulates, so we can have the buy-in of those cities and counties, otherwise no legislation will occur.

Mr. LaClair noted that the representatives to the Joint Policy Committee are primarily our local elected officials and some members of the Commission who are not local elected officials, and the Joint Policy Committee has embraced the policy proposals that the staff has put forward and said that they are interested in and willing to play a coordinating role in developing a regional climate change sea level rise adaptation strategy.

BCDC staff has not developed what the process would look like, has not gone to the next step to articulate what the steps in that process would be. We are working on a number of fronts to try and jumpstart that process by, for one, our local government assistance program, where we are conducting trainings in various cities and counties throughout the region to share the knowledge that we've developed thus far in terms of how governments go about conducting vulnerability assessments and devising adaptation strategies to respond to the vulnerabilities that they identify.

BCDC staff has also been working with the California Energy Commission (CEC) to try and do a regional science-based vulnerability assessment that would be a call to action. And we have been working with CEC and others to try and get funding to do this assessment, not just on sea level rise but on the range of vulnerabilities that the region will confront – on wildfire, water supply, food supply, and so on, to generate a regional call to action to get people motivated to begin confronting the challenges of climate change. With adaptation there's been a lot of good work done, and on mitigation in the region. There is plenty more to be done and staff feels like adaptation is doing a little bit of "catch-up" in comparison to mitigation. There are a number of fronts where staff is trying to put the pieces in place that could help articulate what a process for a regional strategy would look like, but I think it's premature at this time to say that we've got the answer.

Commissioner Gioia commented that he is comfortable with the recommendation, rather than the prescribed approach. And what Mr. Lewis from Save The Bay handed out is pretty sensational.

This issue will play out in other arenas. There's going to be a need for billions and billions of dollars of infrastructure to manage the problems we already have. New problems are just a tiny subset of the problems we already have. And if the Commission creates a series of policies that get evaluated in those processes – recognizing that local governments also have to balance the fiscal realities – I look at the proposed policies and say "you know, the Commission has already been pretty influential." If this set of policies apply to the expenditure of federal funds and state funds through local governments and flood control management it was worth the effort.

So, with that preamble, look how far we have gone. The questions in process for staff are "have you looked at this long enough, and do you see any need to tweak the recommendations that you're making to the Commission -- either for this or from other comments you've received, including from the Commissioners"?

Executive Director Travis asked if he could "take the pulse of the body politic," understanding that there is no vote today and Commissioners may change their mind. Here is the direction I propose we go: I'm hearing that you want the language refined so that it is much more consistent with the other language that we've drafted for the state. Discourage new development in undeveloped areas, along the lines that Commissioner Johnson and Nelson and David Lewis suggested. We would also continue to work with Bay Planning Coalition and with the Bay Area Council, and others, because we really do want this language to reflect as much as we can a broad consensus of the community in the Bay Area.

We're not going to be able to get that done in December or probably even January, so it'll probably be February or March before we come back to you, hold another public hearing, and see where we are then. And in your strategic plan you have asked us to draft legislation that would explain, as Commissioner Carruthers has asked, how this whole thing fits together. How does it work? And what we've suggested is, the best course of action is, to let's figure out what we want to do before we figure out how to do what it is we want to do.

So that would be the course of action that I would suggest. We refine the language, make it much more explicit that we're discouraging new development in undeveloped areas, work with the business community and see what their specific concerns are, and after all that bring it back together for a public hearing in two months or so. Then, after you develop that language and you're comfortable with it we'll craft legislation to carry it out.

Commissioner Gioia stated that he thought that was a good approach. The air district is working on draft CEQA guidelines with regard to health related, air quality issues, that would be considered by local cities and counties as they review developments. Does BCDC have the authority to do CEQA guidelines in that way? Does it, as a regional agency, have the authority to issue CEQA guidelines?

Mr. LaClair responded that, as he understands it, they would not be binding, but the Commission could do that but staff has not recommended this.

Commissioner Gioia followed up by stating that the reason he asked that is – as we all know, CEQA guidelines have a fair amount of impact, because if a local agency wants to approve something that violates some of the CEQA provisions, they have to make a statement of overriding consideration, which obviously makes the project open to more legal challenge. So it does have a practical import. They are advisory but they are significant.

If one of the things along this route was to develop CEQA guidelines that address development near the shoreline as a regional agency, the Commission is probably in a better position to do that with policy rather than with guidelines that may be issued individually and may be different across jurisdictions. I want to understand what our legal authority is, if we have the ability to issue CEQA guidelines.

Deputy Attorney General Reynolds verified for clarity that when "CEQA guidelines" are referenced, that is referring to the regulations that are promulgated by the Natural Resources Agency to carry out CEQA. BCDC does have authority to promulgate regulations but they would be regulations necessary to implement the McAteer-Petris Act, the Suisun Marsh Preservation Act, etc. So, it's the Commission's own laws. BCDC wouldn't itself be able to promulgate CEQA guidelines.

Commissioner Gioia noted that the air quality management district, which is a regional agency, is issuing its own CEQA guidelines – it's issued by the air district but would get utilized by cities and counties as they looked at various development projects with regard to air quality impacts. They are advisory. Could BCDC staff look into that? Because that may be an issue as the Commission looks to put more detail on this, how we want to approach development in areas where there will be sea level rise. Agencies will often look for guidance from another entity that would have more expertise and that's why the Air Quality District is doing it. So I'm asking if BCDC has the ability to do that with regard to bay shoreline development.

Commissioner Goldzband commented that, in terms of the process, the Commission needs to make sure that it doesn't give short shrift to whatever the work product is that is developed by the Bay Planning Coalition, Bay Area Council, and other public interests. The Commission would be heading into a disaster if we somehow, during the intervening time, did something which could be perceived as drafting language that would then cause there to be a row, or somehow needed to be altered or edited. He added that he is impatient with regard to completing this, but at the same time wants to make sure that, because the "and" is the most important word in BCDC's title, that the Commission is not either legitimately or illegitimately perceived as doing something in January or February that easily could have been done in February, March or April.

Executive Director Travis stated that this is too important to do fast and badly. BCDC staff isn't going to draft any language yet; we just wanted to get a sense of where the Commissioners were going. And when staff meets with the Bay Planning Coalition and Bay Area Council and the other groups we'll put it all together and then come back before you.

Commissioner Lundstrom noted that the understanding of when this is finally adopted – when you say "local government" and "flood control," flood control is voters voting for flood control projects. So it's extremely important that the public part of this, separate from government – when you do a launch date the public aspect of this must be very carefully explained so that if there is any type of flood control project, and most of them require local match, and most local match are folks assessing the project --. They must be convinced of it. That's the public component and it must be recognized.

Commissioner Carruthers reinforced what Commissioner Lundstrom said. For example, the flood protection cost in Santa Clara County will be immense; it is a gigantic project. So the public has to be convinced that this is all working together. Commissioner Carruthers also clarified something about his earlier comments -- he was not asking for legislation.

Commissioner Kondylis stated that over the years some parts of the Bay Plan haven't been amended with ten- or fifteen-year intervals and, because this is a moving target, is there anything in there that would force us to review this on an annual or bi-annual or tri-annual basis so the public will know that this is not written in stone?

Executive Director Travis responded that everything in the Bay Plan is always interim. Mr. LaClair added that the staff tried to embrace the broad range of policy sections in the plan that they thought were implicated by this issue and typically the Commission doesn't take up five policy sections at one time, like staff is proposing in this instance.

Mr. LaClair added that, the science will likely change over time and the projections will increase or decrease, depending on what happens with sea level rise. There is flexibility built into the proposal we have; staff is not proposing adoption of a specific standard per se; its recognizing that the conservative standard is 16 inches at 2050 and 55 inches at 2100 and that could change up or down. It's not a "chiseled in stone" standard.

Vice Chair Halsted remarked that this will come back to the Commission. It's very important and we want to get it right, and not too quickly.

12. **Briefing on Web-GIS Decision Support Tool.** In the interest of time and because the meeting was losing its quorum, the Briefing was delayed to the next BCDC meeting.

13. **Consideration of Strategic Plan Status Report.** Executive Director asked for a motion to change two of the deadlines in the Plan..

MOTION: Upon motion by Commissioner McGrath, seconded by Commissioner Nelson, the Commission unanimously voted to change the two deadlines.

MOTION: Upon motion by Commissioner Nelson, seconded by Commissioner Goldzband, the Commission unanimously voted to adjourn the meeting.

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

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

16. **Adjournment.** Upon motion by Commissioner Nelson, seconded by Commissioner Goldzband, the meeting adjourned at 3:45 p.m.

Respectfully submitted,

WILL TRAVIS
Executive Director

Approved, with no corrections, at the
San Francisco Bay Conservation and
Development Commission Meeting
of January 7, 2010

R. SEAN RANDOLPH, Chair