

San Francisco Bay Conservation and Development Commission

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TO: All Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
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SUBJECT: Approved Minutes of January 21, 2016 Commission Meeting

1. **Call to Order.** The meeting was called to order by Chair Wasserman at the MetroCenter Auditorium, 101 Eighth Street, Oakland, California at 1:12 p.m.

2. **Roll Call.** Present were: Chair Wasserman and Vice Chair Halsted and Commissioners Addiego, Bates (Represented by Alternate Butt – arrived at 1:20p.m.), Chan (Represented by Alternate Gilmore), Cortese (represented by Alternate Scharff), DeLaRosa, Gorin, Lucchesi (represented by Alternate Pemberton), McGrath, Nelson, Pine, Randolph, Sartipi (represented by Alternate McElhinney), Sears, Spering (represented by Alternate Vasquez), Wagenknecht, Ziegler and Zwissler.

Chair Wasserman announced that a quorum was present.

Not present were Commissioners: Association of Bay Area Governments (Techel), Department of Finance (Finn), Speaker of the Assembly (Gibbs), Contra Costa County (Gioia), U.S. Army Corps of Engineers (Hicks), City and County of San Francisco (Kim).

3. **Public Comment Period.** Chair Wasserman called for public comment on subjects that were not on the agenda.

There were no public speakers present to comment.

Chair Wasserman moved to Approval of the Minutes.

4. **Approval of Minutes of the December 17, 2015 Meeting.** Chair Wasserman asked for a motion and a second to adopt the minutes of December 17, 2015.

MOTION: Commissioner Wagenknecht moved approval of the Minutes, seconded by Commissioner Nelson.

VOTE: The motion carried with a vote of 18-0-0 with Commissioners Addiego, Gilmore, Scharff, DeLaRosa, Gorin, Pemberton, McGrath, Nelson, Pine, Randolph, McElhinney, Sears, Vasquez, Wagenknecht, Ziegler and Zwissler, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO", votes and no abstentions.

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5. Report of the Chair. Chair Wasserman reported on the following:

Most of my comments are going to be reserved for the beginning of the workshop after our formal session. We are facing a major problem. It is coming at us much faster than we think. The good news is that the general public decision makers are starting increasingly to recognize that.

On our next item I would request Commissioner Nelson to report on this morning's Bay Fill Working Group meeting.

Commissioner Nelson reported the following: The working Group had a terrific discussion with U.S.G.S. and the salt pond restoration folks about the challenges of adaptive management and how we need to use adaptive management in meeting the challenges we are facing, particularly sea level rise and the connection with things like wetlands restoration, marsh losses, sediment management and so forth; what the limits of adaptive management are and then to what extent we need to think about adopting new policies and modifying the Bay Plan and adopting new programs and how we need to look at transportation, restoration issues, adaptive management and a whole series of issues. As the working group that I chair considers to what extent BCDC need to think about formally changing parts of the Bay Plan in order to meet the challenge that we are going to talk about here today, we have plenty of work ahead of us. Following this meeting Zack and I are going to talk about how we make sure that we integrate what that Commission Working Group is doing with what this new body is doing. Please stay tuned.

Chair Wasserman announced: Next I would like the Chief Counsel Marc Zeppetello to provide us with a short synopsis of a new, interesting, relevant and, arguably, confusing Supreme Court decision.

Mr. Zeppetello addressed the Commission: The case that I want to talk about briefly is California Building Industry Association versus the Bay Area Air Quality Management District. It was decided unanimously by the Supreme Court in December.

The case concerns thresholds of significance that had been adopted by BAAQMD for conducting air quality analyses under CEQA. The Building Industry Association had argued that those thresholds of significance, which are referred to as receptor thresholds, that they were invalid because CEQA does not require an analysis of the impacts that existing hazardous conditions would have on a project's future occupants.

The Court of Appeal upheld the guidelines. The Supreme Court reversed although the Court did not get into the details of the specific thresholds that were at issue.

The Court granted review on a single issue which is stated as, under what circumstances, if any, does CEQA require an analysis of how environmental conditions will impact future residents or users of the proposed project?

The short answer is, agencies generally are not required to analyze impacts of existing environmental conditions on a project's future residents or users, but when a project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users.

In addition, the Court looked at a number of specific provisions of CEQA that apply to specific types of projects—airports, schools and housing projects. It said that in those situations, based on specific provisions of CEQA, agencies are required to analyze a project site's environmental conditions regardless of whether the project risks exacerbating those conditions.

The Court focused on one particular guideline. These are the CEQA guidelines adopted by the Office of Planning and Research and that relate to analyzing significant impacts. It upheld and found valid two sentences of this guideline and then two sentences it decided were invalid and went too far. I think it is helpful to put into context what the Court was doing just to read those two sentences.

The sentences that it upheld were: "The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into an affected area." "Similarly, the EIR should evaluate any potential significant impacts of locating development in other areas susceptible to hazardous conditions; for example, flood plains, coast lines, wildfire risk areas as identified in authoritative maps or risk assessments or land use plans."

The Court gave an as example of how it is appropriate to analyze a project's potential to exacerbate conditions; it gave an example of an abandoned gas station that might have MTBE contamination that is relatively localized and contained and a development would go in and disturb that contamination and spread it. The Court said that is an example of a project causing an environmental impact that would have to be analyzed.

Another example that I would give and more applicable to the work of BCDC is, if you had a project in a low-lying area subject to flooding along the Bay and a project proposed to modify the shoreline. It could be argued that by modifying the shoreline flooding risks may be increased.

So that would be an example of the project making a change and there would be impacts that could affect the people that would use or occupy the project.

The two sentences that the Court disapproved from the guidelines were as follows; that "an EIR on a subdivision astride an active fault line should identify as significant effects the seismic hazards to future occupants of the subdivision." "The subdivision would have the effect of attracting people to the location and exposing them to the hazards found there."

My take on that is that locating the project is not increasing the seismic hazard so the project is not changing anything that needs to be analyzed under CEQA.

The Court also noted in a footnote that CEQA does not prohibit an agency from considering, as part of environmental review for a project it proposes to undertake, how existing conditions might impact a project's future users or residents.

The Office of Planning and Research will most likely adopt an amendment to the CEQA guidelines to reflect this decision. Until then there is a lot of traffic on legal law firm blogs about what this decision means.

With respect to the work of BCDC I would comment that I think this decision is not really directly applicable to the issue that we are going to be talking about today in terms of sea level rise policies and what BCDC and the staff need to look at and analyze in projects.

The issue in the case was, under what circumstances does CEQA require an analysis of how existing conditions will impact future residents. It appears that CEQA considers the environment to be static. But we are considering the issue of the environment through the life of the project will be different than it is today.

The other comment that I would offer is that I think this decision does not apply where there is an independent basis of authority or support for looking at future conditions such as the Commission's policies that you will be talking about today.

So with that I would answer any questions or turn it back to the Chair.

Chair Wasserman asked: Are there any questions from the Commissioners? (He received no comment) I have one or two additional comments. I think it is important to note Marc's last comment. This is a CEQA case. It is not a case about regulatory power for agencies such as ours.

In our consideration of applications we do now and will continue to consider the effects of rising sea level on applications. This decision does not affect that.

It does affect what needs to be considered in the CEQA process, which generally is not a matter that BCDC is directly involved with. There are some plans where we need to know that CEQA has been done, particularly in some of our coastal consistency determinations and some others. We are rarely the lead agency.

There is a different point, again it does not directly affect us, but perhaps more indirectly will in the future; and that is the legislation adopted last year, which requires a new element in general plans to address existing and future hazardous circumstances such as the ones that Marc described.

This decision is not saying, you don't think about this. It is talking about legally where and how you think about it.

Thank you very much Marc.

a. **New Business.** Does anyone have any new business to propose?

b. **Next BCDC Meeting.** Our next meeting will be February 4th and we will be here at the MetroCenter and I will not be here. We expect to:

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- (1) We will consider a contract amendment for resilience work with ABAG.
- (2) We expect to have three staff briefings on the ART program addressing the ART Portfolio, the ART Shoreline Parks Study and a study on sea level rise and Bay tributaries.
- (3) We also expect to have a staff briefing from Caltrans on the Bay Bridge Pier implosion, which went very well.
- (4) We will have a staff briefing on sediment science.

c. **Ex-Parte Communications.** That completes my report. If any Commissioner wants to make an ex-parte communication report, now is the time to do that.

Commissioner Pine reported: I had a conversation with the head of the Design Tech High School that has a permit application pending.

Chair Wasserman announced: That leads us to the report of the Executive Director.

6. **Report of the Executive Director.** Executive Director Goldzband reported: It's great to see all of you and I hope that each of you celebrated a happy and safe New Year.

We are now in a hiring binge. First, I am pleased to let you know that Lindy Lowe has accepted the informal and unofficial position of "Acting" Chief Planner at BCDC while we begin the process of replacing Joe LaClair. I say "informal" and "acting" in quotes because there is no such thing in state personnel law. Also as part of the process to replace Joe, I have authorized a \$4,920 contract with Gina Bartlett of the Consensus Building Institute to provide us with facilitation services as we examine how the Planning Unit could and/or should be made more effective given its existing and projected responsibilities. You will remember that Gina is the facilitator who helped us with our Strategic Plan a few years ago; we want to identify the unit's organizational and leadership challenges and needs prior to interviewing candidates for the vacant chief planner position.

Also in the Planning Unit, I want to introduce you to Isaac Pearlman (stood and was recognized). Isaac earned his undergraduate degree in Environmental Studies and Biology from U.C. San Diego, which makes him a Triton, and his Master's Degree in Environmental Science and Management from the Bren School at U.C. Santa Barbara, so he is also a Gaucho. Prior to joining us, Isaac was a biologist in the Peace Corps and was a Sea Grant Fellow where he led a climate adaptation vulnerability assessment for the California Department of Parks and Recreation. Unless I hear any objections, Isaac will work on the Adapting to Rising Tides Program and the Policies for a Rising Bay project.

In our Regulatory Unit, Erik Buehmann of our staff has been offered the position of Coastal Program Analyst III in the Permit Section replacing Jaime Michaels who, in turn, replaced Bob Batha. Erik has worked in the Commission's Regulatory Unit as a Permit Analyst for over three years. In addition to graduating from law school at the University of Michigan, Erik the Wolverine also has a Master's degree in Social Psychology from Ball State University, making him the second most famous Cardinal I know, behind only David Letterman. Prior to

working at BCDC, Erik served as a law clerk for several judges in San Francisco and interned at the Coastal Commission. Unless I hear otherwise from any Commissioners, we shall make that appointment official today. Now, Erik's promotion leaves us with a vacant position in the Permit Section that we shall fill expeditiously.

Also in the Permit Unit, our newest coastal program analyst, Hanna Miller, has joined us as I let you know she would (stood and was recognized). You'll remember that she earned her B.S. in Integrative Biology at U.C. Berkeley and served as the Waste Audit Coordinator for Cal's recycling service. In addition, as a proud Golden Bear, Hanna has worked in various labs at Cal, at the University of Washington and at Scripps.

We also have two announcements in our Administrative section. Unless I hear any objections, we shall hire Alex Smith to fill the position of Administrative Secretary (stood and was recognized). Alex is a Gael from Saint Mary's College in Moraga where he received his undergraduate degree in Philosophy with the Great Books curriculum and his Masters of Art in Education. He has worked a great deal in the education field. Also, I am pleased that we have been able to promote Greg Ogata of our staff (stood and was recognized), who is our new Legal Secretary.

I want to close with one announcement and one recommendation. First, despite all the obstacles, we have finally and officially closed our books for last fiscal year – six months late due to the challenges we encountered along with the ten other state agencies who are using the State's new Fi\$CAL accounting system. Our Senior Accountant, Sebastian Sandoval is not here. He spent an inordinate amount of time in Sacramento with staff from Fi\$CAL, the Department of Finance and the State Controller's Office. He returned today from a well-earned vacation. Now we can start figuring out where we are financially this fiscal year.

Also, unless I am requested not to do so by the Commission, we shall move even closer to using the bare minimum amount of paper on which to provide you information. Starting in March, we will send to you by U.S. mail, only, our meeting announcements and agenda – and that is required by law to use U.S. Mail first class. Links to all other materials will be sent to your e-mail addresses. In addition, we shall strongly request all "interested parties" that participate in BCDC processes and actions provide us with an e-mail address so that we can send them information electronically as well. Of course, we shall send information via U.S. mail to any member of the public who does not have an electronic capability.

Finally, I shall continue to distribute via paper interesting bits of reading that I would urge you to read. Today we have distributed a very timely and well-publicized article from The New Yorker entitled: The Siege of Miami. This is about the challenges that Miami faces as waters lap into neighborhoods there. I urge you all to read it.

That completes my report Mr. Chairman and I am happy to answer any questions you might have.

Chair Wasserman inquired: Do the Commissioners have any questions? (He received no comment)

7. **Consideration of Administrative Matters.** The next item is consideration of Administrative Matters. Jaime Michaels is here to answer any questions. Are there any questions from the Commissioners? (He received no comment)

9. **Adjournment.** On adjournment, I am going to ask Commissioner McGrath to make a motion and Commissioner Nelson to second it – we expect to adjourn this meeting in memory of Sylvia McLaughlin.

Commissioner McGrath commented: Thank you for the opportunity. Nothing that happened with the genesis of this organization was an accident. It is truly a gift to have known Sylvia.

I once organized a kayaking trip and I had Sylvia in the front of my double kayak and showed what the Bay looks like from the perspective of me who spends a lot of time in it.

The incident that I want to talk about is illustrative of the qualities that she had. Sylvia was still driving in her 90s. We went to a meeting at the Port of Oakland and she drove down to my house and I drove to the Port. And on the way back I was driving down Telegraph Avenue and I was kvetching about a mutual acquaintance and Sylvia said one of the wisest things that has ever been said to me. And she didn't even remember it because these things fell off of her lips like pearls. She said, "I always get along with people. It's rather easier than not, isn't it?"

That was just the graceful touch that she had both for people and for me who needed that lesson.

I am going to ask that we adjourn in her memory. She was the same age as my mother but she lived 14 years longer. We were blessed.

Commissioner Nelson spoke: Sylvia was the founder of Save the Bay along with Kay Kerr and Esther Gulick. Sylvia was the last one that we lost. We lost Kay in 2011 and Esther in '95.

I want to reflect on a couple of things. The first thing is, it is hard to remember how different the world was in 1961 when they started, Save the Bay. It was a decade before Earth Day. It was before the publication of Silent Spring. The modern environmental movement did not exist in 1961. They invented the coastal protection movement. There was no coastal protection movement anywhere on the planet.

I had the pleasure of working with Sylvia for 15 years. I worked for Save the Bay for many years, nine of those years as Save the Bay's first Executive Director.

Sylvia, Kay and Esther really were a team. They were often called, The Three Ladies. They were a remarkable force. Sylvia had qualities that are important not just for environmental leaders, but for leaders in any field.

Sylvia had the vision to look at a Bay that was shrinking by 2,000 acres a year and see a Bay where we stopped Bay fill, where we created BCDC, where we have hundreds of miles of shoreline parks, where we have an East Bay Shoreline Park that is now named in her honor. And she saw that before there was a modern environmental movement, and before there was a coastal protection movement anywhere in the country.

She had the optimism to believe that she could achieve that vision. Hal Gillian the journalist once said that Sylvia, Kay and Esther did not know that what they were trying to do was impossible, so they just went ahead and did it.

Sylvia was one of the most optimistic people you have ever met. She had the energy, commitment and the love for the Bay to stick with that fight for more than 50 years. This was an absolutely astonishing level of commitment. Sylvia had the willingness to sit down and work with anyone from any perspective in order to find common ground. Those are really important qualities for us to remember and particularly important for us to reflect on at this moment as the Commission is wrestling with a real new generation of challenges. I think this is a really important moment to reflect on the qualities that Sylvia brought to the table half a century ago because we have an opportunity for that kind of leadership to face the sort of challenges that we are discussing today. I am thrilled to second the motion to adjourn in her memory. Thank you.

Chair Wasserman commented: I have no doubt that there are others who would have comments. In the interest of time I would ask anybody who wants to submit comments to do so and we will include them in the minutes.

I would ask for a vote on the motion to adjourn. The Commission adjourned by a voice vote with no objections or abstentions.

Upon motion by Commissioner McGrath, seconded by Commissioner Nelson, the Commission meeting was adjourned in memory of Ms. Sylvia McLaughlin at 1:40 p.m.

Chair Wasserman added: All Commissioners present have approved a motion to adjourn in recognition, memory and appreciation of Sylvia McLaughlin. That concludes the formal meeting.

Respectfully submitted,

LAWRENCE J GOLDZBAND
Executive Director

Approved, with no corrections, at the
San Francisco Bay Conservation and
Development Commission Meeting
of February 4, 2016

R. ZACHARY WASSERMAN, Chair