

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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July 23, 2010

TO: All Commissioners and Alternates
FROM: Will Travis, Executive Director (415/352-3653 travis@bcdc.ca.gov)
Mamie Lai, Assistant Executive Director (415/352-3639 mlai@bcdc.ca.gov)
SUBJECT: Approved Minutes of June 17, 2010 Commission Meeting

1. **Call to Order.** The meeting was called to order by Vice Chair Halsted at the Board Chambers, First Floor, Solano County Administration Building, 675 Texas Street, Fairfield, California at 1:04 p.m.

2. **Roll Call.** Present were Vice Chair Halsted, Commissioners, Bates (represented by Alternate Balico), Brown (represented by Alternate Carrillo), Gioia, Goldzband, Gordon, Jordan Hallinan, Lai-Bitker, Lundstrom (represented by Alternate Sanchez), McGlashan, (represented by Alternate Adams), McGrath, Moy, Nelson (represented by Alternate Ranchod), Reagan, Sartipi (represented by Alternate Richards), Shirakawa (represented by Alternate Carruthers), Thayer (represented by Alternate Kato), Wagenknecht (represented by Alternate Caldwell), Wieckowski and Ziegler.

Not Present were: Governors Appointee (Randolph), Resources Agency (Baird), City and County of San Francisco (Chiu), Department of Finance (Finn), Speaker of the Assembly (Gibbs), U.S. Army Corps. of Engineers (Hicks) and Association of Bay Area Governments (Maxwell).

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

Steve Vartan of the Napa Yacht Club asked the Commission for help on moving forward on their aquatic disposal of clean materials.

Jean Dolter, a resident of Fairfield, asked the Commission to think of the grade school children that are learning about the Patwin Indian culture and their relationship to the Suisun Marsh when they deliberate upon the marsh's future.

Alternate Commissioner Carruthers asked if BCDC should play a role in Napa Yacht Club's request for help pertaining to their dredging program.

Executive Director Travis replied that BCDC is working with the Club and that he was confident that the issues would be resolved.

Commissioner McGrath suggested that this item be agendized if not satisfactorily resolved. He also mentioned that an administrative permit could be appealed to the Commission.



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Executive Director Travis concurred and stated that the issue in all likelihood would be processed administratively.

Ms. Guidotti spoke about how monies were set aside for Suisun Marsh and disappeared.

Vice Chair Halsted thanked the speakers in turn and asked for any additional public speakers. Seeing no additional speakers she moved on to the draft minutes of the meeting held on May 20th.

4. **Approval of Minutes of May 20, 2010 Meeting.** Supervisor Kondylis had a correction to make to the minutes, on page 28 of the draft minutes where it talks about "Chevron, Vallejo and BP", it should say "Valero" instead of "Vallejo".

MOTION: Commissioner McGrath moved, seconded by Commissioner Lai-Bitker to approve the May 20, 2010 Minutes. The motion carried by voice vote, with nine abstentions.

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

a. **Election Results:** A number of current and former members of the Commission were involved in races this last election, last week's election.

Commissioner Bob Wieckowski won the Democratic primary in the 20th Assembly District.

Commissioner Rich Gordon won the Democratic primary in the 21st Assembly District.

Commissioner John Gioia also in the front row is reelected to the Contra Costa Board of Supervisors.

Commissioner member Susan Adams was reelected to the Marin County Board of Supervisors.

And Commissioner Brad Wagenknecht was reelected to the Napa County Board of Supervisors.

Commission member Beverly Johnson was defeated by former Commissioner Wilma Chan in the election for Alameda County Board of Supervisors seat, currently held by Alice, Commissioner Alice Lai-Bitker.

Former Commissioner Michael Sweeney was reelected Mayor of Hayward.

Former Commissioner Leland Yee won the Democratic primary in the 8th State Senate District.

Former Commissioners Jackie Speier, Anna Eshoo and Zoe Lofgren won the Democratic primaries in their bids to be reelected to the U.S. House of Representatives.

And former Commissioner Rod McLeod lost his bid to be elected to the San Francisco Superior Court.

I'm sure the Commission joins me in congratulating the winners and sending our condolences to the losers.

b. **Next BCDC Meeting:** Due to continued reduction in major permits both regularly

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scheduled meetings in July are cancelled. Therefore, the next meeting will be in seven weeks on August 5th.

At that meeting, which will be held at the Ferry Building in San Francisco, we will take up the following matters:

(1) We will vote on an application to expand the Potrero Hills Landfill in Solano County. That is the subject on which our public hearing is today.

(2) We will hold a public hearing and vote on the stipulated agreement to address enforcement issues at the San Pedro Cove Community in San Rafael.

(3) We'll hold a public hearing and vote on a federal consistency determination for the restoration of wetlands on Cullinan Ranch in Solano County.

(4) We will receive two briefings, one on planning for sea level rise along the Hayward shoreline and a second briefing on the history of oysters in the Bay.

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

c. **Ex Parte Communications:** No ex parte communications were reported.

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

a. **Personnel:** I'll begin by reporting on a rather bittersweet personnel matter. Caitlin Sweeney is resigning as our Chief Deputy Director effective the first of September.

She and her family have decided to embark on a wonderful adventure that starts with living in Costa Rica for a year and then advancing her professional career outside of state government. She set her own unique course. And now that she's leaving us we, again, face a situation of losing someone we can never replace.

But we will move on. And I'll keep you apprised of how we decide to best deal with this latest management challenge.

I am genuinely happy for Caitlin and admire her for making a decision that I'm confident will make her an even better and happier person.

On another personnel matter, we found an outstanding professional to fill the vacant position on our enforcement staff.

Tom Sinclair graduated from Humboldt State University in 1990 with a BA in Geography and a BS in Natural Resource Planning and Interpretation.

He worked for the Tahoe Regional Planning Agency for nine years.

And for the past ten years, he's worked for the California Coastal Commission where he was an enforcement officer in Santa Barbara and Ventura Counties, and in the Santa Monica Mountains including Malibu where he learned to deal with people with special needs.

Tom brings with him a well-honed set of enforcement skills. So, unless you have

objections he will be joining our staff in about a month.

b. **Subtidal Habitat Goals.** We sent you an announcement that the draft report on the San Francisco Bay Subtidal Goals Project was released for public review yesterday.

We've posted the draft on our website.

About 18 months ago we provided you with a briefing on this project which is a collaborative partnership between BCDC, the Coastal Conservancy, NOAA and the San Francisco Estuary Partnership to establish comprehensive and long-term vision for the subtidal habitats of the Bay.

The public review period runs through the end of July. A final report will then be prepared with recommendations aimed at improving research, restoration and management of subtidal habitats.

If you have any questions about this project, please direct them to Caitlin Sweeney at least until the first of September and then to Brenda Goeden of our staff, that completes my report.

7 **Commission Consideration of Administrative Matters.** On June 3 we sent you a listing which Bob Batha is available to answer any questions you may have.

Seeing no questions Vice Chair Halsted moved on to Item 8.

8. **Briefing on the Suisun Marsh.** Vice Chair Halsted introduced Mr. Steve Chappell. He reported the following:

I think the Suisun Marsh is really a treasure in our estuary that sometimes is overlooked between the Bay and the Delta with all the realities that go on today.

So from the Sacramento River and the San Joaquin, what makes it unique is that it is at the confluence of these two major river systems in California and the Bay.

Suisun Marsh is unique because it is brackish.

Suisun Marsh today is dominated predominately by diked managed wetlands.

It's the largest contiguous, brackish marsh in North America. It represents about ten percent of California's remaining wetland acreage.

The ownership of the Marsh is fairly unique as well. It's truly a mosaic of public and private ownership.

You can see the largest landowner on the Marsh is the California Department of Fish and Game. Another landowner is the US Navy at Ryer and Roe Island. The Suisun Resource Conservation District owns lower Joice Island, the Bocci Club Parcel there on the left if 1300 acres, and the Solano Land Trust owns almost 2,000 acres at the Rush Ranch facility.

There's 150 privately owned managed wetlands as waterfowl hunting clubs.

Some of the oldest waterfowl hunting clubs are along this railroad line through the Marsh. They go back to the 1880s.

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The history of the eastern area of the Marsh was different. It was diked and converted for agricultural practices.

At one time there was a 20,000 acre dairy in the Marsh that operated, and you have to think about where Suisun was in the estuary. It was between the gold fields in San Francisco. So it was right along the highway of the waterways that moved commerce.

The Marsh was the midpoint. So they would move products on and off of the island and supply these urban centers in the early turn of the century.

So there's a long agricultural history and a legacy. But as state and water projects developed, the salinities in the Marsh went up.

In the early '60s there was as a call by the landowners to protect the Marsh.

In the '70s the Suisun Marsh Preservation Act was passed. It resulted in the development of the Suisun Marsh Protection Plan and BCDC's policies and regulations.

In addition to that there were other regulatory steps taken including, in the late '70s, setting water quality standards for the Marsh to protect existing beneficial uses.

The California Department of Water Resources and the Bureau of Reclamation have a commitment to mitigate for the state and federal water projects' effects on the Marsh.

This was the plan of protection and there is a longstanding commitment or an agency commitment to ongoing activities and preservation of the Marsh as well as its quality of habitat.

Suisun is unique in its wildlife and we have extensive populations of endangered species in the Marsh.

Another thing that is really unique in Suisun is its proximity between the Bay and the Delta and its importance to native fishes.

We also have a lot of invasive species or non-native species that have been introduced, such as striped bass.

But the fisheries populations are very dynamic because of the brackish nature of the estuary.

One of the prime objectives that I deal with, with the private landowners, is managing the waterfowl hunting clubs for highly productive areas. We focus on resident and migratory waterfowl.

What makes Suisun unique is we are not in the Central Valley and we are brackish. We have available habitat.

We can provide habitat without using fresh water that's in high demand in the summer and provide habitats for the early migrating waterfowl. And if there's a severe drought we can put 50,000 acres of habitat on the ground that these species have become dependent upon in their migrations. So the diversity from site to site and region to region of the marsh is truly rich.

It's a huge patch of habitat available in the estuary.

One of the things I do have to point out is, for the diked-managed wetlands, levees are our critical Achilles heel. They protect these resources and maintenance of those and making sure that they don't catastrophically fail causing flooding and damage to the wetlands is always critical.

So to that I would like to shift one thing that you'll probably be seeing later in this year. I've been part of a process to develop a Suisun Marsh Plan.

It was initiated in 1999. We're hopeful it will go to the public, for EIR, EIF review in about six weeks.

The goal of the plan is to look at how we balance having new needs and objectives in the Marsh.

The one thing that I'm proud of, it is a multi-agency process.

We're looking for a public draft being out the summer of 2010 and finalized in the EIR this winter.

Vice Chair Halsted thanked Mr. Chappell and moved on to public comment.

The first speaker was Mr. David Marianno, a 76-year resident of Fairfield, and he thanked Mr. Chappell for his presentation.

Next Ms. Guidotti stated that Steve neglected to say how he was going to protect the Marsh. She voiced her dislike of the huge metal fence that prevents wildlife from accessing her property.

Ms. Guidotti went into detail on a letter of appeal she had written to Barbara Kondylis.

The next speaker, Mr. Guywn, mentioned that Mr. Chappell had received a \$350,000 grant from the landfill. He saw this as a conflict of interest.

Seeing no further speakers Vice Chair Halsted moved on to Item 9.

9. Public Hearing on Appeal No. 1-05; Potrero Hills Landfill, Inc., Modifications to Marsh Development Permit No. MD-88-09 for Phase II Expansion Project. Item number 9 is a public hearing on the application to expand the Potrero Hills Landfill which is located in the secondary management area in Suisun Marsh.

About five years ago we received an appeal of Solano County's permit for the expansion of the landfill.

In December 2005, we found that the appeal raised a substantial issue which required us to consider the matter before us de novo.

Our processing of this application has had to await the outcome of a lawsuit dealing with the EIR on the project.

That lawsuit has now been resolved so we can finally hold a hearing on the application.

As I mentioned earlier, we are not voting on this application today. The vote will come at our August 5 meeting.

Tim Eichenberg, our Chief Counsel will summarize the special legal procedures and policies that we must use in considering this application.

And Ming Yeung will then give us some background on the project.

Tim Eichenberg presented the following information:

Thank you Madame Chair. My name is Tim Eichenberg. I'm the Chief Counsel of BCDC.

And I'd like to give you a very short presentation on how the Commission reviews projects under the Suisun Marsh Preservation Act.

Normally the Commission reviews projects for consistency with the McAteer-Petris Act and the Bay Plan, but for projects located in the Suisun Marsh the Commission reviews projects under the Suisun Marsh Preservation Act.

Under the Marsh Act the Commission has original permit jurisdiction in the primary area of the Marsh and reviews such projects located in the primary area for consistency with the Marsh Act and the Marsh Protection Plan which was adopted by BCDC.

However, the Commission has appellate not primary jurisdiction in the secondary management area of the Marsh where the landfill is located.

The Commission reviews appeals of Marsh development permits in the secondary management area that are issued by the County for consistency with the Solano County Local Protection Program not the Marsh Act or the Commission's Marsh Protection Plan.

So it's the County's LPP which governs the action of the Commission in this case.

The Commission has accepted this appeal of the County's Marsh Development Permit for the expansion of the landfill in 2005 by finding that it raised a substantial issue as it's required to do under the Act.

The review of the project was delayed to prepare the Science Panel Report which you will hear reference to, and to resolve a ruling to set aside the County's certification of the Environmental Impact Report by the Solano County Superior Court.

Review of the project was resumed after the County revised the EIR and the Court approved the EIR on November 3, 2009.

On May 12, 2010 the Solano County Superior Court also ruled that Measure E which was adopted by the County in 1984 to limit the importation of out-of-county waste to 95,000 tons per year was constitutional and enforceable by the County.

However, the ruling did not enjoin or invalidate the County's Use Permit for the Marsh Development Permit for the landfill or the Commission's consideration of this appeal under the policies of the LPP. That's why we are holding this hearing.

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This litigation is described in more detail, along with the permit history in Table 1 of the Staff Summary.

And a closed session has been scheduled after the public hearing if it is deemed necessary by the Commission to confer with legal counsel on pending litigation.

The Commission is reviewing this appeal de novo. Therefore it is not limited to the information or issues raised in the County's Permit.

However, the Marsh Act requires the Commission to base its findings, as I said before, on the consistency of the project with the policies of the LPP as approved by the County and by the Commission.

The Staff Summary describes in detail the specific policies of the LPP relevant to this project and the corresponding findings that the Commission must make to determine that the construction and operation of the landfill will not have a significant, adverse, aesthetic or ecological impact on the Marsh.

This is required under Policy 4 of the LPP Utilities, Facilities and Transportation Section.

Ming will address these policies and findings in her presentation in more detail.

The staff summary is based upon information in the Environmental Impact Report, the Scientific Panel Report which I referred to earlier, the Draft Biological Opinion by the Fish and Wildlife Service and information provided by other public agencies, the applicants, the appellants and information presented at this public hearing.

The Commission should provide the staff with policy direction or questions that it needs to determine whether the proposed project is consistent with the Local Protection Program of the County, whether mitigation measures or conditions are necessary to make the proposed project consistent with this LPP or whether the project is inconsistent with the LPP.

After today's hearing our staff will prepare a recommendation based on what we heard today and your direction and we'll prepare findings for the Commission to consider at its August 5th meeting.

At that time a vote has been scheduled. Thank you.

Then Ms. Yeung gave an overview as follows:

Good afternoon Commissioners. I'm just going to give a little brief overview about the project.

The proposed project on appeal today involves the expansion of Potrero Hills Landfill onto an adjacent 167 acres within the secondary management area of the Suisun Marsh.

The site is located within a shallow valley surrounded by a horseshoe-shaped, grass-covered hill known as the Potrero Hills.

The proposed expansion area is currently used for cattle grazing and contains a drainage channel known as Spring Branch Creek, two stock ponds and a number of small seasonal wetlands.

I'd just like to provide a little background on the project site.

The existing 320 acre landfill site is also known as Phase 1.

Until 1984 Solano Garbage Company operated a local landfill on an approximately 70 acre site just north of the Potrero Hills and adjacent to the primary management area and Hill Slough.

This landfill pre-dated the adoption of the Suisun Marsh Preservation Act.

In 1984 Solano County approved the closure of the Solano Garbage Company and the relocation of the landfill within the Potrero Hills where an existing quarry operated.

This new site provided greater capacity and allowed joint use of the landfill and the existing quarry operations.

The Potrero Hills site also shielded the landfill out of public view, was further from the sensitive habitat of the primary management area and had improved environmental conditions.

Since its move in 1984, the landfill has grown and now accepts wastes from up to 28 counties.

The proposed project involves the expansion of the landfill, both horizontally and vertically.

In short, the project would expand the size of the landfill by about 50 percent and increase the height an additional 125 feet.

The project would also relocate a section of Spring Branch Creek and impact two stock ponds and several small wetlands at the site.

In addition, several new ancillary structures are proposed. These include, a new landfill gas-to-energy power plant, new overhead power lines and changes to existing power lines, a new water pipeline and storage tanks, a truck container washing facility, a visitor center and new sedimentation basins.

The project would also involve reactivating an old bypass land and vacating a County right-of-way easement.

Additional changes are some operational changes, changes in the processing of wastes, operation hours, night lighting and bird abatement services.

Mitigation and public access are also proposed as part of the project.

The staff believes the project raises six key issues.

The first issue is whether the proposed project is consistent with policies in Solano County's Local Protection Programs that address the landfill and the protection of the Marsh.

The Policies call for protecting upland grasslands and agricultural uses in the secondary management area.

But it also allows for existing non-agricultural uses to continue so long as they will not cause adverse impacts on the Marsh and are compatible with the preservation of the Marsh and

its wildlife resources.

The Commission should determine that the proposed project would be consistent with these policies.

The second issue is whether the project would have significant, adverse, ecological impacts on the Marsh.

The Commission should consider the project's possible impacts to special-status species at the site, corvid predation and groundwater withdrawal and determine whether the proposed mitigation for the project is adequate to address these issues.

Third, the Commission should determine whether the project would have significant, adverse, aesthetic impacts on the Marsh.

The Commission should consider the increased height of the landfill that would make the project visible from Highway 12, the proposed water tanks and berm located along the northern hills, the proposed new overhead power lines and increased night lighting.

A lot of these project components will be further fleshed out by Jim Dunbar in a minute.

The fourth issue for the Commission to consider is whether the project would result in adverse effects on water quality entering the Marsh.

The Commission should determine whether the proposed relocation of Spring Branch Creek is consistent with the Local Protection Program policies addressing disruption of runoff and the stream flow in the Suisun Marsh watershed.

Issue five is whether the proposed project is consistent with specific policies in the Local Protection Program that address the undergrounding of new power lines and the creation of new roads in the Marsh.

And finally, the Commission should also consider whether the proposed public access is consistent with policies for recreation and marsh access.

We've received a number of letters and emails on the project. All that we received prior to last Friday was mailed to you. Letters received since Friday have been placed in your folders.

And I'm available to answer any questions. If there are none at this time I will turn it over to Jim Dunbar, the landfill representative, for more project description.

Vice Chair Halsted introduced Mr. Jim Dunbar. And after a brief break Mr. Dunbar gave the following presentation.

Good afternoon, Madame Vice Chair Halsted, Mr. Travis, Commissioners and members of the Bay Conservation and Development Commission.

We are pleased to have our opportunity to present this important project before this Commission.

My name is Jim Dunbar, District Manager, Potrero Hills Landfill in Solano County. I serve as the Project Manager for the proposed Phase 2, Potrero Hills expansion project for which a Marsh Development Permit has been applied for.

With me are several members of our project team and senior managers from our parent company, Waste Connections Incorporated based in Folsom, California to support this presentation.

We appreciate the excellent presentation on the history and importance of the Suisun Marsh by Steve Chappell and the legal and procedural background of this project.

We recognize that this is an important project and we appreciate the hard work and coordination of staff.

Our presentation provides us with three key categories of information.

One, why the continued operation of Potrero Hills Landfill is a superior and safe site for resource recovery and disposal operations and why the facility is critically important to Solano County to northern California communities it serves.

Two, a summary description of the existing and, more important, of the proposed activities in the Marsh Development Permit.

And finally, three, an overview of the Marsh and wildlife protection elements of our plan addressing the issues identified in the staff report.

Potrero Hills Landfill is located east of Suisun City and south of Travis Air Force Base.

This project is important to Solano County for the benefits that are derived by allowing the landfill to operate as an environmentally sound, waste management and resource recovery disposal facility.

The facility is fully compliant with federal and state regulations regarding the design and construction of landfill containment and protection systems.

These regulations are known as Sub Title D at the federal level and Title 27 within the California regulations.

These regulations provide stringent and prescriptive performance standards which feature detailed design criteria, redundancies in containment structures and detailed monitoring systems, provide state of the art environmental controls and monitoring.

The Landfill is located in a superior geologic setting with hundreds of feet of natural clays which act as a barrier to prevent escape of any potentially harmful materials.

This natural liner material is enhanced with the combined use of modern geomembranes, heavy plastic liners, to provide a protective barrier to keep wastes in place together with environmental controls.

As you heard, in the 25 years that the site has been operating, groundwater remains unaffected by any leachate impacts.

Seasonal surface water flows and discharges are of better quality than upstream stormwater discharge.

Air quality impacts are reduced by best management practices related to equipment maintenance and dust control.

And greenhouse gas emissions are greatly reduced by destruction of the captured methane through the landfill gas system.

This expansion project was initiated in 2002 because of the need for a comprehensive, environmental investigation and review.

The initial EIR, the Environmental Impact Report was prepared in 2003 and 2004 and certified pursuant to CEQA by the County in September of 2005.

As a result of court rulings in response to litigation brought by site opponents the EIR was revised and enhanced over the ensuing four plus years.

Specifically the alternatives to the project and potential project effects on water use and air quality were thoroughly analyzed and studied with the Court finally deciding November of last year that the County's EIR was in compliance with CEQA in all respects.

The Court upheld the EIR and the Use Permit issued by the County.

Importantly for our purposes here as we come before BCDC the opponents of the project never developed any legal challenges to the EIR's evaluation of the biological impacts of the project under CEQA and the Court ruled in the County's favor rejecting unsupported claims in its first decision in February of '07.

This multi-year, review process involved many opportunities for extensive public and agency participation with a thorough environmental review of the potential impacts with the project by the Trial Court.

At the end of the CEQA review process Solano County granted a Land Use Permit and it noted that the Court validated the EIR was complete and compliant with CEQA, the California Environmental Quality Act.

Speaking directly to the site safety in compliance with regulations over the past many years Potrero Hills Landfill has had an exemplary regulatory compliance record with Solano County and the state of California.

Solano County is the local enforcement agency under state law providing direct and regulatory oversight for the facility and acting locally as an extension of the state's regulatory program managed by Cal Recycle.

This unique regulatory program provides regular and consistent inspections of the facility to ensure compliance with state and federal laws.

The results of these regular inspections highlight the quality of the site's performance in meeting and exceeding regulatory standards and requirements.

The landfill facility provides essential resource recovery, recycling and disposal services to Solano County.

The County also directly benefits by receiving fees from each ton of waste disposed at the landfill to fund the regulatory programs administered by the County LEA.

The LEA provides environmental oversight and inspection of county-wide, solid-waste management and related facilities.

The tonnage also assists the County in its efforts to reduce roadside dumping through police enforcement and clean up of illegal waste disposal locations.

The County receives substantial revenues through the General Fund which supports County services as a whole.

In total, including property taxes, the County may receive in excess of \$4 million for the various programs annually based on resupplying through the waste.

In addition Potrero Landfill indirectly supports County efforts with voluntary participation in the County-wide Tire Amnesty Acceptance Program, the Mower Exchange Program wherein we take gas-powered lawn mowers for electric recharge, broadcasting public service announcements, promoting environmental awareness and active participation in the County's solid waste taskforce.

The benefits go far beyond just the County. Our employees, are residents and homeowners in Fairfield, Suisun City and the County.

Our employees directly support the local economy by the nature of where they work and live.

The landfill is also a local purchaser of supplies and goods to run a successful business.

Our total expenses which go towards purchases and supporting local suppliers and businesses is approximately \$10 million each year.

A loss of operations of this landfill would not be replaced by any substitute business but there would be an impact to those people that would have to pay more for disposal of their waste materials, increases in greenhouse gas emissions, increased roadway wear and tear due to the longer miles the waste would have to be transported, the resulting loss of County revenues to support a basic County-wide services, the loss of jobs to our employees who would not be able to find similar work in their field of expertise and the loss of a community supporter and partner for the many organizations that we donate our money and volunteer our time.

The landfill fully accepts the responsibilities of being an environmental service provider and a center for resource recovery expertise.

Our customers are the residents, cities and counties that make up the greater San Francisco Bay area and extended areas north and east.

We promote, by our actions, the idea that environmental stewardship involves leaving a legacy that future generations can build on.

We do this by turning landfill gas, a potential greenhouse gas emission, into electricity by virtue of an onsite power plant.

We collect metals from old and unused or broken products so they can be made into newer or more efficient appliances.

We collect and process green and wood wastes for composting and biofuel which reduces the need and demand for virgin, wood-based resources.

We collect electronic wastes and send them to processing companies so that potentially harmful components do not end up polluting our waterways and open spaces.

Let me start by showing you a snapshot of our existing operations and overview of the key components of the landfill expansion project.

I will attempt to be brief with my discussions.

The landfill has safely and efficiently operated for over 25 years. And our proposed project would continue our current operations and allow our facility to serve the public for another 35 years or more.

We have proposed a number of new activities to increase the amount of waste diversion to generate energy from landfill gas and to enhance the efficiency and safety of our operations.

The landfill will increase in size both horizontally and vertically.

From the existing 190 acres on this side to a roughly a 215 acre area shown in the red outline there.

The height of the landfill will also increase from 220 feet to 340 feet above mean sea level.

These new landfill dimensions are fixed by the topographic features of the Potrero Hills area and the commitment to dedicate as much land as possible to environmental mitigation preservation.

An onsite drainage feature known as Spring Branch Creek will be relocated to protect its surface water flow characteristics.

Currently the creek runs through this portion of the property. It will be directed into this blue line here.

Our improvements to the drainage, including channeling and piping, will allow for a better flow as it leaves the landfill property and connects with other downstream drainage areas.

A landfill project, whether existing or expanding. Requires support facilities to meet the regulatory requirements of numerous agencies.

Our proposed expansion project includes these as well.

This will include a supplemental water storage and piping system located on the

northern property boundary, new sedimentation basin within the eastern protected area, vacating Scally Road currently. It's lined out as a county road through the property.

Continue bird abatement activities and alternative daily cover operation and waste solidification facility located throughout the project.

These Phase 1 facilities will also include within the confines of the current area the new water line extension, the by-pass road that was mentioned earlier parallel to the existing roadway, a truck and wash facility, a power plant facility along this area and a new visitors center located in our current administration area.

We have worked to minimize the physical size of our project and have structured a mitigation package that provides nearly six times the acreage that would be impacted.

This roughly shows what's happened over the years from the initial EIR where we were at a one-to-one landfill impact area versus mitigation. Through the process it has now grown so we have roughly 5.8 or 6 times the amount of property we're dedicating to mitigation.

The landfill has worked collaboratively with your staff and BCDC members from other resource agencies to significantly reduce project impacts and providing an unprecedented level of habitat compensation.

The landfill footprint has been reduced from 193 acres to 167 acres and mitigation lands have grown from 193 acres to 963 acres.

The Final Mitigation Plan has been designed to mitigate impacts to all biological and water resources impacts identified by the EIR.

An example of some of these would be the amount of land that we have proposed for the expansion of 215 acres has now been supplemented with the additional parcels for conservation easements shown in the lime green.

The southern hills area, the eastern valley area, part of our Griffith Ranch ownership and what is known as the Director's Guild.

Contra Costa Gold Fields are a federally-listed and endangered plant species.

No Gold Fields occur in the landfill expansion but one of the largest remaining populations are found at the Director's Guild site.

This photo was taken a few weeks ago and shows a site investigation being conducted by staff members from the Water Board, the Department of Fish and Game and the Fish and Wildlife Service.

With the careful management of the landfill since its purchase in 2002 I am happy to report that density of Gold Field plants at the Director's Guild site now numbers in the millions.

As you heard prior to this presentation, our project is within the secondary management area of the Suisun Marsh.

BCDC staff has raised a few issues that relate to allowing the landfill to continue with its operation.

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I will detail our compliance with each of these issues.

Issue Number One. Is the project consistent with policies protecting the Marsh?

Minimizing or offsetting potential impacts to the Marsh and its wildlife is a key element of our planning and design process.

Over the 25 year history of the landfill operations there have been no documented evidence of impacts to the Suisun Marsh as a result of construction or waste disposal operations.

As we propose to move to the next 35 year phase of the development the technologies have improved and the measurement of our performance has improved.

We believe the level of mitigation proposed to your Commission, the U.S. Fish and Wildlife Service, the California Department of Fish and Game and the Regional Water Quality Control Board will directly protect and enhance the Marsh and its wildlife habitats.

The ecological or interrelationship of success, resources, habitats and species is also a key focus of our mitigation plan.

Issue Number Two. Will the project have significant ecological impacts on the Marsh?

The Potrero Hills area offers us the opportunity to take measures throughout the life of the project that will reduce the impacts to non-existent or insignificant.

Our proposal is, in essence, a continuation and refinement of operations that have been conducted without environmental impact for over 25 years.

We have and will continue to work with the regulatory agencies responsible for the protection of water quality, protected species and other resources that would include all of these parties in the adaptive management of impacted lands.

Our mitigation areas will offer connectivity and enhance the adjacent properties.

We have carefully prepared our engineering and revegetation plans to provide screening during project construction.

This is Issue Number Three. Will the project have significant aesthetic impacts to the Marsh?

As your staff report notes the project EIR did not identify a significant aesthetic impact from the development of the project.

Recognizing that the sophistication of visual impact analyses has improved in the seven years since the initial project was issued.

We've commissioned an independent analysis to prepare an update of this project.

This view which you see here is a recent update of the report submitted to your staff. It shows the existing hills as they currently are and post-landfill development, the final cap will blend in as shown there.

The landfill expansion would use the same basic facility design that we have

successfully used in the existing landfill.

These designs separate the recycling and waste material, the leachate from water courses and contain and treat these fluids.

Issue Number 4. Will the project have any adverse effects on water quality entering the Marsh?

We have provided a Stormwater Pollution Prevention Plan modeled on our current one, successful to the Water Board staff.

And we look forward to working with them to obtain our Water Quality Certification very soon.

This image shows the upper reaches of Spring Branch Creek drainage. The only drainage that would be affected by the project during one of the short periods when it actually conveys water.

Following this, the following shows the water upstream of the prior photo about two months later in the year.

We see how it's basically been all, the grass is all dried out and all that's left is the dry soil.

As noted in the EIR this drainage area is of very low ecological value.

We do, however, provide complete compensation for the length of channel in this area as part of our plan.

The next issue. Will the project be consistent with policies for new electric lines and roadways?

The landfill is currently not serviced by any electrical service provider. Our neighbors to east and north are serviced by PG&E and some of these above-ground service poles and power lines are actually on our property.

As a result of the opportunity to produce renewable power from landfill gas it is necessary to bring power lines directly to the power plant location within the site boundary.

This is the entrance road leading into the landfill and along you see this fine wire here, that's an existing power cable from PG&E out in front of the landfill.

The added benefit will be to eliminate the need for onsite power generation and the resulting emissions.

In addition, this project will not require the development of any new roadways.

In fact, one roadway alignment will be subtracted as an existing county-identified roadway. The Scally Road extension through the Potrero Hills will be vacated as part of the project.

This view also shows the existing landfill access road as I mentioned. Parallel to it, kind

of in the shadow area, is the bypass road that could be used in the event of access problems from the main road.

This existing landfill road and the shoulder area of the roadway that are historically used as a quarry road but would be designated as an emergency bypass road.

The landfill expansion project is consistent with the Local Protection Plan Policy for new electric lines and roadways.

Next issue. Will the project be consistent with policies for recreation and Marsh access?

We have worked with BCDC staff and the Commission's Design Review Board to develop a safe and secure way of offering recreation and Marsh access within the limits of protecting the Marsh.

The first feature of recreation and public access is our developing relationship with Rush Ranch and the Solano Land Trust.

Potrero Hills Landfill has supported the efforts of the Trust for developing education and public exposure to unique areas within the County.

As part of this expansion project the landfill will dedicate an annual donation in excess of its partnership commitment to be used for promoting public access and recreational opportunities at Rush Ranch.

The second feature is our commitment to make available for future users an opportunity to view the regional landscape from one of the highest points within the hills.

This area is known as the southern hills and offers panoramic vistas from this area, from the Suisun Marsh and Mount Diablo to Solano and Napa Counties.

The third feature is a public viewing area on elevated land north of the current landfill.

This site is on the closed Solano Garbage Landfill, and it affords views of the Marsh, headwaters and unique views of seasonal plant life.

More regionally it also is situated towards the southern end of the Travis Air Force Base flight path and offers visitors a chance to see an active community partner and its connection with the security of our country.

The continuous take off and landings of large, military transport planes serve as an example of how a complex and broad ecosystem like the Suisun Marsh can co-exist and even thrive within the same confines as an industrial-military complex for over 60 years.

We feel that the landfill expansion and each of its related components has been thoroughly investigated, analyzed, reviewed and proven to be compliant with CEQA.

So in conclusion I'd like to present my conclusions for your consideration.

Number one. Over the past 25 years Potrero Hills Landfill has had an exemplary compliance record with Solano County and State CalRecycle.

Their regular inspections highlight the quality of performance in meeting and exceeding their specific regulations.

Solano County receives fees from each ton of waste disposed of at the landfill and these fees help the County promote its efforts to reduce roadside dumping.

In total we invest an estimated \$10 million each year into the local and regional economy.

Our project provides a stable, long-term source of disposal capacity.

Promote and encourage recycling activities.

Increase the efficiency of site operations.

Implement re-use, recycling and advance waste technologies and innovative uses of landfill related products including energy.

Our new Marsh Overlook would provide a unique addition to the Rush Ranch and Grizzly Island public access areas.

It would be readily accessible to the thousands of drivers who currently travel Highway 12 really without any knowledge of the Suisun Marsh, its beauty or its importance.

This following image was taken recently at the Grizzly Island Wildlife Area adjacent to our mitigation area.

The enhancement, adaptive management and protection of our mitigation lands will continue in perpetuity.

The protection and management of over 900 acres will add to the existing 1500 acres of the Hills Slough Wildlife Area and over 15,000 acres protected at Grizzly Island to form a contiguous block of over 17,000 acres of protected and managed Marsh habitat.

We have designed our project and mitigation program to be fully compliant with the Suisun Marsh Protection Plan and the Solano County Local Plan of Protection.

At this point I'm finished with my discussion. We're very happy with the work we've done with the BCDC staff.

We want to acknowledge the hard work and many years of work.

We're happy to take any questions at this time and I would like to reserve my comments for the end of the discussion.

Commissioner Carruthers wanted to know what was meant by Phase 3 in the presentation.

Mr. Dunbar answered that Phase 3 related to a power plant and it had nothing to do with Phase 3 landfill operations.

Commissioner Wieckowski commented: If we're sitting in de novo and we're only supposed to be looking at the SMPP and LPP it seems to me that that may be beyond our jurisdiction on this question to review CEQA since that's been dealt with by the Court.

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Deputy Attorney General then commented: You're correct that the Commission should be guided by the provisions of the Protection Program and you'll be determining whether the project is consistent with those policies.

You will rely on the EIR that was prepared by the County but you will also be required to make certain findings regarding mitigation of impacts that are identified in relation to your responsibilities for protecting the Marsh.

Commissioner Wieckowski asked: Do we get that second question after we determine that it has met or hasn't met the local protection plan or do we, I mean if we don't believe it met the local SMPP then why would we ever determine whether it was consistent with CEQA? But if we thought it met the Local Land Use Policy then after we did that would we look at it and say, is it still consistent with CEQA and somehow it wouldn't?

Deputy Attorney General Reynolds answered that if you decide not to approve the project you don't have to worry about CEQA.

Commissioner Ranchod disclosed that he holds a leadership position with the National Sierra Club. He felt he could be objective on this matter.

Vice Chair Halsted then moved on to the public hearing.

The first commentor, Ms. Thomas, opined that this whole thing was a disaster and she couldn't imagine how it got this far.

She felt the project would have a significant, negative impact on the Marsh.

Arthur Feinstein, the next speaker, stated that this should be an easy vote for the Commission because it doesn't pass the laugh test if you look at your Local Protection Policies and the SMPP. Of course, you're just looking at the LPP.

But if you ask the question, is there a significant ecological impact; how can you possibly say, no?

And so we think this is an easy one. Obviously it's not going to be.

Politics comes in and other considerations, but the factual basis is quite clear. Stream into pipe. Valley into hill.

Your own Science Team looks at this and says, ah, there's a habitat loss. Dr. Dave Shuford in your Science Panel Report says this.

Now you've heard how much mitigation is coming.

But again, your Science Panel Report says that even in the EIR, the EIR recognized that around the landfill and all of the mitigation land is within the secondary management itself.

That all the land around the landfill will likely change little in the future and hence cumulative impacts will be less than significant. That was in the EIR describing the lands that are going to be protected as mitigation for turning this valley into a hill and destroying that habitat.

So again, even in the EIR they say, the mitigation lands are not threatened. So where's

the benefit? Where's the mitigation?

When you're losing approximately 200 acres and you're gaining 0 acres because all the mitigation is already protected.

Mr. Feinstein mentioned that corvid predation of endangered and threatened species would be a problem as noted in Jules Evens, a well-respected biologist and that this was not included in the Staff report .

Supervisor Sperring said that he was in support of the project. He stated that this project is important to that regional infrastructure that serves the needs and challenges of both our cities and counties throughout the Bay Area.

The Potrero Hills Landfill is a regional resource. And it's part of the regional infrastructure, and not only serves Solano County but really serves many of the important needs throughout this region.

The landfill expansion is a critical component of our County Integrated Waste Management Plan. And so it's an integral part of that.

Mr. Steve Chappell stated that the Resource Conservation District supported the proposed project.

Mark Lillis commented that Potrero Hills Landfill has been a fantastic community partner. He asked the Commission to support the project because the community needs the help and a lot of good news.

Mr. Kenneth Browne stated that he supported the lawsuit to uphold the validity of Measure E and that he was against the modification of Marsh Development Permit number MD-88-09 to authorize expansion of the existing Potrero Hills Landfill.

Ms. Dilenna Harris considered Potrero Hills Landfill a model business partner and she supported the expansion.

Mr. Mike Ammann commented that the Commission should consider the growth of our mega-region and the continuing need for garbage disposal.

Scott Reynolds, the chairman of the board of the Solano Economic Development Corporation commented that the expansion would create jobs, public access, protect the environment and protect local government revenue.

He offered the full and continuing support of the Chamber of Commerce for the proposed expansion.

On behalf of the board of directors and over 600 members of the Fairfield/Suisun Chamber of Commerce, he strongly urged the Commission to approve the expansion of the Potrero Hills Landfill.

Ms. Ann Wall said that she was in support of the landfill's expansion request.

Mr. Kromm mentioned that he used to serve on the Solano County Board of Supervisors.

And when this process first started he was one of those evaluating and eventually came to a no vote on the expansion of Potrero Hills Landfill.

One of the key reasons of opposition to Potrero Hills Landfill's expansion is Measure E, which has been mentioned in passing here today.

He also mentioned that the EIR must change its project description due to air impacts from out of state waste and CEQA is dead silent on vector control.

He urged the Commission to vote no on this project.

Ms. Jane Bogner stated that she sits on the Solano County local task force for solid waste management. She hoped the Commission would consider all the new information and especially Judge Beeman's recent ruling.

Ms. June Guidotti discussed a transcript of a meeting held by the California Integrated Waste Management Board on December 15, 1989.

She mentioned that Solano Garbage Company had no permit in 1984 when they started building the landfill, and urged the Commission to deny the permit for the landfill.

Mr. Guywn mentioned that Solano County does not need to become the garbage dump of Northern California.

He mentioned that there have been problems with the landfill, in contradiction to Mr. Dunbar's assertion in his presentation.

Supervisor Barbara Kondylis stated that she was speaking on behalf of herself. She asked that the Commission consider this project almost as if it were a new, stand-alone project. And she stated that if the Commission did this they would not be able to approve the project.

The Suisun Marsh Protection Plan talks often about the need for expansion of the dump in the Marsh, only it was done so in connection with the grandfathering in of the original site.

She mentioned that the Commission as well as the Board of Supervisors are charged with looking at this project in connection with how it adheres to the Local Protection Plan.

And as a County Supervisor, and as an alternate on BCDC, there was no way that she could connect the two.

Supervisor Kondylis stated that this was just a devastating proposal. She listed a number of problems that the landfill had in complying with the Local Protection Plan including alternation o Spring Branch Creek, the prohibition against new roads, visual compacts, lighting, ferries, power lines, water quality, and birds.

She reminded the Commissioners that they were not just representing their jurisdictions but representing the people of the state of California.

She stated that it was really important to the state, to the nation and to the planet to preserve this very, very special place.

Mr. David Tam from SPRAWLDEF stated that the landfill industry is a declining industry. He also stated that many counties have significantly unused daily landfill capacities. His contention was that Solano County doesn't need this landfill because of unused capacity, especially after the discussion to uphold Measure E.

Mr. Roberto Valdez commented that he was not convinced that this project would not have significant adverse impacts on both the marsh-related wildlife and habitat within as well as outside the project area.

Mr. Boone, the president of the Northern California Recycling Center, stated that they supported the statements of Barbara Kondylis.

And he said that what we are engaged in right now in California is really a great conflict between light and dark about what is going to get recycled and what is going to the dump. He urged the Commission to deny the project.

Mr. Marianno stated that the Marsh has continued to decline over the years. And he stated that he commended Potrero Hills for what they have done in the community through their involvement but he didn't think they were serious about what they were doing to the environment.

He stated to the Commission that the Marsh is important to everyone and that they should consider that when they vote.

Mr. Robin Leong commented that there was corvid predation of the Least Tern, the Snowy Plover and the Salt Marsh Harvest Mouse.

He pleaded with the Commission to vote no on the Marsh Development Permit for Potrero Hills.

Vice Chair Halsted then asked the applicant if they would like to respond to any of the comments.

Jim Dunbar stated that they would like to respond after a short break to gather their thoughts.

After a short break Steve Peterson had the following to say:

We have been consultants to the landfill for many years and working with LSA Associates, Mr. Tim Lacey from LSA is here with me.

We've been working very closely with your staff. And I'd like to begin by complimenting your staff on how constructive the criticism has been.

We've had a lot of spirited discussions over many years and I think that at the end of the day our mitigation plan has been approved by their input.

But having said that I would like to respond to a few of the comments that were made related to the habitat preservation, the value of the Mitigation Plan, the Spring Branch Creek issue related to water quality and riparian and waters of the United States and the state of

California as well as speaking to issues related to corvids and predation of marsh birds.

I'd like to begin by talking in a general sense about what our Mitigation Plan will do.

As I mentioned we've been working with your staff. We've also been working with the U.S. Army Corps of Engineers, with the California Department of Fish and Game, with the U.S. Fish and Wildlife Service and the California Regional Water Quality Control Board.

We've been working very collaboratively to come up with a mitigation program that responds to all of their needs in protecting our resources.

So with that there's common threads and there's specifics related to the regulatory framework that we need to respond to.

The common threads are for the protection of land in perpetuity.

As you probably know within the requirements of most permits, there needs to be a dedication of lands and a guarantee that they will be there in the future.

Mitigation lands, in this case we're looking at the green areas here.

Again, the southern hills parcel up on the ridge top, this buffer area around the pond 5 area for the California Tiger Salamander.

The eastern hills which is a parcel that was added to the mitigation mix specifically in response to your staff's about the protection of grasslands.

The eastern valley which provides linkage between existing California Tiger Salamander ponds between the southern hills, the eastern valley and, hopefully, in the Griffith Ranch in the future. And then the Director's Guild site.

Something that all of these parcels share in our proposal as accepted tentatively by the U.S. Fish and Wildlife Service in a Draft Biological Opinion is that these lands would be monitored for a period of no less than 10 years.

We would give the results of the monitoring related to species and habitat improvements. And then if we are successful after those 10 years we would turn these properties over to a third party to manage in perpetuity including a monetary easement to make sure that the work is done on an ongoing basis.

So we're in the midst of negotiations to figure out exactly who that's going to be.

It could be either likely be the Center for National Lands Management or the Wildlife Heritage Foundation.

But nevertheless those are both recognized bodies that would ultimately take responsibility for these properties.

I'd like to take a second to talk about something one of our prior speakers said, Mr. Marianno, about Lawler Ranch and the loss of Lawler Ranch from the Marsh.

It's a perfect example of a contention that was made earlier that isn't true.

As you might remember the Lawler Ranch subdivision was once part of the protected

area. It was pulled out of the Marsh after that time by legislative act.

And that applies for just about any other area of the Marsh. While the Marsh Plan is a very robust and a very powerful body of law it doesn't prevent changes unlike this situation where we would actually change the title to land, that this land is locked up in a conservation, in conservation easement in perpetuity.

So that's the commitment that this project would make.

The other distinction to bring to your attention is that with this sort of conservation plan it's not just a matter of drawing lines on a map and letting it go. This area would be managed.

And we have a full Grassland Management Plan that would look to control exotic species from coming into the area.

We also have some contention, or some elements of the plan, which would actually improve the habitat by adding additional water sources for wildlife.

And also to have very good range management including putting different fences in different parcels so stock could be moved on and off the properties on a very good scientific basis.

A good example of that is on the Director's Guild. Since the company bought this property as Jim mentioned earlier we've been able to increase the number of Contra Costa Gold Fields there just by getting the stock on and off the property at the right times to get the other plants that are competing with the Gold Fields mowed down by the cattle at the right time.

So that's the sort of thing that would happen. So the contention that just locking up the property is not going to improve it isn't correct.

Basically there would be a management plan that would be conducted in perpetuity by a third party that's funded by the landfill to ensure that these habitat values are improved and kept improved.

The second thing I'd like to speak to is Spring Branch Creek. And I think you saw the slides earlier that spoke to, that showed you the Spring Branch Creek drainage, as it would be impacted.

In essence this is a discontinuous watercourse. It's not really a creek per se. It doesn't have any riparian habitat. It doesn't have any aquatic substrate. It doesn't support a fishery or anything like that.

In essence it's a swale that's carved itself in and it can base water during rainfall events and for a fairly short period afterwards.

As you saw in the two pictures in Jim's presentation you have, in essence, a wash that holds water and it evaporates out.

What the proposed project would do is to take some length of that drainage and put it in a pipe as it went around the landfill.

And when it got out of the pipe it would arrive at the old landfill, the existing landfill's trapezoidal channel which was permitted by Corps of Engineers and Water Quality Control Board permits back in the '80s into another sort of stilling basin.

And we've got quantitative data that shows that the quality of water leaving the facility currently is improved from what it is upstream.

So we would not anticipate any downstream effects from the Spring Branch Creek drainage.

The other thing to consider is that it's a very low quality, the source. But it is within the jurisdiction of the U.S. Army Corps of Engineers and the Water Quality Control Board.

We've been working with the folks from the Water Board who have been very helpful and we appreciate them coming as well today and also Dave Wicken from the Corps to come up with our mitigation for that stream length.

And what we would do on the Director's Guild is take this fairly low-value wash as it comes through here and we'd go to the Director's Guild and treat this new dark blue area which would be a sinuous channel that would increase the length of drainage and replicate what was there prior to the 1930s.

As you can see from this photo there's sort of a line that runs through the middle here. That's a ditch that was carved by farmers in the 1930s and it goes directly out to Hill Slough.

In an ideal world we'd be able to take that ditch out of commission and run a channel all through it but it does have habitat for lepidurus which is a zonal-pool, fairy shrimp. So we really can't mess with it.

So what we propose to do and what the Fish and Wildlife Service has agreed to, in concept in the Draft Biological Opinion, is to keep that ditch in place but to take some of the water out of this playa pool area.

It's actually split by Scally Road now, and then create a new channel section which would come through this area and go into this mitigation area which connects to Hill Slough Wildlife Area which ultimately connects to the Grizzly Island Preserve.

So with that we're actually providing high-quality channel that really helps.

As a side note, you'll see this feature going north and south through the playa pool. That's an old road that was kind of constructed during World War II, we think, from looking at the aerial photos.

And we don't know exactly what they were doing out there but they built this road.

So what we would be doing as part of our mitigation plan is grading that down and allowing the Gold Fields to come in and inhabit that so we have had even more habitat for the Gold Fields.

But nevertheless, Spring Branch Creek as it sits right now is not a high-value resource. What we would be supplying in compensation would be much higher value.

So basically, bird issues are very important in this part of the world especially with Travis Air Force Base contiguous with the landfill.

We've been working with the landfill for many years. In fact, I've been a consultant with the landfill since 1992 and probably the late '90s forward.

The landfill has worked collaboratively with Travis Air Force Base's biologists and environmental scientists to collaboratively try to control birds from doing a couple of things.

One is, being an issue for bird strike and aviation safety. That is, working with the Air Force's BASH Plan.

And then also, making sure we control the amount of seagulls that would be coming to feed on the landfill.

So starting about five years ago we joined Travis Air Force Base in having a falconer coming out and, in essence, hazing the birds using the traditional methods, including cracker shells and whistler shells and things like that but also flying the birds.

So what happens in a lot of cases is the Travis Air Force Base falconer will say, I've got some gulls up from the Air Force Base. They're coming your way.

And after a short time Steve Vasconellos who is this gentleman will lift the falcons and the seagulls will see them and it'll push them.

I think that the comments that Jules Evens provided are very factually based in many cases but not applicable to this situation.

What's going on at the landfill and what has gone on at the landfill is doing the right thing for managing gull populations and making sure they don't get out of control.

That includes keeping the working face small. Keeping the availability of foodstuffs very limited.

Keeping the amount of ponded water down so you don't have birds loafing in those areas.

And situations where you have birds that are loafing Steve has dogs that come out and chase them and get them airborne so the falcon can move them out.

As for the contention that noise is a problem, cracker shells have been used and pyrotechnics have been used for probably 25 years in this location as with most California landfills.

And the Fish and Wildlife Service and the Fish and Game Departments never have seen that as a problem.

But nevertheless, the contention is that from Jules Even's letter and Mr. Feinstein's testimony today that there is, and also the gentleman from the Audubon's contention that there is an issue related to corvid predation on Marsh birds, specifically the Least Terns and the Snowy Plover.

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This is not new information about those nests sites. That was reported quite a long time ago and your Scientific Review Panel acknowledged that in their findings.

One thing that may not be clear to you is that we have worked collaboratively with your staff and also your Scientific Review Panel to improve our project.

One of the ways this has happened is by running through various iterations of the Mitigation Plan.

We're currently on our third revision of the Plan.

And with the last two revisions we've included a lot of improvements that were recommended, including a provision recommended by Dave Shuford to have a Corvid Abatement Program as part of our Bird Hazing Program.

That Corvid Abatement Program is part of our Mitigation and Monitoring Plan currently.

And the way that would work as with the landfill's Seagull Control Program is there would be ongoing monitoring counts, sharing those counts with folks like San Francisco Bird Observatory and others, Audubon, Fish and Wildlife Service, Fish and Game and looking to a unified strategy to controlling the corvids.

There hasn't been any sort of problem identified by the Fish and Wildlife Service related to the predation of endangered species such as those two birds in their Draft Biological Opinion.

They reviewed our operations.

They reviewed our plans.

And we continue to be vigilant in controlling birds but at this point there's no smoking gun related to predation of shore birds, or excuse me, marsh birds, you know, by the operations of the landfill.

In the interest of full disclosure and as a side note, Jules is an excellent biologist.

And he's so good that he's actually working for our company as a subcontractor on another project.

But when I spoke to Jules about his submittal to Mr. Feinstein a few weeks ago and he was not aware of the fact that we had taken the recommendations of the Scientific Review Panel Report which he did review and we had put them into our Mitigation and Monitoring Plan.

So we think that that issue is largely addressed.

Again, I think when it comes to endangered species issues and concerns we need to rely on the input of the Fish and Wildlife Service and the Draft Biological Opinion.

And none of the issues that were brought forward today that I observed or listened to were of concern to the Fish and Wildlife Service.

That's my response. If there are any questions I'd like to try and answer them if I could.

Vice Chair Halsted stated that before taking Commissioners' comments they needed to proceed to close the public hearing.

However, she needed to make sure that the applicant was willing to waive the 21 day right to a vote from the Commission after the closure of the public hearing.

Mr. Peterson and Dunbar stated they were willing to accept the waiver.

Mr. Peterson closed his presentation by stating the following:

The 900 acres currently are not protected as many people stated. Only under our project will they become protected with conservation issues.

In response to some of the follow-up questions. There were comments related, quite a few comments related to Measure E.

The opponents have argued that import restrictions were a feasible alternative to the landfill however Measure E is not a change in the project.

In approving the EIR Judge Beeman ruled that the County could properly reject import restrictions such as Measure E because of their legal uncertainty.

This was stated verbatim in his opinion or in his ruling on October 14, 2008.

With respect to the question about composting. We currently have a Green Waste Composting Permit. We use it very limited. We basically respond to requests for composting.

Our most recent was from the city of Suisun. They conducted a community garden to help some of the citizens produce their own vegetables and greens.

We produced compost for that project and had delivered two loads, one in the Fall and one in the Spring.

However in the future our composting will expand as described in the project with a full organic mix of products.

And we intend to do that on a larger scale.

And finally, with respect to the water supply assessment and the question about water quantity, there was a water supply assessment that was redone in 2007 as part of the revised EIR with the cooperation of our neighbors except one.

Site water use does not affect the water levels in and around the landfill. And, in fact, the area recharges with rainfall replenishing the aquifer.

And I want to reference this 2000 study and make it part of the record.

And with that I will close. I'd also, we did have one speaker that could not come today, the Mayor of Fairfield, Harry Price. He did submit a letter of support and I want to include that with our package information to close out.

Vice Chair asked for a motion to close the public hearing. Commissioner Reagan moved the item and it was seconded by Commissioner Gioia. Vice Chair Halsted closed the public

hearing.

Commissioner Jordan Hallinan asked Mr. Feinstein to explain what he meant by "these lands are already protected."

Mr. Feinstein responded: All the lands posed for mitigation are within the secondary management area.

And your law says that within the secondary management area basically you can't do much except agriculture.

The only exceptions were, there were a few exceptions for existing uses that were not agriculture. And the landfill if it can be shown that the expansion of this landfill will not produce an ecological or aesthetic impact.

But those are the only uses that are allowed in the secondary management area which is, again, all the land proposed for mitigation.

Those are the only uses that can take place. So these lands do not face development. They do not face any kind of change of use other than an agricultural use which is usually compatible with these critters.

And so it's protected under your law. That's basically it. This is an anomaly in your law in that the landfill may expand if you can make that finding.

But for the rest of those 980 acres you can't do anything.

Now what the gentleman just said is, well, perhaps you can legislate a change. And, of course, that is possible. I can't deny that the Legislature could move. They could take away the entire secondary management area.

I think society has moved on a little bit. I think we've seen the Gulf people are now only thinking natural resources.

I think it could be much more difficult for legislation to come through and say, we no longer care about the secondary management area, let's put housing there.

But that's the only way that these lands are threatened with legislation.

You are their protector otherwise.

Did that make sense?

Commissioner Jordan Hallinan replied it could be either agriculture or more landfills if approved.

Mr. Feinstein responded, landfill only in this one restricted area in the 200 acres that are being proposed. Other than that, agriculture, yes.

Alternate Commissioner Adams added the following:

But what I understand our mandate to be is an alternate to this, and Supervisor McGlashan wasn't able to be here today is that we need to look at this proposal within the context of this protection act that was put into place and whether or not the proposal works

well within those, within that framework.

And when I was reading the documents there were a number of questions that I had.

There were definitely some positives like the methane capture and generating energy and a recycling program.

But there were also issues that weren't well addressed for me like what happens if there's a major earthquake?

I didn't see anything about the geology, seismic, if things rupture, the clay fractures, breaks.

What happens to the drainage or leakage in those instances?

The other issue is what is the impact of the night lights and noise for a 24/7 operation on the critters that are living there?

And then one of the other issues is how do we handle invasive species that are coming in as part of the trash?

Right now in Marin County we have three small areas of Goat Grass that are growing that we have to, that's a state plant that can't be spread because it'll ruin our agricultural industry. It's a nasty, invasive grass that's double-barbed. If it gets into cows' throats it suffocates them.

So with our agriculture we have a mission and a mandate by the state to eliminate that.

And we have to be really careful about how we handle that so that it doesn't get transported some place else and start another infestation.

And so one of the things that I didn't see in this was, how do you manage those kinds of invasive plant things that might come in as green covering your landfill from gardeners or whatever that might start an infestation.

And I didn't see the no project alternative. How that rated in relationship to the project that was proposed because I didn't have an opportunity to read the EIR.

I'm going solely on the documents that I received here today.

And so, one of the comments that was made about, you know, the garbage becoming a sort of an outdated program, in my county I'm dealing with a landfill issue ourselves, Redwood Landfill.

And we're also dealing with a rock quarry permit.

And there are always some unforeseen consequences or long-term implications for issues that are raised when we're not being very careful about how we're moving forward on changing land use issues.

And our Zero Waste Program, you know, we're trying to live by the mantra of reduce, reuse, recycle and rot and having our landfills be more processing areas for how to reuse, reduce, recycle and rot so that you're not having to build 350 foot tall hill where a valley used to

be.

And so, you know, when I'm thinking about this, I'm thinking in terms of what's coming, what the implications are going forward and I don't know that all of the questions have been answered for me if I were the one making the decision today to say, there's no problem and we've mitigated everything the way we need to in order to comply with our mandate that says we need to protect the Suisun Marsh.

So those are just my thoughts and I don't know if there's any responses to any of the questions that I've raised having not had the benefit of the EIR.

Mr. Dunbar responded to the comments as follows:

I believe the two major points were earthquakes and invasive species. Vice Chair Halsted added that night lighting was commented on as well as noise for critters. Mr. Dunbar responded by stating the following:

With respect to earthquakes. The landfill is designed in accordance with state standards for earthquakes.

The liner material is robust enough to handle the earthquake that would be projected for that site.

And the worst-case scenario because of the composite liner, the plastic and the hundreds of feet of natural clay we believe, and we think the state will agree upon review of our application, that that is not an issue.

That has been mitigated by the design itself.

Alternate Commissioner Adams asked: to what level of earthquake?

Mr. Dunbar responded: The standard for that area is a Category 4 according to the state categories of 1, 2, 3, 4.

With respect to night lighting even though we're asking for a 24 hour operation and this really the intent today to go to a full 24/7 but we have proposed by having the allowance of a 24 operation it maximizes the off-hour, non-drive times to eliminate growth congestion.

However, night operations are a possibility and lights are limited. We're going to be limited to the number of lights we're allowed to use.

They will be forced to go downward projection not upward. And if need be and it becomes an issue we will use tinted lights or covered lights to reduce any glare.

Mr. Peterson stated that invasive plants are a big concern in any operation where you have vehicles coming and going.

And in this case there are two different programs that would respond to that and make sure that it didn't come a problem.

Currently the mitigation lands that are on Potrero Hills land suffer from Pepper Weed being brought in from the Hill Slough Wildlife Area and we work with our partners at Fish and Game to try and control that but due to funding problems and prevailing winds it's pretty

tough.

So we know what we're up against.

But with that there are two basic plans that respond to it.

The first of which is the Grassland Management Plan that I alluded to earlier. And also as part of that we would be doing vegetative surveys on a regular basis to identify the infestation of invasive species early on to get a handle on them.

Typically in this kind of situation where we're dealing with endangered species such as California Tiger Salamander we would not do a broadcast application of any herbicide. We would do a wand application to make sure that it isn't broadcast beyond the plant that we're trying to eradicate.

But with that, the Grassland Management Plan is one piece of it.

The other plan that controls that is the Mitigation and Monitoring Plan proper by which we have to do vegetative surveys on an annual basis and report those findings to your staff, Fish and Wildlife Service, Fish and Game, Water Quality Control Board.

With that, if we do find a problem, what we would propose to do at the end of each year is come up with a remedial solution, a method to eradicate an infestation coming into any of the mitigation lands, coordinate that with the agencies that have purview over the permits and then move forward the following year to eradicate them.

If we weren't successful we'd have to report that. And we would keep working on it until it's controlled.

Commissioner McGrath added: I've got some suggestions for the staff.

As I think we all know, well-engineered and managed sanitary landfills are essential to urban life and the protection of water quality.

Whatever this Commission does with this application, approve it, deny it, approve it with conditions, I want to make sure that it's accompanied by the necessary reasoning so anyone can follow our analysis.

And it seems to me there's two stages that need to be addressed here in the staff report.

One is mitigation of the significant impacts and the second, if necessary, is possible consideration of alternatives.

Structurally what I recommend is for significant impacts we start with the 24, I had a little trouble trying to figure out what they all were and then how much of them were in our jurisdiction.

So this is how I would fix that. I'd like to start with the 24 significant impacts and screen out those that don't have a reasonable potential for ecological impacts.

There are some that would be significant in other arenas but they're not with our discharge.

I just want to see how those are parked.

Next, on those impacts that are of concern to the Marsh what I'd like to see is clearly establish the impact, the significant threshold that was used in the EIR, the mitigation measures that are proposed, the views of the relevant agencies who have expertise on those questions and the specifics of the Mitigation Monitoring Program.

My concern here is that all of the concerns that we have are mitigated below the point of significance.

I want to tell what that is and I want to have some ability to think about the risks of failure of a mitigation measure and then what?

How the program manages the risk.

The question here as I see it is whether or not we are confident when considering risks as well that all the mitigation measures takes those impacts below the significance level for ecological impact to the Marsh. That's our test.

There are some things that have been raised here where I think that's important, seasonal wetlands, vernal ponds, these are areas that are kind of hard to mitigate.

Corvids, some impacts have come up today. There's a line of reasoning, I want that organized clearly in a set of findings that we can follow.

Very clear statements by Commissioner, by Supervisor Kondylis about the impacts of lighting on aesthetics. I'd like to know how much lighting there is now and how that would change and what the significance threshold is for lighting and aesthetics, litter control and the like.

And then, finally, there have been some comments made about Spring Branch Creek that are very dramatic. Spring Branch Creek doesn't have a lot of existing value.

My question here is the prohibition against modification really quite so broad as some would think?

That, I think, would organize our ability to deal with it and try to answer the question of, do we have to look for alternatives.

While I am troubled with the idea that three-quarters of the garbage comes from outside of the County, that doesn't mean it's inconsistent with the standard as I recognize it.

It's only if that additional garbage, I think, triggers impacts that can't be mitigated then would we be compelled to look.

Our responsibility is to not to assure the success of recycling. That's not our job.

Our job is to protect the Marsh.

And I'd like to see that organized about what impacts were identified initially as significant, how they've been mitigated and then some discussion of that risk.

And then I think I'll have the information I need to make a decision.

Alternate Commissioner Ranchod commented the following: I want to thank the project proponent and everyone who took the time out of a beautiful afternoon to come participate in the public hearing. It really does inform, at least, this Commissioner's analysis of the decision.

And I think there really are two questions here. And I think this has been alluded to by others.

But the first is, does the proposed project conform with the County's Local Protection Program?

And then if it does conform with the program then given the Commission's obligation under CEQA of a responsible agency, is the EIR sufficient given some of this new information that is alleged to have come out recently.

On the LPP there are a number of issues that have been identified in the Staff Report by BCDC, the Scientific Review Panel Report and comments about potential ecological impacts of the project and whether the project then conforms with the LPP.

I'd like to see our staff further analyze some of these questions which bear on conformity with the LPP.

How does the diversity of habitats change as a result of the project even with the mitigation?

What ratio and level of mitigation is appropriate to offset the impacts for this particular ecosystem and habitat?

What quality and size of mitigation lands is sufficient for those impacts on the Marsh? Especially with respect to the shrimp in ponds 1 and 4, the California Tiger Salamander and the salt water intrusion from the withdrawal of groundwater at the well.

If the project does conform with the LPP and it's not clear to me at this time that it does, then we as a Commission have to determine whether the CEQA analysis that has been done is sufficient.

And as a responsible agency we have to reach our own conclusions on whether and how to approve the project, whether there are conditions that are required or not.

I'd note that the landfill, gas-to-energy project that's proposed is part of this requires a permit from the Bay Area Air Quality Management District according to the Staff Report.

And BAAQMD has indicated it may prepare its own supplemental CEQA document to evaluate air quality impacts.

I'd like staff to address that further including what the potential impacts are from any leaking methane or other landfill gas that may not be captured by the gas-to-energy system.

But the CEQA issue that we also, I think, need further analysis of is the service area for the project.

It appears or, you know, it's at least alleged to have expanded from the current service area that seems to be 150 mile radius primarily to include a significant stream from out-of-state

waste.

And it's not clear to me whether this represents a change in the project for purposes of CEQA.

If it does it would necessitate further CEQA review.

And it's also not clear to me that the increase in air emissions from the truck traffic associated with a greater service area or a change in the mix of the service area has been adequately evaluated in the current CEQA documents.

But I think as a Commission we're not yet ready to make a decision on this project but I expect our staff can address these issues and provide us with recommendations for how to mitigate or eliminate these impacts and comply with CEQA. Thank you.

Vice Chair Halsted then asked for a motion to adjourn to a committee. This was moved by Alternate Commissioner Carruthers and seconded by Commissioner Lai-Bitker.

Commissioner Gioia stated the following: I just wanted a process question to staff. And, again, I appreciate everybody coming today.

The summary to us identifies seven issue areas and has a fair amount of discussion in each of those and there's more information that came out today.

Is it the staff's intention to come back with further discussion and recommendations with regard to these seven issue areas? I just want to understand the process.

Ms. Yeung responded they were hoping to lay out all of the facts and information that we have to date.

On the issues, we hope to get some feedback from the Commission on how they felt about it and try to include the advice of the agencies that deal with certain species like, for instance, U.S. Wildlife Service's Draft Biology Opinion and also some of the opinion of the Jules Even's Report et cetera.

So I think we were trying to get some direction whether or not these based on the information that we have whether or not these raised issues with conformance with policies and whether or not they can be mitigated or if there's, you know, changes.

Commissioner Gioia responded: And that's when we'll come back then in the next report prior to the meeting in August. Were they going to be, was it going to be an additional hearing we would schedule with that additional information in these seven issue areas?

The Executive Director Travis interjected the following: No, we've closed the public hearing so our intention is to use the testimony we received today, further direction and questions from Commissioners, we hope, fully and adequately address all of those and deliver to you a recommendation for action on August 5th.

Commissioner Gioia stated: And then on page 5, and I think, Will, you talked about this at, this has come up before, on page 5 there's the BCDC Policy 7 which has some policy regarding the landfill that that last half of that paragraph.

But basically reading the language that, that basically development should not be permitted unless it can be shown, one, that no other practical, reasonably-accessible alternative to site to Solano County is available.

And two, that the construction and operation of such facilities would not have adverse ecological or aesthetic impacts on either the Marsh or adjacent uplands necessary for the protection of the Marsh and Marsh-related wildlife.

So, and it seems that the seven issue areas are attempting to address this so then any other policy questions so in any further discussion that particular standard will be addressed on the reasoning with any further recommendations.

Ms. Yeung responded by saying that policy is from the Suisun Marsh Protection Plan.

Commissioner Gioia responded that he understood that.

Ms. Yeung then stated the Staff Summary includes a history of the Plan and then the Local Protection Programs. So actually that plan which is not in the Local Protection Program which is the standard that we need to use to evaluate the project.

Commissioner Wieckowski commented the following: A lot of colorful testimony today but very difficult sitting in de novo trying to look at just the LLP.

My tendency was always to pretend I'm in San Francisco. I'm a Commissioner and I'm going to look at this project to approve it or not approve it.

So a lot of, I keep going back to pages 12 and 13 that have the language of the Suisun Marsh Policy and the LLP and there's language that talks about significant, adverse ecological and aesthetic impacts on the Marsh.

And those are what these voters voted on here in Suisun or in Solano County. And that's all I'm supposed to do.

I'm fighting with myself to be, to limit my focus of what I've heard today which has been very broad versus is this project going to have a significant or an adverse or ecological impacts.

Some of the testimony talks about, if I can focus on one thing, the aesthetic, because that seems to be the more flimsy of the, criteria that we can look at because there's no doubt that a 350 foot mound has some aesthetic impact.

We saw one visual that looked at, I imagine it's what it's going to look like when it's completely done. There's a cover and the native grass grows in versus the non-native grasses that currently exist right now.

I guess what I need from staff is, as this landfill is being produced or built what is going to be the aesthetic impact as the project goes along, not what it looks like at the beginning, at the end but as it gets built. Over 20 years how that, I understand there's some mitigation planned for the seagulls so I don't know what that is.

And I'm just looking for some help there.

The same, Supervisor Gioia asked when we look at the seven criteria, the ecological, I heard some testimony on the mitigation, the stream and the water quality and the, the stream, I forget what the name of the stream is now Spring Branch Creek. I don't know when I'm looking at seasonal wetlands and a creek that is not always wet how to use the criteria and how to score, I guess, is my concern.

When I'm looking at the land, the Local Land Use Plan. I know, I think I have an idea when I'm a BCDC Commissioner but I'm looking at what did these people vote on? What was this, what was the controls that they have?

Because I think I have the first question is, what is it not allowed under the Solano Land Use Plan, and I'm not sure.

The final, I guess the final observation is that there is some discussion over whether this expansion or the land use is consistent with the Solano Land Use Plan.

It seems to me the plain language is that that was an allowed use. I need some help on weighing whether the voters when they voted on this, they knew that they were going to have some sort of a landfill but whether that was anticipated that it would be this project that's coming forward.

And I don't know how to resolve that. I guess that's what we'll be talking about next month.

But that's some input on the background on the decision or the, the, when they were writing the ballot statement, what were they anticipating when they were saying, land use as an existing use?

Those are my questions.

Commissioner Reagan commented the following: I guess the question I got is on the top of page 13. It basically says that, again, the Marsh Act specifically may not preclude the future development of a solid waste disposal site at Potrero Hills if it can be demonstrated that et cetera, et cetera and we've already gone through that. And then we've heard the charge that we're restricted to what's in the Solano LLP.

And basically our charge is to determine if there's significant, adverse ecological impacts or aesthetic impacts on the Marsh.

And there's a lot of peripheral issues that are coming out that are not in this charge.

And so my, my request to the staff is as we move forward we filter out the things that don't relate to that and concentrate on the things for which this Commission does have authority.

Executive Director Travis commented: And we will do that and, the strict reading of the language in there, it says, that can be permitted only if shown will not have a significant, adverse ecological impacts or aesthetic impacts.

The interpretation of that is the development as mitigated. So I think that's very important.

It's not just what is proposed. It is how what is proposed with any necessary conditions can reduce the impacts to such a degree that they would not be seen significant.

Commissioner Reagan added that there are pages and pages of conditions and there is a 25 year history that we haven't had an ecological problem with a more primitive operation that is now contemplated.

And we haven't had a problem in 25 years of that. So I have a stretch to think that what we're contemplating which is a much more rigorous operational standard is going to create an ecological problem that hasn't occurred yet.

Commissioner Lai-Bitker thanked everybody for their testimony and thanked fellow Commissioners for their very thoughtful comments.

And for me I have a couple of thoughts.

One is, listening to the testimony, particularly one talked about how the truck had an accident on the S drive and spilled the, the oil. I'm trying to just remember, is that specifically relating to incidents at the property or the Marsh.

It made me think, I don't know whether doing the EIR process whether that was addressed. Because I'm seeing it is a beautiful wetland marsh land and co-locating with landfill, the fact that that adds some truck traffic, whether this is some kind of incidence that needs to be corrected, whether there are ways to monitor.

So I don't know whether that's already addressed before or not but that's something that makes me think about that.

And, and we talked about, you know, 900 acres of improved or protected land that with this project they would have it otherwise they wouldn't have.

So these are the things that I think that we're thinking about. It's something that I need to weigh and the whole thing about public access as well.

Mr. Boone mentioned about this being such a great experience for him and his family and how you would never forget that you were there. And he also said, not many people have the opportunity to experience that.

So, I wonder with this project, I saw the map. It talked about how it has public access. So I was just trying to learn more and balance more in terms of what this project means, the pros and cons.

And the bottom line is we are charged to evaluate on how to protect this Marsh.

And David Tam's testimony was interesting about how only 66 percent of the capacities are being utilized in the Bay Area in terms of landfill.

And I heard the applicant talk about the population growth. We're going to have 11 million more people.

So how are we going to integrate all these kinds of information to try to help us evaluate what we could.

Alternate Commissioner Carruthers had the following to say: Once again I'm again really impressed with the people that are on this Commission that can pose those challenging questions that we'd expect our staff to answer.

I really rely on the rest of you and of course the people that come to the hearings and offer their information.

I find this one one of the most challenging projects that we've had to deal with in a long, long time.

And I find the specifics of the environmental impacts, the specifics of the mitigations are hard to really comprehend.

I really appreciate Mr. McGrath's charge to the staff to make those clearer.

I want to make sure that the mitigations work and so I find myself troubled by the debate over the corvids and the seagulls, for example, and their impact on the birds and wildlife.

One gets a little thing, I wonder about all the fences that are being talked about, how do they impact the movement of wildlife? Do they relate to access to water courses or whatever?

I wonder about the, what is the impact of changing the valley into a hill? Does that change the hydrology or does will that change the availability of water rather than self change of habitat.

We've all talked about the other things that are really important so I don't have to.

The thing I find myself troubled with, Commissioner Lai-Bitker touched on. It's being brought to us and justified as a regional facility.

And yet I'm confused about the array of regional availabilities.

I'm confused about the array of regional needs.

And one of the things that troubles me about the proposal, and it's not the applicant's fault in any way, and that's the, the impact of this question over Measure E.

And we can say it lies outside our jurisdictions. But the thing I find myself always concerned about being in the position of possibly approving a project that because of its context in several years we'll be back seeking some sort of remedy because they've been presented with an untenable, ongoing business opposition.

So if they end up having to rely on shipping in refuse from Oregon and Nevada, I guess I feel really uneasy about being a party to setting that up as a need for them.

So I don't know what you do about that.

But I don't want to approve a project that, that has a substantial doubt about its own feasibility.

Commissioner Gioia stated: I think this whole issue of Measure E poses a lot of other issues that are not all, I mean, not all within our jurisdiction although are relevant issues to a

project.

I suspect we haven't heard the final word from a court on this because there's going to be further appeal and there are some who say there's been this position that the final resolution may be that Measure E is not constitutional.

So the question is, is that issue and that battle may go on for some period of time which is a separate issue that's sort of the charge that we're given.

So that's the complicating factor but I think we can't rely on the final decision of the trial court as being the final decision in the matter.

Deputy Attorney General Reynolds stated: I am hearing your comments and it sounds to me as if you already understand and that I don't need to insight you with that your decision is not guided by Measure E. You're guided by the Local Protection Program. And I also agree with Commissioner Gioia on what we have now is trial court decision that does not invalidate the Use Permit.

The issue of whether Measure E is constitutional will be finally decided later after appeals.

To the extent that it affects other issues related to your approval in terms of interpreting what might happen later, that might be something that you should discuss in a closed session.

Commissioner McGrath added: When this returns with a recommendation I would hope that the staff counsel and the Attorney General's Office could focus us right in our standard.

It is a little confusing whether or not the standard is simply significant impacts and how convinced we are that, the risks of failure are there or different, different bits and pieces out of the LPP have been suggested here as policy standards.

So I'd like that to be a little less ambiguous as to, this is the standard that you're to use.

These can perhaps guide your thinking about what is or is not a significant impact.

But the question remains this, that, that would certainly be helpful and, and in that light I don't think Measure E is, is our charge.

I think we might get there if we had to find that some mitigation measures were triggered only because of the greater volume of waste.

But absent that, if, if we can be quite satisfied that the standard of significant impacts and we're quite satisfied with all the mitigation measures then I don't think we get there.

But I'd really like that clearly laid out with legal advice so I'm not winging it.

Vice Chair Halsted then had the room cleared so the Commission could go into closed session.

10. Closed Session to Discuss Possible Litigation. After a brief closed session Vice Chair Halsted announced no action was taken.

11. Consideration of Strategic Plan Status Report. Executive Director Travis commented to

the Commissioners that they had been provided the first monthly update on the Strategic Plan.

The first report simply assigned staff and there is no action necessary.

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

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

14. **Adjournment.** Upon motion by Commissioner Wieckowski, seconded by Commissioner McGrath, the meeting adjourned at 5:15 p.m.

Respectfully submitted,

WILL TRAVIS
Executive Director

Approved, with no corrections, at the
San Francisco Bay Conservation and
Development Commission Meeting
of August 5, 2010

R. SEAN RANDOLPH, Chair