

San Francisco Bay Conservation and Development Commission

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March 9, 2018

TO: All Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
Sharon Louie, Director, Administrative & Technology Services (415/352-3638; sharon.louie@bcdc.ca.gov)

SUBJECT: Approved Minutes of February 1, 2018 Commission Meeting

1. **Call to Order.** The meeting was called to order by Chair Wasserman at the Bay Area Metro Center, 375 Beale Street, Board Room, First Floor, San Francisco, California at 1:05 p.m.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted, Commissioners Addiego, Chan (Represented by Alternate Gilmore), Jahns, McGrath, Nelson, Peskin (arrived at 1:17 p.m.), Pine (arrived at 1:13 p.m.), Ranchod, Randolph (arrived at 1:07 p.m.), Sartipi (represented by Alternate McElhinney), Sears, Showalter, Spering (represented by Alternate Vasquez), Techel, Wagenknecht and Zwissler.

Chair Wasserman announced that a quorum was present.

Not present were Commissioners: Association of Bay Area Governments (Butt), U.S. Army Corps of Engineers (Bottoms), Santa Clara County (Cortese), Department of Finance (Finn), Speaker of the Assembly (Gibbs), Contra Costa County (Gioia), Sonoma County (Gorin), State Lands Commission (Lucchesi), U.S. Environmental Protection Agency (Ziegler).

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 January 18, 2018 Meeting.**

Chair Wasserman asked for a motion and a second to adopt the minutes of January 18, 2018.

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

VOTE: The motion carried with a vote of 16-0-0 with Commissioners Addiego, Gilmore, Jahns, McGrath, Nelson, Ranchod, Randolph, McElhinney, Sears, Showalter, Vasquez, Techel, Wagenknecht, Zwissler, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO", votes and no abstentions.

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

a. We had a very vigorous and informative discussion with our Financing the Future Work Group this morning. We are getting very close to providing the outline for the next stage which will be Commission workshops on ways in which we can finance what we will need to do.

Commissioner Showalter wisely pointed out that when we have that discussion and when Commissioners are talking about funding capital projects we need to talk about funding the planning that will be necessary to get all this done.

All of these issues are wrapped together and we spent a fair amount of time talking about education and communication which will be the next wave coming forward. We are just starti working groups on these two fronts.

This last Friday I spoke to the group of congestion-management agency executive directors throughout the Bay Area about what we are doing. They were interested, receptive and excited. As we move towards the Regional Adaptation Plan those county entities may play a very significant role.

The Sonoma County Agency has already combined the transportation issues with sustainability issues and is leading the way. They are an important link in expanding the funding issues and assisting us in this endeavor.

I do have to let you know that the Majority Leader of the State Senate has decided to replace his current appointee, Barry Nelson, with a new appointee – Teresa Alvarado, of San Jose, who is SPUR’s Executive Director in the South Bay. We all can agree that Barry has done more than yeoman’s service on BCDC’s behalf during the past 11 years that he has served on this Commission; most recently as Chair of the Bay Fill Working Group.

He brings a wonderful combination of real commitment, technical knowledge, passion for our issues and passion for equity. That has been very, very important for in his comments here as well as in that Working Group. While we are sad to lose him as a Commissioner, I pretty much guarantee that we will continue to use his expertise and insight as we move forward during the next few years. Fortunately, we have Barry for at least this meeting and, at the proper time, I shall ask for a motion to adjourn in his honor.

We are all appropriately and understandably and increasingly sensitive to work place harassment. Furthering our commitment to anti-harassment training I encourage each of our Commissioners to complete such training in there local jurisdictions or elsewhere if they have not done so.

b. Next BCDC Meeting. We will not have a meeting on February 15th. Our next meeting will be held on March 1st.

c. Ex-Parte Communications. This is the time to put any ex-parte communications on the record if you want to. Keep in mind that you have to file them in writing. (No ex-parte communications were reported)

6. Executive Director's Report. Executive Director Goldzband reported:

Thank you very much Chair Wasserman. Every now and then, putting together an agenda for a BCDC Commission meeting is tricky. In December, our preliminary agendas for the first half of this year were stuffed and I was concerned that we would not be able to accomplish everything that we needed. Now, we are faced with a short meeting today and, perhaps, no meeting in two weeks. Staff schedules Commission meetings around the different agenda items that require votes, as those issues, mostly, require more time and their disposition are precious to their sponsors. While briefings are no less important and are beloved by those who provide them, I have been told many times that Commissioners prefer meetings that include a mix of regulatory decisions and policy discussions.

I am also aware that many people favor the George Burns approach to meetings: "The secret is to have a good beginning and a good ending and to have the two as close together as possible."

a. Budget and staff. I had planned to provide the Commission with a budget briefing today but we haven't quite yet finalized our mid-year projections, so I shall do so the next time we meet. I do have some good news, however – the difficulties that we experienced with the Department of Finance and the State Controller's Office regarding our provision of cap-and-trade funds appear to have been resolved. We expect to receive those funds either tomorrow or early next week which will put us on a path to start (and expand) some notable projects. I'll detail that spending plan in my budget report.

We are happy to let you know that Andrea Gaffney, our Bay Design Analyst, has found an intern to assist her. Kate Lenahan earned her undergraduate degree in Art and Art History from Sarah Lawrence College in New York and is earning her master's degree in Landscape Architecture at Cal – which makes her both a Gryphon and a Golden Bear. Her thesis is on the intersections of rising groundwater and underground contamination and regional, sea-level rise in the Bay Area. She has assisted Resilient by Design and DredgeFest California. We expect that she will join us next week.

b. Policy. At this time I want to introduce Erik Buehmann who will report on BCDC's leadership and participation in a successful Rebuild by Design event for its ten teams.

Chief of Federal Consistency and Permits Erik Buehmann addressed the Commission:

Last Wednesday, January 24th, BCDC staff participated in the Resilience by Design Challenge Regulatory Office Hours. The ten Resilience by Design teams who had been chosen to participate in the event met with BCDC staff and some of your sister agencies. State and federal representatives were present as well as other stakeholders; Bay Trail, Water Trail, the Water Emergency Transportation Authority who run the San Francisco Bay Ferry.

We had multiple tables and each agency sat at a table. Each of the 10 project teams spent 15 minutes at each table asking questions, bouncing ideas off of the agency staff and it was a fun experience.

We answered a lot of questions and I was present and Andrea Gaffney was present. Brad McCrea was emceeding the event. Our goal was to be a resource to the teams. We answered a lot of questions about our jurisdiction. We dispelled some misconceptions about BCDC's laws, policies and rules about fill.

Several projects were interested in the process that you began last year to amend the Bay Plan to examine policies related to fill for habitat and also the Bay Plan Amendments focusing on environmental justice.

It was great to see that the teams had prioritized public access in a fundamental way. It was a fundamental priority for most of the projects.

Several teams were working on enhanced modelling that could consider tidal flooding, fluvial flooding and stormwater all together.

The most inspiring thing for me was that several projects focused on breaking down barriers some communities have to the Bay. This will allow us to engage these communities and allow them to have informed conversations about adaptation and resilience.

I am happy to answer any questions.

Executive Director Goldzband continued: I had meant to bring a plaque that BCDC received about six weeks ago from the Federal Highways Administration. BCDC received an award a couple of months ago for the Commission's role in helping Caltrans move forward with its timely and creative response to removing the old piers that once supported the old east span of the Bay Bridge.

Our former permit analyst, Tinya Hoang and Rafael Montes, our engineer, accepted this award on behalf of BCDC. And, to prove that no good deed goes unpunished, you will soon hear from Rebecca Coates-Muldoon who has replaced Tinya on the Caltrans beat about the upcoming plan to keep some of those piers in place.

I do have one piece of sad news to report. Some of you will remember Myrna Carter, who was hired by BCDC in 1966 and retired a few months before I was hired. Myrna worked for BCDC for 46 years and retired as our Legal Secretary. Myrna passed away on Saturday. Fortunately, a few of our staff were able to visit with her last week beforehand.

That concludes my report, Chair Wasserman, and I'm happy to answer any questions you may have.

Chair Wasserman asked: Questions for the Executive Director? (No questions were voiced)

7. Consideration of Administrative Matters. Chair Wasserman stated there were no listings on administrative matters.

8. Public Hearing and Possible Vote to Commence the Rulemaking Process to Revise the Commission's Permit Application Fees. Chair Wasserman announced: Item 8 is a public hearing and possible vote to initiate the rulemaking process to revise the Commission's permit application fees. Chief Counsel Marc Zeppetello will present the staff recommendation.

Chief Counsel Marc Zeppetello addressed the Commission: On January 26th you were mailed a staff report and a recommendation to commence a rulemaking process to revise the Commission's permit application fees that are in your regulations at Appendix M. A copy of the current version of Appendix M is attached to the staff report.

The existing regulation was adopted in that form in 2008. The fees are categorized by type of permit application; major, minor, region-wide permit, and our fees are also based, particularly for large projects, they may be based on the total projects costs.

The fees were established in 2008 and earlier with a goal of seeking to recover approximately 20 percent of the regulatory program costs or permitting costs. The regulation provides that the fees are to be recalculated every five years which would have commenced in 2013. That was not done in 2013 due to the absence of a Chief Budget Officer and Chief Counsel.

The fees that we collect for permit applications are deposited in the state's General Fund. The Legislature appropriates money from the General Fund to support BCDC's regulatory program. The fees that we get vary over time and we get a fixed amount from the Legislature that helps provide a steady source and a fixed amount of revenue from the General Fund.

In 2015 the Department of Finance agreed to support an annual budget augmentation of one million dollars from the General Fund to augment BCDC's then-existing budget on an annual basis. That agreement included a stipulation that the Executive Director would propose for the Commission's consideration that it amend Appendix M to double the existing permit fees.

The increased revenues from those fees would go to the General Fund to reimburse for a portion of the annual one million dollar budget augmentation.

It was clear in the discussions that it was understood by the Administration that the fees could not be modified without the approval of the Commission and without going through a formal rulemaking process as required by the Administrative Procedures Act.

The fees were increased in 1991. That's as far back as we had information from staff reports. In 1991 they were increased in response to a recommendation from the Legislative Analyst that BCDC increase its fees to recover at least 20 percent of permitting costs.

Twelve years later the fees had not been adjusted and by 2003 and staff did an analysis that showed that the fees were only recovering about six or seven percent of the full costs of the permitting program.

Staff recommended that the Commission consider in 2003 increasing the fees. The staff presented a range of possible options, alternative fee structures, including that the Commission seek to recover 20 percent, 50 percent or 100 percent of either direct permitting program costs or both direct and indirect on total permitting program costs.

The 20 percent target is somewhat arbitrary or historical but it is not a legal requirement. The case law supports the general proposition that regulatory fees are valid so long as they do not exceed the reasonable costs of providing services necessary to regulate the activity for which the fee is being charged.

And the case law also says that the manner in which the costs are allocated by fees should bear a reasonable relationship to the payor's burdens or the benefits they receive. I believe our current fee structure does that in that minor permit fees or administrative permits are charged much less than fees for major permits on large projects which consume considerably more staff resources.

After the staff recommendation in 2003 and a public hearing, the Commission decided to set a target to recover 20 percent of total that is, direct and indirect costs of the regulatory program. One of the reasons that this was done was that this was going to more than triple the then-existing fees. That was viewed at the time as being a rather substantial increase in the fees. The Commission decided to leave it there.

Also, in 2004 there was a report from the Department of Finance which recommended that the Commission increase its fees to recover at least 20 percent of permitting program costs.

When the Commission amended the fees in 2004 it also amended the regulation to require an annual adjustment of fees so that the annual fee revenue would be compared to program costs and could be adjusted to try to maintain the target of recovering 20 percent of total regulatory program costs.

In subsequent years it turned out that the fee adjustment was not working because of the variation in the types of projects, large projects, small projects, and the actual number of projects in any given year.

In 2008 the regulation was amended again in two ways. The first way was that there were more categories of permit fees and permit applications set forth in the regulation and the general approach was to increase fees for larger projects and to reduce the fees for smaller projects.

The regulation was changed so that the fees would be recalculated every five years instead of annually. This was to allow for a better averaging of costs and permit fees over time and to take into account the variations in the amount of fees paid and the types of projects.

The fees were not adjusted in 2013, but before bringing this matter before you today we did go through an analysis and looked at the last five fiscal years through the end of fiscal year 16/17, and we did the analysis as called for in the regulations of total regulatory program costs each year and annual average fee revenues, and did the calculations called for by the regulation, which resulted in a determination that under the existing regulation the fees would not be adjusted; that we are very close to the target of 20 percent. I believe it is 19.6 percent. The fees for this five-year period have been very close to the 20 percent target and the fees would not be adjusted.

For this reason, pursuant to the agreement with the Department of Finance, the Executive Director is now recommending that the Commission consider authorizing staff to initiate the rulemaking process to double the permit fees to compensate the General Fund for the one million dollar annual budget augmentation.

I will close with a couple of comments about the rulemaking process should you decide to go forward. The process would start with staff and my preparation of a Notice of Proposed Rulemaking and an Initial Statement of Reasons, in which we have to provide certain information required by the Office of Administrative Law and its regulations.

To prepare those documents we would need to have specific, proposed language or changes to Appendix M in a strike-out, highlighted format for the Commission and for the public to review.

We also would have to do an assessment of the potential impact of increasing fees on state and local government agencies and also on private parties. Such an assessment is specifically required and was done in the past.

In order to do that assessment staff has already begun the process of conducting a review of recent permits, permit applications, and the types of permits and permittees over recent years in order to generate information about potential impacts and calculate average number of fees or permits by type over time.

As part of the rulemaking process we would also need to look at potential alternatives for meeting the Commission's objectives and whether or not there are alternatives that might be feasible.

Once the rulemaking notice is issued and published there would be a minimum of a 45-day comment period. A public hearing is not expressly required by the Office of Administrative Law's regulations fee but it is good practice and in both of the prior permit amendments that I looked at the Commission held at least one hearing. I would anticipate we would do that again.

I will close with that and be happy to answer questions or open it up for comments and discussion. Thank you.

Chair Wasserman asked: Questions? We will open the public hearing.

Commissioner Zwissler inquired about fee amounts rationale: Is the proposal to just come up with an extra million or is it to double the percentage or how did we come up with the numbers?

Mr. Zeppetello replied: The proposal is that we would double the permit fees and the simplest way to do that would be to take the fee schedule as you see it in Appendix M and multiply each fee by two. And where there is a percentage multiply the percentage by two.

And then in conjunction with that it would be necessary to change the target. We could change the target from 20 percent to 40 percent. Another alternative might be we could eliminate the target and eliminate the whole process of adjusting fees and the Commission could reserve the option to reopen that issue whenever.

At the moment our thinking is that the most direct and simplest way would be to just multiply by two every number in this column.

Executive Director Goldzband added: I would like you to take a step back. That is not the question before you today. The question before you today is whether you would approve a process through which this would be discussed publicly and transparently with a public hearing and then there would be a decision.

Commissioner Zwissler continued his inquiry: Right. But there are numbers in front of us. I am curious as to how we came up with a million and doubling our fees.

Executive Director Goldzband explained: You will remember that about three years ago we were able to get an augmentation from the Department of Finance to make sure that we could get rid of a structural budget deficit. They totally understood that and they were marvelous to work with and they said, what we would like you to do is take a look at your permit fees and can you double them so that we can repay back part of that to the General Fund.

I said, I cannot do that. What I can do, is I can recommend to the Commission that they consider that. But it is the Commission's decision to do so.

How many of you sit on another regulatory board that issues permits? Let me see a raising of hands. (Approximately one-third of Commissioners raised their hands.) How many of those fees go to a General Fund as opposed to the actual organization that actually issues the permits?

We are one of the few, we may be the only, for all I know, state agency whose permit fees go the General Fund as opposed to actually go to the agency. I am sure there are others, but I could not tell you who they are because our law was written in 1965.

This is all part of an agreement that I made, with the knowledge of the Chair, but that I made with the Department of Finance.

Commissioner Nelson commented: This is clearly something we should pursue and I don't know what the correct outcome is. I do have two suggestions for staff.

The first is on page 4 of our Staff Report you will see a pretty wide range of fees. In the last several years we have been doing pretty well. The economy has been booming. But if you look back at 2012 through 2014 as the economy was recovering we were around 12 percent.

My suggestion for staff is, let's go back and look at a longer period so we get a better sense of how we do during the boom years as well as the bust years and the recovery years to give us a better sense of how we are doing on average because I think that the last several years are not a representative sample.

The second suggestion is that we are different from other agencies, but it would be helpful to have a sense of the fee structure of other agencies so we can see where we rank.

Executive Director Goldzband responded: And you can be assured that staff would do that if you decide to move forward.

Commissioner Showalter commented: I was just wondering what kind of workload is associated with this process and if it would mean that there is something else that we are not going to be able to do or do in a timely manner.

Mr. Zeppetello explained: The rulemaking process does take time and there are a lot of very detailed procedural and substantive requirements that the Office of Administrative Law and its regulations requires us to follow.

This particular proposal is relatively discreet as opposed to a more comprehensive review of our regulations which is also something on my list. I would estimate it might be 50 to 100 hours of my time over several months and with support from staff to do the analysis of permitting fees. To some extent it will take me away from other things that I could be doing, but it is part of the mix of my job at this point.

Executive Director Goldzband chimed in: Marc was very fortunate to have two interns last summer who spent an inordinate number of hours combing through the records to make sure we understood what the history was because we can't do this without understanding the history.

If you are asking Commissioner Showalter, would the Executive Director rather not have Marc do this but do something else, yes, but that is not the answer that I would suggest is pertinent at this point.

Commissioner McGrath commented: I agree with Commissioner Nelson that we should start this process. I would like to give you two perspectives.

One perspective is when I represented the Port of Oakland and time was money. The Port was willing to pay to have staffing to get feedback to do what it needed to do.

As a small developer having built in San Leandro and in Berkeley houses that my grandchildren live in and that I live in I can tell you that an understaffed planning department is a nightmare. It took over a year to get permits for a seismic safety project from the City of Berkeley.

I do think that at some level adequate staffing is necessary for the public service. Does that mean that there should be uniform fees or should there be some consideration where time is not so important? Those are things we can listen to the public comment for.

I certainly think that having heard from the Department of Finance that they expect at least 20 percent, we ought to do what we agreed to do.

Commissioner Ranchod commented: I agree that we should start the process as has been discussed. I would suggest to staff that as we prepare the background for this that we look not just at the past five years of revenue and regulatory program costs but look at the trend.

The total regulatory program costs seem to be in a trend of increasing so I don't think we are going back to a 2.4 million dollar regulatory program cost that we had in 2012.

If the outliers from 2014 and 2015 where we had more than a million dollars in revenue were tied to specific really big projects, it would be good to understand that and what do we actually project to be revenue in the next couple of years or at least the next three or four years so that we can really shoot for a target that is appropriate.

Commissioner McElhinney commented: Just for clarity, the fees were set up when? Did you say starting in 1991? Is that the last time they were updated?

Mr. Zeppetello answered: We mainly relied on the staff reports associated with the 2004 rulemaking and the staff reports at that time said the Commission's fees were last updated in 1991. Both the McAteer-Petris Act and the Suisun Marsh Act authorize the Commission to impose fees. I am confident that there was a fee structure pre-dating 1991. We haven't actually gone back that far to look for it.

Commissioner McElhinney continued: So this would be our first update since 1991?

Mr. Zeppetello replied: No. This would be our first update since 2008.

Commissioner Peskin had a mathematical observation: I don't understand the average in the chart on page 4 relative to total regulatory costs. Because these are the first years of regulatory costs and that can't be the average.

Mr. Zeppetello replied: I believe that is the average of the five years shown.

Commissioner Peskin explained: That is not possible because if the costs escalate every year; the average is somewhere around three million bucks.

Mr. Zeppetello agreed: Yes, that could be. Although let me clarify that under the adjustment procedure in the regulation you take the average fees for the last five years and you compare it to the highest total regulatory program costs for the five year period. When I did the math that is shown on the next paragraph I used the 3.5 million dollar number, the highest annual program costs. There appears that there is a mathematical error in the averaging.

Chair Wasserman commented: I will frequently say to clients that attorneys are often not good at math. I certainly support this motion. We made a deal with the Department of Finance and we ought to honor that deal. If the fees have not risen since 2008, it is time to review that.

There are also some additional reasons. If, in fact, we are the only agency in the state whose permit fees go to the state rather than to the programs that create the costs, maybe we ought to re-evaluate that. We have a number of items on our agenda that we might seek to amend in the McAteer-Petris Act and this might be one of them.

In addition, coming out of the Financing the Future concept, we are going to need lots of money from lots of places. These permit fees come from people who derive direct benefit from building in or on the edge of the Bay. They are amongst the primary groups benefitted by our overall efforts. All of that is legitimate.

I would caution us to keep an eye on that million dollar issue but that doesn't govern anything amongst other reasons because we have to have a clear and justifiable basis for the nexus between what our costs are and what the fees are.

The million dollars actually comes out of that because that was awarded in the sense that we looked at our costs and we needed at least a million dollars more. So it is not irrelevant but it is not the primary guide.

All of this makes sense but we do want to do it in that broader context without trying to increase the burden on you a whole lot, Marc.

Unless there are any other comments I would entertain a motion to close the public hearing.

MOTION: Commissioner Vasquez moved to close the public hearing, seconded by Vice Chair Halsted. The motion carried by a voice vote with no abstentions or objections.

Executive Director Goldzband added: I want to let the Commission know that when staff decided to agendize this issue for February 1st I spoke with representatives of the Bay Area Council, Silicon Valley Leadership Group, Bay Planning Coalition, Building Industry Association, Save the Bay and SPUR to let them know that this was coming up so there would be no surprises.

As a matter of fact, the State Coastal Conservancy was also part of that because they are going to have a tremendous amount of need for BCDC permits over the next few years and I told them to not worry so much about today as make sure that you are a part of the public process. So they are part of that.

Commissioner Vasquez had a question: So would you come back with a list of recommendations? Are we just having this to target that 40 percent?

Executive Director Goldzband replied: I would like to see what it looks like. Don't worry. Staff will come at you with at least two or three recommendations. I would imagine that at least one of them will hit the 40 percent figure meaning doubling the permit fees.

Commissioner Vasquez added: I think part of that ought to be why we are so dependent upon the state because of the way it is set up. In county land, our fees are based on the nexus of 100 percent recovery and then the Board can adjust it whether they want 85 or 90 or 50 depending on how much they want to pull out of the General Fund in order to maintain that program. A 20 percent recovery is pretty small.

Vice Chair Halsted shared some history with the Commission: I think I recall that in 2003 we seriously looked at 100 percent recovery and we looked at it and we looked away very quickly. (Laughter) I think strategically it is important to understand how it relates to the rest of our budget as well. I think presenting a full picture is critical to our strategy going ahead.

Chair Wasserman added: Including what other agencies charge, absolutely. I would now entertain a motion to approve the recommendation.

MOTION: Commissioner Nelson moved approval of the staff recommendation, seconded by Commissioner Randolph.

VOTE: The motion carried with a vote of 18-0-0 with Commissioners Addiego, Gilmore, Jahns, McGrath, Nelson, Peskin, Pine, Ranchod, Randolph, McElhinney, Sears, Showalter, Vasquez, Techel, Wagenknecht, Zwissler, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO", votes and no abstentions.

9. Briefing on BCDC 2017-18 Budget Status and 2018-2019 Forecast. Chair Wasserman announced: We are not doing Item 9 and that brings us to Item 10.

10. Briefing on Government Alliance on Race and Equity (GARE). Chair Wasserman announced: Item 10 is a staff briefing on the Government Alliance on Race and Equity Program. Elizabeth Felter and Elena Perez will make the presentation.

Executive Director Goldzband commented: Let me inform you why you are now going to have this briefing. This is not the kind of briefing that BCDC is used to receiving because it is not about land use per se or the Bay per se. It is about an issue which while most if not all of the local elected officials and others of you are dealing with on a daily basis. It is an issue which BCDC has started to work on.

You will remember that last year you voted for BCDC to proceed with a Bay Plan Amendment that will somehow reflect the need to take into account social equity concerns with regard to the Bay Plan.

As part of that process and the staff member that is going to lead that effort will start next week. We know that there will be workshops and that the Commissioners will want to take part in those discussions just as you wanted to take part in the Bay fill discussions and the rising sea level discussions and the financing the future discussions.

We were very fortunate that a number of BCDC staff have been able to and will continue to be part of the GARE Program. We thought that we should give you a brief vision or description of that program as you start thinking about how BCDC and the issue of social equity will intersect; coalesce et cetera during the next year.

With that I want to thank Elizabeth and Elena for standing up and taking you through this for the next 20 to 25 minutes.

Coastal Program Analyst Elena Perez addressed the Commission: Thank you very much for the opportunity to speak with you today.

We would like to share about BCDC's participation in the Government Alliance on Race and Equity (GARE) and our steps forward as an agency as we work together towards racial equity.

GARE is the national network of governments working to achieve racial equity in order to advance and improve opportunities for all. Many of our peers, local and state partners are looking internally at operations and considering how to overcome the historic marginalization of specific groups so that we can proactively serve all communities.

GARE is a joint project of Race Forward, The Center for Social Inclusion and the Haas Institute for a Fair and Inclusive Society at Berkeley. We participated in a year-long program where GARE provides education tools and best practices to empower public agency staff to advance racial equity through our day-to-day work.

In 2017 National GARE participants included 85 local and regional units of government across the country and the movement is growing.

Research Program Specialist Elizabeth Felter continued: So here in the state there are a number of different types of governments who are participating. Many different cities and counties participated in the first year of GARE training which only began in 2016. This is a new effort that already has a lot of widespread participation particularly here in the state of California.

One thing that we learned is that during that 2016 learning year representatives from the different cities and counties around the Bay Area voiced how important they thought it would be to have the regional agencies participating with them. Following that information the Bay Area Regional Collaborative (BARC) sponsored BCDC, MTC and the Air District to participate in this past year. We are really grateful to have this opportunity. It has been an eye-opening opportunity that is continuing to grow.

A new cohort that is focusing specifically on state activities has already started its training session in Sacramento. The Coastal Commission is participating in this. They sent 15 or 20 of their staff to participate in that cohort.

We have been trained for a year and we have many different things that we want to share with you. We are going to start with an activity that we learned in GARE and it is called, "Lay it on the Line".

I will read a statement and if you disagree with it then you go to the left side of the room and if you agree with it you go to the right side of the room. Please line up anywhere between the left or right side of the room or perhaps somewhere in between depending on your degree of agreement or disagreement with the statement.

The first statement is: People who engage in public meetings are the ones who care most about issues. (Commissioners lined up in various locations to the left or to the right with some taking positions in the middle of the room).

Commissioner Zwissler commented: I'm on this side of the room because in my experience in public meetings the people who are there are the people who want to be there. I don't know who is not there. I'm sure that while there are stakeholders that have an opinion those who engage are the ones who seem to care.

Commissioner Jahns spoke: I think something similar but more to the disagree side. A lot of people who come to these meetings are people who are paid to be here. There are some engaged public citizens but those are people that are probably going to be most affected by the project but you cannot see who is not here because they can't take time off of work or anything else that is preventing them from attending.

Chair Wasserman commented: In a number of public hearings you get people because they care but they care about what they have been told which may, in fact, not be the real issues before the body. Second, there is the huge, unheard majority, many of whom do care, but don't have the ability to come to afternoon or night meetings.

Ms. Perez read the second statement for the Commissioners. The second statement read: Hiring and promotion decisions should be based solely on merit. (Commissioners lined up in various spots either to the left or right of the room with some taking positions in between)

Commissioner Showalter commented: I think that in order for this statement to be true you have to take a very comprehensive view of what "merit" is. Merit is not only your technical ability it is also your ability to behave in whatever the corporate culture is that you find yourself in.

Generally it needs to be on merit. As a woman who worked in engineering for many, many years I think we need to think about merit a lot more and be gender and color blind.

Commissioner McGrath opined: This was too black and white of a question and it is really not that simple. I've hired maybe 100 people over my career and there are a lot of things that go into a successful employee more than how they did on the exam.

I've never hired anybody that wasn't fully qualified but I've hired to balance teams with people with perhaps stronger technical skills or stronger empathy. I've hired to increase the diversity of a place because a diversity of opinions gets you a stronger result.

Merit typically in a civil-service system is overly constrained to how well you do on an exam which is not the best indicator of how you perform as an employee.

Commissioner Sears was recognized: Our County has participated in GARE for two years and the answers to these questions are always fascinating. It is important that all of us look at how we define, "merit." All of us need to look at ourselves and what we consider to be "merit" and probably rethink this just a little bit.

Commissioner Gilmore commented on context: It depends on what context you are looking at when you say, "Merit." I think about the academic context and I was told a story by an administrator of a very prestigious university back East.

She said, well, you have to determine what it is that you as an institution or an employer are looking for. If I am looking for an oboe player that year; everybody else who is otherwise qualified, but you are an oboe player – you get a leg up as opposed to a piano player. It all depends on the context and the balance that you are trying to achieve.

Ms. Perez continued the meeting: These are really fine points. It is important that we are clear about our terminology and what we mean because words matter. And how we define and use words matter. Those are really important points to keep in mind.

This work is not intended to focus on individual acts of bigotry but rather to identify how systems continue to impact people based on their race so that we can develop practical changes that result in positive outcomes.

Historically the government has explicitly created and maintained racial inequity through practices such as deliberate disenfranchisement, internment camps and red-lining; then the government actions were indirectly racist.

These surfaced in a number of ways including urban renewal programs, gerrymandering, voting restrictionse and riddled throughout our prison system.

Today there are laws and practices in place intended to eradicate inequities. The 13th, 14th and 15th Amendments were enacted and we have Brown versus Board of Education, the 1964 Civil Rights Act, the Voting Rights Act, the Fair Housing Act and more; and yet, even though it is illegal to discriminate inequities continue to persist.

It is clear that race is still a determinant of inequitable outcomes. Regardless of where you live, what region you are in, whether you are in the suburbs, in the city, in rural areas; we are still seeing inequities.

Race Counts recently published a report that highlights the racial inequities in our state. Racial disparities can be found across a broad spectrum of cities and counties throughout California. Political participation also shows disparities between whites and black, Asian and Latino minorities.

These examples highlight that despite our efforts to eradicate racism there are obvious racial disparities. We need to ask why there are still racial disparities in communities of color when laws have been in place to prevent discrimination.

What can we do to address these inequities? As a public agency we need to think about who benefits from the work we do and who is burdened by the work we do. Our upcoming Bay Plan Amendment for social equity and environmental justice is one step towards addressing inequitable outcomes.

Ms. Felter continued: Often when we are doing this work we talk about treating symptoms and not the causes. A lot of focus happens around programs and services. Programs and services are incredibly important but alone they are not getting us to equity. We are still seeing these disparate outcomes.

We need to do a deeper analysis of our institutions and our systems. We also need to spend some time understanding our biases.

We are going to do another exercise. We will learn a little bit more about how we perceive things. A line of colored text will appear on the screen and we will all shout out what color it is as quickly as you can. I apologize to those people who might be color blind. This was an oversight on our part. As the line of text comes up just shout out the color as quickly as you see it. (Four differently colored lines of gibberish were flashed on the screen. Participants were able to immediately shout out the color of the individually-flashed lines on the screen. The four colors of gibberish lines were red, black, blue and green.)

Okay, we are going to do it again. (The words black, red, blue and green were flashed on the screen. Participants were able to shout out the color because the words were of the same color as denoted by their written form; the word, "Black" was in the color of black, the word, "Red" was in the color of red, the word, "Blue" was in the color of blue and the word, "Green" was in the color of green.)

Ms. Felter continued with the exercise: Okay, one more time. (The word, "Green" was in the color of red, the word, "Black" was in the color of blue, the word, "Yellow" was in the color of black and the word, "Blue" was in the color of green.)

Ms. Felter continued: I heard people hesitating even though the instructions were specifically to blurt it out as fast as you could. This is meant to illustrate different types of thinking. Reading is, "fast thinking" and color is, "slow thinking." That's why when we get to this tricky slide where the name of the color and the actual color don't match up you either get it wrong or it takes you longer to process it. That continues happening even after you have noticed that I am trying to trick you. It still takes you longer to answer the question.

This type of conflict in thinking and perception also happens with how we perceive race because we are having conscious and unconscious reactions to race that are drawing on how we have been socialized our entire lives.

We all have bias. Given the values of equality and justice that we hold in our society there can be a tendency to say things like, "I don't have bias" or "I don't see color" but we do see color and we do have biases. Bias comes out in how we evaluate one thing or one group of people against another thing or another group of people.

A lot of this bias is prevalent unconsciously. That unconscious process can play a stronger role in certain types of situations. One of those situations is stress. Stress makes everything worse.

We also rely more heavily on our unconscious when we are under a time crunch, when there is ambiguity or some other type of lack of information or when there is under-representation of a group in question.

We find ourselves saying things like, we just have to get this done, we don't have time to bring everyone to the table.

Research has shown that suppressing or denying prejudiced thoughts can actually increase prejudice instead of eradicating it. Instead of repressing it we need to work to acknowledge and make peace with the fact that we are biased and then work towards directly challenging and refuting it.

This work is somewhat of an individual responsibility but this is also something that we as individuals cannot totally fix on our own and that is why there is the need for an institutional response.

I want to reiterate that this work with GARE is not focusing on individual acts of bigotry. It is about evaluating our systems and where there are opportunities to improve.

We participated in a year-long training with GARE and we have been applying some of those skills that we have learned. With MTC and the Air District, we as a regional group developed a draft methodology to evaluate different programs or projects through a racial-equity lens.

We also have performed some analysis of the demographic composition of our staff compared to the demographic composition of the nine-county Bay Area Region.

When we compare these two demographics it looks like we are doing okay here at BCDC as an agency but when you look at individual departments or the composition of our managers and supervisors that is a much different story, and shows a lack of diversity.

When we presented some of this information to the different executive directors of the three regional agencies, we were asked if our next step would be doing a demographic analysis of our Commission. We will see if the regional agencies move forward with that.

Some of our partner agencies have been doing work along these lines. The Air District established their Office of Diversity Equity and Inclusion. The Air District hosted a speaker series starting with, "Racial Equity 101" by Dwayne Marsh from GARE.

We had a talk on what does it mean to be a culturally-competent organization by Dr. Tamu Nolfo from CA Dept. of Public Health and an unconscious-bias talk by Dr. Tony Byers from Cook Ross Inc. MTC has piloted their racial-equity tool and evaluated their public-engagement plan through a racial-equity lens. MTC has also conducted an organizational assessment.

Here at BCDC internally we have a specific action in our Strategic Plan related to increasing staff diversity. Elena and I also hosted a workshop to introduce our staff to GARE that included the activities that you participated in today. Staff from the Coastal Commission, the Coastal Conservancy and the Resilient by Design Challenge also participated.

Externally the Adapting to Rising Tides Program uses equity in all of their projects. And in our current ART Bay Area Project vulnerable communities are one of the specific focus areas. We have approved an amendment to our policies on social equity and environmental justice.

Ms. Perez continued: There is still much to be done. Luckily there are many opportunities for us to work towards racial equity. There are ways to address racial equity, such as changing our hiring, recruitment and retention strategies.

We can evaluate BCDC work activities from a racial-equity lens whether that is through public involvement, data collection, communications and evaluation. We can also ensure our agency promotes a culture of inclusion to address any unintentional, institutional racism.

And while we are developing we do have programs that go above and beyond requirements. We need additional actions and resources to explicitly and proactively advance equity.

We want to take responsibility where we have the power and the influence and use it to work towards racial equity. In preparation for the upcoming environmental justice and social equity amendment process and in order to strive to address all issues that come before the Commission with a race and equity lens we would like to invite you to a race and equity workshop for the Commissioners so that we can move together as an agency towards racial equity and strategize our path forward.

Here you see a partial listing of some of the reports and agencies that are working on racial equity issues. Thank you.

Commissioner Sears commented: That was a really great presentation. If you have not looked at the Race Counts Report it is really a fascinating report. It is extremely well done. Marin County is at the top of the list in terms of disparities on just about every single measure.

It is something that we are taking very seriously. It is not where we want to be. It really is an informative report and it also has a nice tone and none of it is judgmental. It is all fact-based. I hope everybody takes a look at it.

Ms. Felter commented: Right now the analysis in that Race Counts Report is done county-by-county but we just learned yesterday that they are doing it on a smaller scale; so a city-wide scale analysis and comparison should be available using the same metrics by summer.

Commissioner Ranchod was recognized: Thank you for an informative presentation and for including this on the Agenda. What is this workshop that you are proposing to schedule for the Commissioners?

Ms. Felter replied: We are hoping to have the GARE trainers come in and do a workshop tailored to Commissioners and also invite the public to participate sometime in the next several months.

Executive Director Goldzband added: As we move forward on the Social Equity and Environmental Justice Bay Plan Amendments it seemed that one of the ways to start that off is to make sure that the Commissioners, Alternates and members of the public who are going to be involved with that process get an understanding of some of the biases that we all carry. It may not change anything right off but as staff, as Commissioners, as Alternates and as members of the public we need to think through these kinds of issues in a way that BCDC Commissioners and Alternates have not been trained to do necessarily qua-BCDC.

It would give a leg up to those folks who are actually going to participate. That is what we are planning to do.

Commissioner Sears commented: We actually had this and we did it for our County Administrator, department heads and our two supervisors. I was one of the people who participated. It was a four-hour seminar where you did a condensed version of the entire, year-long program. It was absolutely fantastic. It was incredibly worthwhile.

I really encourage everybody to come. It was informative. Dwayne is a tremendous trainer. He is an amazing person. I thought it was really well done.

Executive Director Goldzband chimed in: As Shannon starts preparing and starts working through the Bay Plan Amendment process we will figure out the Commission second meeting of the month because starting in the spring we will be doing workshops just like we did last year and we will figure out a day during that schedule to have that workshop.

Commissioner Pine commented: I wanted to thank you for your presentation. This is a very important issue and one that is the national focus now as it should be.

One thing I always struggle with is the co-occurring problem of economic inequality. There is a tremendous correlation between the economic health of an area and the school performance. That is a big driver of some of these challenges we face.

Ms. Felter continued: Thanks for that point. In the reports referred they do disaggregate income from race.

Chair Wasserman stated: Thank you very much for the report and for your efforts in this. All of us who think about these things and are sensitive need to recognize that we are always dealing with our own implicit biases.

I learned a bit about it early on as a young lawyer choosing juries in criminal defense cases. You did not want to ask, can you be fair? You never get a, “no.” (Laughter)

You do want to get people to come up with questions that get people to think about ways in which they have been prejudiced so that they can have a chance of dealing with it.

It is a process that we all need to go through all of the time.

Executive Director Goldzband added: You will remember that Elizabeth apologized for those people who might be color blind. I want to tell a story because it applies to each of us.

When I was Vice-Chair of the California State Coastal Conservancy back in 2000-2001 I always sat next to a dear friend, the late Gary Hernandez, who was a very significant attorney in the Bay Area.

The first thing we always got when we looked at a project was a map. And for some reason Gary who always sat to my right always leaned over and I worked with Gary and I figured that he could not read a map because there are some people who simply don't read maps well.

After getting to know Gary very well we were driving back down from Humboldt to San Francisco and he told me, I need to tell you something. The reason I always ask you for help on maps is because I am color blind.

From then on the staff made sure that there were black and white maps for Gary so that he could see what they were actually talking about. That was an incredible lesson for me as I worked my way through the next few years.

I haven't asked any of you if you are color blind but if you are or if you have some kind of disability that requires us to do something different, we need to know about it. Feel free to let me know because we will do whatever we need to do.

This demonstrated how somebody who is incredibly successful – it took him a long time to work up the courage to tell me because he wasn't willing to tell the Executive Director.

Commissioner McGrath spoke: I am going to make a motion to adjourn in Barry's honor. I am going to tell you a little story first. Barry and I weren't always friends much less close. (Laughter) When I took the job at the Port of Oakland at the urging of Will Travis Barry was Executive Director of Save the Bay.

We ended up working together. The point of this story is a little bit of honor to Barry and also to remind us that nothing we do we do alone.

About two years after I worked there and after Barry and I had gone together on a few things I went off to Washington and met Nancy Pelosi who was not yet the Speaker. There were people who said that if the Port of Oakland was not dredged really quickly they would leave Oakland.

The Congressmen and women from the Bay Area said, well, we are going to do something about that. And I felt that all my credibility was gone. It worked out because the deal that came out of that which Barry helped broker was what delivered Sonoma Baylands and the CVPIA.

I am sitting in my office and still thinking that my credibility is just going to be diminished and I get a call from Laura King who was at NRDC. She informed me that their top priority for the upcoming year was the Central Valley Improvement Act. This was a favorite of Barry's. She asked me if the Port of Oakland would help support this. MWD and the city of Los Angeles have come onboard. I told her, I don't know and our tenants are agriculture but I will see what I can do.

At that time the chairman of the California Coastal Commission was Tom Quinn who was also the Communications Director at the Port of Oakland and Tom said, you know, I think there is a watershed change. I'll see what I can do. Not long after that I got a call from Barry. He told me, you know CVPIA and Sonoma Baylands – maybe we can tie them together. And not long after that I got a call from Nancy Pelosi's staff asking, how much money do we need to do Sonoma Baylands?

We put it in the budget and put in the CVPIA. After a whole bunch of machinations it emerged as a bill. There was a Republican senator in California and he was urging a veto vote. It dawned on me what Laura and Barry were up to.

On the other side was the vice-chairman of the Port Commissioner who was vice-president of the Transamerica Corporation who is head of the Business Roundtable who convinced the President to sign the bill.

So instead of being litigated the project went through on a handshake deal. It didn't hurt that Ron Dellums had a 100 percent League of Conservation vote rating and twisted all the necessary arms. That is how Sonoma Baylands happened.

None of us did that alone. We did things with opportunity. I treasure the deals that I have had an opportunity to work on with Barry. He has accomplished great things and I will miss you here.

Chair Wasserman added: I second the motion. (Applause)

Commissioner Nelson spoke: It is a sad day for me. Thank you Jim. It has been a pleasure and an honor sitting on this body for the last 11 years and having represented three Pro-tems and they have all been great.

I first testified before BCDC 34 years ago this summer. It has been a long time.

Your new Commissioner is going to be terrific. I want to close with one thought. That thought is that it is popular in some circles to say that government is the problem. It is popular in far-more circles to say that the government is broken. It has been a real pleasure and an honor to work with an agency that demonstrates that the government works and it can work for the environment and the economy. It can work in the public interest. Government can evolve to tackle new challenges or challenges that we are finally facing like climate change and equity. So it is appropriate that we are having a conversation today. I hope you haven't seen the last of me. Thank you. (Applause)

11. Adjournment. Upon motion by Commissioner McGrath, seconded by Chair Wasserman, the Commission meeting was adjourned at 2:32 p.m. in honor of Commissioner Barry Nelson's commitment to San Francisco Bay.

Respectfully submitted,

LAWRENCE J GOLDZBAND
Executive Director

Approved, with no corrections, at the
San Francisco Bay Conservation and
Development Commission Meeting
of March 15, 2018

R. ZACHARY WASSERMAN, Chair