

# San Francisco Bay Conservation and Development Commission

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October 25, 2019

**TO:** All Commissioners and Alternates

**FROM:** Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)  
Peggy Atwell, Director, Administrative & Technology Services (415/352-3638; peggy.atwell@bcdc.ca.gov)

**SUBJECT: Draft Minutes of October 17, 2019 Commission Meeting**

1. **Call to Order.** The meeting was called to order by Chair Wasserman at the Bay Area Metro Center, 375 Beale Street, Yerba Buena Room, First Floor, San Francisco, California at 1:08 p.m.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted, Commissioners Addiego (departed at 3:17 p.m.), Ahn, Butt (represented by Alternate Arreguin), Chan (represented by Alternate Gilmore - departed at 3:17 p.m.), Cortese (represented by Alternate Scharff), Resources (represented by Alternate Eckerle - departed at 3:17 p.m.), Lucchesi (represented by Alternate Pemberton - departed at 2:50 p.m.), McGrath (departed at 3:17 p.m.), Peskin, Pine, Ranchod (represented by Alternate Nelson), Randolph, Sears, Showalter, Spering (represented by Alternate Vasquez), Tavares (represented by Alternate Nguyen – departed at 3:17 p.m.), Techel, Wagenknecht and Ziegler (departed at 3:33 p.m.). Senator Skinner, (represented by Alternate McCoy) was also present.

Chair Wasserman announced that a quorum was present.

Not present were Commissioners: U.S. Army Corps of Engineers (vacant), Department of Finance (Finn), Contra Costa County (Gioia), Sonoma County (Gorin), Governor (vacant)

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

Mr. Riley Hurd addressed the Commission: I am here on behalf of Galilee Harbor a low-income, artists and maritime community right off the shore of Sausalito.

I've come to the Commission today to report a situation at Galilee that is dangerous and untenable. Galilee has had a strong working relationship with BCDC over the years. They are very grateful for that. And today we are requesting your immediate assistance.

One of the BCDC-imposed conditions of Galilee is that they install a quote, public, small, boat-launching float—a dock. This is a condition that Galilee has dutifully complied with for many years.

However, the purpose of this dock, public access to the water—the purpose of BCDC—is no longer achievable. Specifically the dock has been overrun by the anchor-out community.

The closure of nearly every other access point on the Sausalito waterfront has concentrated the problem at Galilee. They have 30 to 40 dinghies tied up at any given time 24/7.

This might not be as big an issue as it is not for a very small but, frankly, dangerous subset of the anchor-out community.

What is interesting is Galilee has been a huge supporter of the anchor-out community. They took their mail and they are friends with them. They are part of that community but things changed recently and there is a very small but dangerous component of the anchor-out community.

There is drug paraphernalia, garbage piling up, screaming, fighting, dangerous boating activities and what brought me here today was that the harbor manager was threatened with a pipe and followed to her boat for attempting to enforce some reasonable rules at the dock.

This objectively is not compatible with the residential use, raising kids or getting sleep. It has become a public nuisance and the Galilee Board has a duty to its residents and now its employees to do something about it.

I would also submit that the impact of this condition now far exceeds the reasonable relationship for the use for which it was imposed.

So we have been in contact with staff. We have been very thankful for their assistance. They let us put up signs—they're ignored. They suggested security guards—it is \$25,000 a month.

We were directed to meet with the RBRA and the city but neither of those agencies are the one that have imposed the dock condition.

You are discussing today social equity; I would submit that Galilee, a low-income, maritime community, should not be forced to bear the brunt of what is essentially a humanitarian crisis.

What they would like to do is take the dock out and let the political forces solve that anchor-out issue and they stand ready and willing to put it back immediately for the purpose for which it was designated.

Thank you and we ask for your help.

Chair Wasserman replied: Thank you and as you may know we cannot respond to public comment because it has not been agendaized. However I am sure the matter will be addressed at a future meeting. I thank you.

Chair Wasserman moved to Approval of the Minutes.

Ms. Atwell stated the following: On the minutes from our last meeting Number 2 under Roll Call, under Not Present the last word in the sentence "herself just before the meeting adjourned" – the word should be "began" not "adjourned".

4. **Approval of Minutes of the October 3, 2019 Meeting.** Chair Wasserman asked for a motion and a second to adopt the corrected minutes of October 3, 2019.

**MOTION:** Commissioner Scharff moved approval of the corrected Minutes, seconded by Commissioner Vasquez.

**VOTE:** The motion carried with a vote of 21-0-0 with Commissioners Addiego, Ahn, Arreguin, Gilmore, Scharff, Eckerle, Pemberton, McGrath, Peskin, Pine, Nelson, Randolph, Sears, Showalter, Vasquez, Nguyen, Techel, Wagenknecht, Ziegler, 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:

With all of the political comments and debate over the last couple of weeks climate change has been pushed to the back pages. I did hear an interesting rumor that Uber has done some experiments with pilotless boats on the Bay. It would be an interesting experiment.

Even though there hasn't been the news, we know that the major crises facing us continues and the sea continues to rise and we need to continue to do our work and today will be a very significant milestone in that.

a. **Next BCDC Meeting.** Our next meeting will be held on November 7th, when we will:

- (1) Hold a public hearing and possibly vote on the U.S. Army Corps of Engineers Maintenance Dredging Program.
- (2) Hold a briefing on Highway 37.
- (3) Hold a public hearing and possibly vote to initiate a Bay Plan Map amendment proposed by the Contra Costa County Flood Control District.
- (4) Hear an update on our Strategic Plan implementation.

(5) *Ex-Parte Communications.* If anyone wishes to make a verbal ex-parte communication report now is the time to do it. This does not substitute for the written report that is required. (No one reported ex-parte communications.) That leads us to the Executive Director's Report.

6. **Report of the Executive Director.** Executive Director Goldzband reported: Thank you very much Chair Wasserman.

I think that everybody here knows that today is a major anniversary of an event that was so unexpected here in the Bay Area and throughout the United States – 88 years ago Al Capone was convicted of tax evasion on this day (Laughter). I mention that as a proud native of the South Side of Chicago because prior to the trial Capone had bragged publicly that he would never be convicted of any misdeed. That unexpected event certainly turned the world inhabited by the FBI, the Department of the Treasury, and the criminal world upside down.

I won't say that the same intensity of response will be true after today's discussion and possible adoption of the environmental justice and social equity Bay Plan amendments. But, combined with your decisions two weeks ago regarding Bay Fill, I think it is worth stating the obvious – the autumn of 2019 has been almost earth-shattering at BCDC. And speaking of earth-shattering, Monday night's earthquake (just a few days before the 30th anniversary of Loma Prieta) shook me out of bed and thrilled our teenager who'd never felt one before. Most important, it was another reminder that Mother Nature always wins and our collective work must recognize that fact as we make the Bay Area more resilient to her actions.

a. **Budget and Staffing.** I am pleased to introduce you to Angela Noble (stood and was recognized). Angela is our new Records Manager. Angela started with us on Tuesday and she is already back so she hasn't given up on us yet.

Angela joined just in time for tomorrow's semi-regular, All-Staff Retreat. With just a few exceptions we will find our way to Richmond City Hall tomorrow morning where we will be welcomed by Commissioner and Mayor Tom Butt. We'll then work together on internal communications and other issues throughout the morning with facilitators from Coro Northern California. We'll then grab lunch from a local deli and spend the afternoon at the Rosie the Riveter National Historic Park where we'll learn about how a long-suppressed half of our population became a crucial cog in America's World War II efforts. We'll also share regulatory, planning, and administrative lessons-learned. So BCDC will be closed for business tomorrow – at least at 375 Beale St. – but we'll have our cell phones on and active should you require our services.

And, I have one more new hire to announce. Unless I hear otherwise we shall hire Priscilla Njuguna as our new San Francisco Bay Enforcement Policy Manager. Priscilla is a Husky from Northeastern University from which she graduated magna cum laude and is also a member of the California Bar having graduated from the Dickinson School of Law. Priscilla has found success throughout her career including as a logistics officer in the U.S. Army after earning U.S. citizenship, as a compliance officer in the banking industry, and also as a legal advocate for adults in elder abuse and immigration and naturalization cases. BCDC's "Job Announcement" listed a half-dozen or so duties inherent in the position that require the ability to manage staff, develop strategies, prioritize work, develop and implement new policies and procedures and change management plans, and work closely with superiors – all of which Priscilla has accomplished in her previous positions. In addition, Priscilla is fluent in several languages including Spanish. She plans to start at BCDC on October 31st and we look forward to having her with us.

I'd like to call on three members of our senior staff to make short reports on a couple important issues. First, Steve will brief you on the progress of the legislation affecting the Oakland Athletics' plans for Howard Terminal and a couple of other adaptation bills.

Mr. Goldbeck addressed the Commission: The governor has signed AB 1191 by Assemblymember Bonta for the proposed ballpark and mixed-use development at Howard Terminal in the Port of Oakland. The bill would clarify that the Commission's alternative upland location and minimum fill necessary, fill tests would not apply to the already filled lands at Howard Terminal and several Bay Plan sections regarding new fill also would not apply.

The bill further specifies how the ballpark and associated open space would need to be designed in order for the Commission to find that it is water-oriented use under the Commission's law. And the bill would also provide that the Commission determine whether or not to approve deletion of the Seaport Plan designation on the Howard Terminal within 140 days of certification of a final EIR.

It would otherwise preserve the Commission's authority to consider the proposed Seaport Plan amendment and a permit application for the proposed project.

The governor has also signed Assembly Bill 825 by Assemblymember Kevin Mullin that would revamp the San Mateo County Flood Control District with an explicit mandate to address rising sea level. The Commission supported AB 825.

The governor also signed SB 298 by Assemblymember Skinner that sets up an infrastructure financing district that was originally proposed for the West Oakland area but now covers the whole city of Oakland.

That completes my report.

Commissioner Nelson was recognized: I have a question about Mr. Bonta's bill regarding the Howard Terminal Project. The Commission normally goes through a pretty thorough process when updating the Seaport Plan to make sure that we are adding land when necessary and deleting land where appropriate. So given the relatively tight timeline in that bill for making a finding I just wanted to ask staff how that bill will affect our ability to do the necessary, internal analysis we do before we are required to make that determination and whether we need to get ahead of that instead of waiting.

Mr. Goldbeck answered: We already are getting a head start on that because the Commission is working on updating the Seaport Plan designations and looking at the Seaport Plan Forecast generally to update the Seaport Plan which will be the basis for considering whether that site is needed or not. So that work is ongoing and we believe that the 140 days will be adequate to prepare the actual staff Report for the Howard Terminal when the final EIR is adopted because we will use that in part for the environmental assessment that we do for the project. So we believe that there will be adequate time.

Commissioner Nelson continued: And so that consultant's report will get to us in time to inform that analysis?

Mr. Goldbeck replied: Yes. We already have the forecast from the consultant and they are being considered right now.

Executive Director Goldzband continued: Now I'd like Brad to update you on the Enforcement Committee's deliberations regarding the Richardson's Bay anchor-outs and public-access issues at Union Point Park in Oakland. Normally Karen Donovan would handle this but she's helping to run the annual Environmental Law Program at Yosemite this weekend.

Mr. McCrea reported the following: I want to update you briefly on a couple of issues that have been a subject of recent Enforcement Committee meetings.

On September 25th the Enforcement Committee received its second briefing on the Richardson Bay anchor-out issue which included presentations from representatives from the Richardson Bay Regional Agency and the city of Sausalito.

Your colleagues on the Committee noted their support for efforts to prevent any additional boats from entering the Richardson's Bay Anchorage.

Enforcement Committee members also expressed doubt that a possible mooring field to hold in place the exiting flotilla would be consistent with the McAteer-Petris Act.

The Committee members also asked staff to inform the Committee regarding the number of live-aboard slips in local marinas and be prepared to present further updates on the region's progress in the coming months.

Last Thursday the Enforcement Committee received an update on the encroachment by homeless individuals in Union Point Park along the Oakland Waterfront. After hearing from staff and the representatives of the marina that is adjacent to the Union Point Park and representatives from the city of Oakland the Committee acknowledged the challenges that Oakland and its co-permittee the Unity Council are facing. However the Committee members indicated that the permittees must develop a plan to make the conditions in the shoreline park safe for the public and the nearby marina occupants and to ensure freedom of movement along the shoreline for all.

The Enforcement Committee directed the staff to schedule a follow-up briefing on Union Point Park at its November 20th meeting and also directed the staff to commence drafting conceptual terms of a cease-and-desist order for its consideration depending on the results of future discussions with the parties. Thank you.

Commissioner Scharff chimed in: I think what we actually asked was that the city of Oakland to come forward and present a plan that they had at that meeting and they said they would.

Mr. McCrea responded: So noted, thank you.

And I'd like Marc let you know of BCDC's response to the federal EPA's proposal to change its Section 401 Water Quality Certificate regulations.

Mr. Zeppetello reported the following: In late August of this year EPA proposed to amend its regulations governing the issuance of water-quality certifications under Section 401 of the Clean Water Act. This is primarily an issue for the State Water Board and the regional boards but it is also of concern to the Commission and Commission staff because under the McAteer-Petris Act and under the Bay Plan the Commission defers to the regional boards on issues of water quality and appropriate conditions with respect to protecting water quality in the Bay.

Under EPA's existing regulations and under a Supreme Court case that was decided by a 7-2 majority in 1994 the Supreme Court said that once there is a discharge that the conditions can be imposed on the activity that is being regulated to ensure compliance with water quality standards.

EPA is now proposing to adopt the dissent in that case and limit the appropriate conditions only to the discharge thus narrowing the scope of the certification process.

The proposed rule would allow the federal agency to which a permit is being applied for to specify a timeframe by which a water-quality certification needs to be provided. The Clean Water Act says that certifications need to be provided within a reasonable timeframe not to exceed a year.

On its face this is not particularly troubling, but it does create a potential issue with the Commission's responsibilities under the Coastal Zone Management Act because under the CZMA generally a concurrence can be provided within six months. So there is a potential that if the federal agency were to require a shorter time period than six months the Commission would need to act without the benefit of the regional boards input.

We have prepared a draft, comment letter to EPA that we will be submitting by next Monday which is the deadline. In drafting that letter we have gotten some assistance from a draft letter that was prepared by the Coastal States Organization focusing on CZMA issues and we are also seeking to coordinate with the State Water Board which I understand is also preparing a comment letter. Thank you.

Executive Director Goldzband stated: Finally, I am pleased to let you know that BCDC will be very well represented on Monday and Tuesday of next week at the biennial State of the Estuary Conference in Oakland. Steve, Jessica, Brenda, and Shannon are each participating on panels. Jackie Mandoske and Sam Cohen will be displaying posters. BCDC will have a table advertising our job vacancies and recent accomplishments. In addition, Commissioner McGrath will participate on the same panel as Jessica so we'll hope that their messages will be aligned.

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

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

**7. Consideration of Administrative Matters.** Chair Wasserman stated: We were provided with a set of administrative actions. Does anybody have any questions for Brad on those? (No questions were voiced)

**8. Vote on Bay Plan Amendment No. 2-17 Which Would Add a New Section and Revise Various Sections of the Bay Plan to Address Environmental Justice and Social Equity.** Chair Wasserman announced: Item 8 is a Commission vote on Bay Plan Amendment 217 regarding Environmental Justice and Social Equity. Clesi Bennett will provide the staff recommendation and we will hear from the Commissioner Working Group as well.

Planner Clesi Bennett presented the following: I am a coastal planner in the Planning Division at BCDC. You now have before you a staff recommendation on Bay Plan Amendment 2-17, the Environmental Justice and Social Equity amendment which was published on October 4th.

This will be very similar to the Fill for Habitat vote you held two weeks ago.

In 1999, the state of California codified the concept of environmental justice defining it as "the fair treatment of people of all races, cultures and incomes with respect to the development, adoption, implementation and enforcement of environmental laws, regulations and policies".

As a state agency BCDC uses this definition of environmental justice.

BCDC's mission is to "protect and enhance San Francisco Bay and encourage the Bay's responsible and productive use for this and future generations." In many ways the Commission has been remarkably successful in achieving this mission.

Today, only a few acres of the Bay are filled annually and projects placing fill in the Bay must mitigate project impacts typically by restoring additional Baylands.

Today, over 350 miles of the Bay shoreline are now open to the public.

BCDC has also approved hundreds of projects that enliven, enhance, and protect the shoreline such as ports and marinas, residential and commercial development, parks and wetlands, bridges, and flood protection.

However, not all people have benefitted from this work. In some cases, these developments may have placed burdens upon certain communities, such as increased pollution or displacement of residents.

In order for the Commission to carry out its mission equitably and fairly, it is necessary to examine how our policies and practices may be contributing to or exacerbating environmental injustice or social inequity and to identify opportunities for change.

The Bay is a resource that is meant to be shared and enjoyed by all not only those who live adjacent to it or have the means to recreate on or near it.

And climate change will impact various areas differently and adapting to rising seas poses additional challenges to those with fewer financial, social and political resources.

BCDC views these issues, which are integral to fulfilling its mission, as ones of environmental justice and social equity.

As a reminder of the process that has led up to today's recommendation and vote, here is the timeline in regard to this Bay Plan amendment. This amendment was initiated in July of 2017 after the Policies for a Rising Bay Project and the Commissioner workshops on rising sea levels determined environmental justice and social equity to be Commission priorities.

The Environmental Justice Commissioner Working Group has also been instrumental to this work. They have been meeting since April of 2018 and we want to thank them today for all that they have contributed to this effort.

The Working Group includes Commissioners Eddie Ahn, Sheri Pemberton, John Vasquez, Pat Showalter, Jessie Arreguin as well as former Commissioner Teresa Alvarado. We would also like to thank NOAA who funded this project.

After substantial research and public engagement staff released a preliminary recommendation for this Bay Plan amendment on May 31st and the Commission held a public hearing on July 18th. The revised recommendation was released on October 4th and that brings us to today, the possible vote.

I would also like to recognize the Environmental Justice Review Team who has been guiding us in this process. This group is funded by the Resources Legacy Fund to participate in our Bay Plan Amendment process. The team consists of representatives from several Bay Area environmental justice and community-based organizations including Greenaction for Health and Environmental Justice, Breakthrough Communities, ShoreUp Marin City, Nuestra Casa, and EcoEquity.

BCDC received several public comments during the public comment period. We want to thank folks for providing these comments. We made some important revisions to the Staff Report because of their efforts.

The most common issues raised by the public comments revolved around lack of clarity. Staff made changes to address many of these comments which I will detail shortly.

Additionally, many comments raised issues on how the policies would be implemented. At the end of this presentation, we will touch on implementation.

I want to mention a letter from Verenise Caballero. There are 418 other identical letters from various folks.

After soliciting written and oral public comments and Commissioner feedback provided at the July 18th public hearing, staff discussed comments internally through meetings with BCDC regulatory staff.

Staff also followed up with many of the commenters to clarify any comments. And the Environmental Justice Commissioner Working Group met twice since the public hearing, in September to discuss policy revisions and earlier this month to discuss implementation.

On October 4th staff published a revised recommendation in responses to the public comments that we had received.

Staff believes that the recommendation that you have before you today, which resulted from this process, accomplishes what we set out to do since identifying environmental justice and social equity as Commission priorities.

In summary, the Bay Plan Amendment does the following: it adds a new section to the Bay Plan on environmental justice and social equity and it amends three current Bay Plan sections – public access, shoreline protection, and mitigation.

There are a few things I would like to highlight. We have created guiding principles to guide the Commission in this work and we will be asking you to adopt these in a separate resolution.

These amendments strive to ensure meaningful community involvement in projects, as well as identify and address disproportionate impacts of projects.

Additionally, some other highlights include, collaborating early and often with local governments and other agencies to more holistically address issues of environmental injustice and social inequity, attempting to ensure that all feel welcome at the Bay and its shoreline, and attempting to ensure that all benefit from BCDC's work.

I am going to walk you through some of the more detailed changes that were made in response to public comment on the May 31st preliminary recommendation and at the July 18th public hearing. Changes were also made based on discussions at the September 5th Environmental Justice Commissioner Working Group meeting.

Starting with Environmental Justice and Social Equity Policy 2 on page 13, this proposed policy addresses the role of local governments in helping to address issues of environmental justice and social equity.

The policy was originally proposed to read that "the Commission should support, encourage and expect local governments" to include environmental justice and social equity in their planning. However, "expect" was changed to "request" due to BCDC's inability to carry out "expect." "Request" allows the Commission to be actionable.

The policy also originally called on the Commission to be a leader in collaborating on these issues that may fall outside of our jurisdiction. Since then, “provide leadership” has replaced “be a leader” and “may affect” replaced “that fall outside of.” Both changes were made in order to clarify the intent of the policy.

These changes were made in response to public comments and discussions at the September Environmental Justice Working Group meeting.

Policy 3 is on page 13 and this policy is about meaningful community involvement in various projects. The original version of this policy said that, “local governments and project applicants should be encouraged and expected” to meaningfully involve communities. We revised this policy to be less wordy and to remove “expect,” as BCDC is unable to carry out “expect.”

It now reads that such outreach and engagement “should be conducted by local governments and project applicants.”

Also this policy was originally worded to say, “if previous outreach and engagement were insufficient further outreach and engagement should be conducted.” We received comments that “insufficiency” was subjective and difficult to determine. So we changed the policy to say, “if previous outreach and engagement did not occur” to increase the clarity of this policy.

In addition to calling for the involvement of identified vulnerable and disadvantaged communities, this policy revision also includes underrepresented communities.

Each of these communities are defined in the proposed Bay Plan findings of the environmental justice section. In this case, we added underrepresented communities because we want to ensure that small communities not captured by screening tools that are reliant on residential data, such as those experiencing homelessness or transient populations, are involved in the process.

These revisions were made to provide clarity and in response to public comment and discussions at the September Environmental Justice Commissioner Working Group meeting.

Through this meaningful involvement requirement, the Commission can start to understand who a project proponent involved in their process and how, who supports the project, how the project changed based on feedback and/or why the project could not be changed based on feedback.

It is also important to note that similar changes were made to Public Access Policy 5 on page 20, Shoreline Protection Policy 2 on page 27 and Mitigation Policy 3 on page 31 for consistency with this policy.

Looking at Environmental Justice and Social Equity Policy 4 on page 14, we see that this policy is about identifying and addressing disproportionate project impacts. Underrepresented communities were added along with identified vulnerable and disadvantaged communities for the reasons that I just stated.

In response to public comments “disproportionate burdens” was changed to “disproportionate impacts” and the “steps of subsequent mitigation” was shortened to the word “mitigation” to clarify this policy and improve consistency with other policies.

These changes were in response to public comment and discussion at the September Environmental Justice Commissioner Working Group meeting.

In identifying disproportionate project impacts, you, as a Commission, may hear more about items typically found in an environmental impact report than you may have for past BCDC permits.

We will now discuss Public Access Finding C on page 15. This finding generally describes public access and offers some examples.

Changes were made to ensure that there is no conflict with public access as a public trust use and BCDC's ability to allow limited, ticketed events pursuant to permit conditions.

These edits include changing "by public access' nature" to "in general" before the statement that "public access is free." We have also added "public programming that activates the shoreline" to a list of potential public access uses.

Additionally, events will be addressed when the Commission updates its Public Access, Design Guidelines as is included in BCDC's current Strategic Plan.

"Non-physical aspects of public access" was changed to "programming" as it was not clear what "non-physical aspects" referred to. These changes were made in response to the Commissioner deliberation at the July 18th public hearing and in response to the Environmental Justice Commissioner Working Group meeting discussion in September.

This slide addresses Public Access Finding H and Policy 8 on pages 16 and 21 as they were edited similarly to further ensure that public access is welcoming to local communities.

Finding H describes the barriers to public access and Policy 8 attempts to address some of these barriers. In both, phrases specific to public access serving the needs and embracing the cultures of local communities were added.

In Policy 8, the notion that public access improvements should provide barrier-free access replaced the notion that these improvements should permit barrier-free access to ensure that project proponents and the Commission are more proactive in creating and requiring barrier-free access for people with disabilities, people of all income levels, and people of all cultures.

The final changes to Policy 8 were made to improve the sentence structure. These changes were made in response to discussion at the September Environmental Justice Commissioner Working Group meeting.

Lastly, I will discuss Mitigation Finding H, which is on page 30. This finding explains the benefits of meaningfully involving communities in mitigation projects. Changes were incorporated to add specificity and clarification to the finding.

Communities may be involved in several phases of mitigation projects such as the planning of projects, the construction of projects through volunteer events, the monitoring of projects through citizen science, through onsite educational opportunities, and through the programming of any public access on the site.

These changes were made in response to public comments and in response to discussions at the September Environmental Justice Commissioner Working Group meeting.

In summary, this amendment does a few things. It, for the first time, recognizes BCDC's role in contributing to or perpetuating environmental injustices and inequities around the region. It adds definitions and guiding principles to the Bay Plan that are specific to environmental justice and social equity. It requires meaningful community involvement in certain projects. It requires identifying and addressing disproportionate impacts of certain projects. It allows the Commission to use inclusive design principles in the evaluation of public access. And it requires identifying and addressing any potential adverse adjacent or nearby impacts of shoreline protection structures. It requires incorporating sea level rise and associated science into the design of remediation projects. And lastly, it requires the Commission to not only consider the design and location of mitigation benefits, but also the distribution of these benefits.

So, finally, the staff recommends that the Commission adopt two resolutions. Resolution No. 2019-07 commits the Commission to the environmental justice and social equity guiding principles and Resolution No. 2019-08 adds a new Environmental Justice and Social Equity section to the Bay Plan and revises findings and policies in the current Public Access, Shoreline Protection and Mitigation sections.

We want to touch on implementation as it has come up throughout our amendment process. Staff recognizes that we will need to conduct a robust implementation phase for this amendment as these are new topics for our Commission.

The last step in the amendment process is the administrative law reviews by the Office of Administrative Law and NOAA's Office of Coastal Management.

Once the Bay Plan is officially amended, staff will develop implementation guidance for internal and external stakeholders and make our vulnerable community mapping data publicly available.

We also plan to hold trainings for the Commission, for our Design Review Board, applicants, and local governments on these new policies.

We also hope to provide trainings, hold capacity exchanges and build relationships between our regulatory and permit staff and community-based organizations.

There are also some longer-term implementation activities that we have identified that the Commission could undertake.

We have broken these into two buckets; process and policy-related activities. These process activities include: improving our community outreach and engagement broadly across the agency, improving our meeting and meeting material accessibility such as translation, improving coordination and collaboration with other agencies and local governments to more holistically address environmental justice and social equity, and we could more explicitly address equity in the agency's day-to-day operations such as communications, public education, and human resources activities, such as recruitment and hiring.

We also wanted to announce that we are in the midst of hiring BCDC's first environmental justice and community outreach specialist who will be working on many of these items.

The longer-term policy activities include updating our Public Access Design Guidelines, updating our regulations, exploring amendments to the McAteer-Petris Act for environmental justice, building capacity to address tribal issues, and ensuring environmental justice and equity are central to regional shoreline adaptation planning.

With that, I would like to invite Commissioner Ahn as chair of the Environmental Justice Commissioner Working Group and any other Working Group member to provide comments or add any details to this presentation.

Commissioner Ahn spoke: I will mention three points to those assembled here. It has been two years and 17 meetings of the Environmental Justice Working Group, so it has been a slog (laughter) and it's finally upon us.

I want to thank the staff for their patience and all who have contributed to our efforts. The first point is to emphasize the creation of guidance to help us through this implementation process which will be absolutely critical to the success of the Plan Amendment. Number two is training and making sure that we properly train our local partners so that we can properly implement this amendment, as well as the relationship building that should occur with everyone from permit seekers to other community stakeholders including additional environmental justice communities that we are hoping the Environmental Justice Review Team can help us do outreach with. And finally we have mapping, which is an issue I brought before this Commission several times now.

You will notice in this presentation that there was a blend of CalEnviroScreen and a reference to Adapting to Rising Tides, but an understanding of what communities we should be serving in the first place should be really important; not just disadvantaged communities or DACs as it is sometimes defined by the state of California, but vulnerable communities. And as our understanding of climate change is changing over time, in other words, as we see in more and more communities under siege by the effects of climate change from pollution and the planet creating havoc in our local communities – to make sure we are mapping them adequately will be an important part of this process.

Commissioner Showalter commented: I would like to say ditto to everything that Commissioner Ahn has said and thank the staff. They have done a really fine job of getting their arms around a very difficult social issue which isn't the kind of thing that we typically, at this Commission, work on.

We need to be working on it and recognizing that fact and doing research about what is standard in other agencies and working with the State Lands Commission was really wonderful.

I also want to thank the environmental justice community who took an active role in our meetings. They did a tremendous amount of work on their part and they brought a lot of very relevant knowledge to our discussions.

One thing I want to say is that by doing this we are exercising leadership. We aren't going to carry out these environmental justice activities ourselves because the discussions that need to occur on any project have to take place right from the beginning of the project design all through its development.

So if they haven't gotten started on that before it gets to BCDC, it just won't work. But what we are doing is we are raising the awareness and providing important definitions. I think that is very valuable. I am really happy to see this going forward.

Commissioner Pemberton was recognized: I also wanted to thank the staff, the Working Group members, and especially Clesi because this was a team effort and a multi-year effort but she was at the hub and heart of everything and the meetings were tremendously well-organized and run very well and she is very well prepared and I want to give her a lot of credit because it is a job really well done.

I also wanted to especially thank the community and everyone who came to the meetings and who participated when we asked to hear from them and what they thought because the content of the Bay Plan Amendment is supposed to reflect the community's perspective and I think it does that.

I wanted to also emphasize some concepts like meaningful community engagement and language access and those kinds of things that I hope if approved today will be at the forefront as this is implemented because that is critical.

If it is adopted, I really look forward to its implementation and hearing more about how it is working, where we can improve or reset, and that sort of thing. So thank you and that concludes my comments.

Commissioner Vasquez chimed in: I once heard that if you are the last speaker, everything has already been said but not everyone has said it. (Laughter) So here we go.

I want to thank the Commission for taking this on, my fellow Commissioners. I want to thank you for your faith in putting that responsibility on a few of us that were at those 17 meetings, but more importantly, I want to thank the staff who did a tremendous job and for the community who came and engaged themselves to tell us where we needed to put those refinements.

And at the end of the day, it is a document that is going to serve and continue to serve us for a long time to come, yet, it needs to be a living document. It needs to be able to reflect the communities as everything changes. But more importantly, I think that last line in those outcomes that everyone should benefit from all of this is important. Even those that don't think they have a voice have been given a voice by what we are doing and they have a platform to come to speak to us on.

And that meaningful engagement should really be just that – meaningful engagement early on speaking to these communities and having them come out and speak and listening to what they are really saying. Often times they say the squeaky wheel gets the most grease, but that is not always true. We have an opportunity now to be fair and just to everyone. So thank you all.

Commissioner Scharff commented: I would also like to thank the Working Group and the staff for working on this. It is a great day that you are bringing this forward to us.

I had some questions about how we implement this. I want to make sure I understand it properly. My first question is on Finding B where it talks about the Commission as one of the agencies involved in the process has played a role in approving development et cetera – the

question that came to my mind is where it says, where we basically allowed projects or approved additional development projects to existing ports, oil and gas operations, sewage and wastewater treatment plants; I wanted to ask staff—I view this as a document in which we have aspirations of inclusivity of helping groups, when I read this I just wanted to make sure that this doesn't interpret it that if, for instance, the Port of Oakland came to us to expand that this doesn't preclude that from occurring automatically by being in here.

I mean there aren't that many ports – we have the Port of Oakland and the Port of San Francisco. I don't know of any other ports.

Commissioner McGrath (off mic): There is the Port of Redwood City.

Commissioner Scharff acknowledged the comment: Oh Redwood City that is true. So we have lots of ports. (Laughter) But this doesn't stop us from doing that – I am really asking – is any of this prescriptive?

If the Chevron Refinery up in Richmond comes to us, does that mean that nothing further can be built out there even before we look at the impacts? I am assuming not, because this seemed a little prescriptive. I wanted to raise that question.

Ms. Bennett explained: First, I wanted to note that it is a finding rather than a policy. So it is just a statement of fact and there are no policies directly aimed at ports or refineries. This is just a statement of history.

I also wanted to note that we are not amending the McAteer-Petris Act, which is where our authority on approving and denying permits is found.

Commissioner Scharff replied: Okay, great. And then this comes before us in the Enforcement Committee all the time. We have the anchor-outs. We have Union Point Park, which has homeless issues. When I see that the copper wire has been stripped out of the park, there are burned-out RVs there, the grass is dead, and the place is a total disaster. We have been talking to the City of Oakland telling them they need to restore the park.

The questions I have now are: I am assuming that this does not become a project in which we can no longer move forward and do that because we have communities of homeless people who now occupy the park and I want to know if we are going to look at this differently and what that means on these issues.

Chair Wasserman chimed in: I am going to give Clesi a little bit of time to think about that and I don't want to cut off questions from the Commissioners but I think we should hear from the speakers before we continue our questions.

Ms. Emily Lopper spoke: I am with the Bay Planning Coalition. We are very supportive of this amendment and incorporating these principles of environmental justice and social equity into the planning process. We want to commend the Commissioners and the Working Group and the staff for conducting an incredibly robust public engagement effort that led to the development of this final recommendation and we appreciate being a part of that process.

We submitted a joint letter with some other business organizations over the summer when the initial recommendations were released that highlighted some concerns about how some of the vague language and the additional requirements around assessing project impacts may unintentionally lead to delays in projects at a time when we should be expediting the delivery of these important climate adaptation projects around the region.

We are appreciative of staff for incorporating some of our suggested changes into the final amendment and we think it is really important to work with the business community and the permit applicants to ensure that they are on the same page about what is required as part of this new policy and we are really eager to work with you to help get the word out to those communities. So thanks very much.

Chair Wasserman announced: Next we have Paloma Pavel and Terrie Green is yielding her minutes to Ms. Pavel.

Ms. Paloma Pavel was recognized: Thank you. Dr. Paloma Pavel president of Earth House Center and a member of the Environmental Justice Review Team.

I want to thank all of you for this process. I want to reframe our way of thinking about it as numbers of meetings, but rather to think about it in the view of a living ecosystem; that we have actually been building a kind of inter-connected root system which will enable us to be sustainable and strong under hard weather, which we anticipate going forward.

I want to thank you for helping to build the bridges, the relationships, and the trust that will be needed to face the times that lie ahead of us.

Climate change creates a multiplier effect for communities who are already grappling with threats from skyrocketing rents, displacement, rising sea levels, et cetera.

Also vulnerable communities are kind of like the canaries in the mine. We are actually the ones who are at the front end of this, but actually as we make provisions that affect and protect the most vulnerable communities, we are actually creating a future that works better for everyone.

As we know from Hurricane Katrina and Superstorm Sandy, they taught us that the development of public infrastructure needs to encourage and support the advanced signals that are coming from vulnerable communities.

The BCDC amendments send a strong signal and a leadership that not only affects development here in the Bay Area, but other eyes throughout the country, throughout California, are looking at BCDC as a leader in this movement. This is an approach that needs to be taken across various agencies and it is starting here. And we are proud of that and hope that you join us in that.

We also want to highlight the three areas of ensuring responsibility that shoreline development and how it has disproportionate impacts will be measured here and that public participation will be increased and communities will be notified as developments are made. This is a good thing and that we are going to be fostering inclusive and accessible space which includes the history, inclusive design, and multi-cultural programming. This makes for a better shoreline for everyone.

I also wanted to say my partner Carl Anthony was taken into the emergency room this morning but recorded his comments for us. He was supposed to be the second speaker. May I proceed?

Chair Wasserman answered: You may.

Ms. Pavel played a recorded message from Carl Anthony via her cell phone: So this is Carl's 50 second message for everyone.

"This is Carl Anthony of Breakthrough Communities and a member of the Environmental Justice Working Group. You have the opportunity to pass the recommendations before you today of great historical significance for the Bay Area and for the country.

I want to emphasize the fact that this is just the beginning of a mobilizing effort to make sure that the communities of color have an opportunity to weigh in and we are going to need to organize those communities to be able to understand everything that is going on and what their self-interests are in the situation.

I am urging you to pass the recommendations as they have come to you and we look forward to continuing to work with you."

Ms. Pavel continued: Thank you Carl. This isn't two years of work – this is decades of work. This is work that the communities surrounding you have been hoping for, working towards for many decades. This is a historic moment. Thank you.

Ms. Nahal Ghoghaie-Ipakchi commented: I am the director of EcoEquity Consulting and I am the coordinator of the Environmental Justice Review Team. Thanks again to the Commissioners for all of your work on this amendment process especially the Environmental Justice Working Group Commissioner members as well as my fellow Environmental Justice Review Team members and the BCDC staff for working with us on this environmental justice and social equity amendment.

These amendments to the San Francisco Bay Plan will ensure that low-income communities of color and other underrepresented groups not only feel welcomed to visit these shoreline sites but also these new requirements to recognize their history, arts, and culture will allow these residents to also provide them a sense of ownership and stewardship and pride among them as well as all of the residents of the Bay.

And today may be a major success with the vote. But I think that the real celebration will take place when these policies are enacted and we see equity alive and well on the shoreline. Thank you.

Ms. Roxanna Franco addressed the Commission: I am here representing Julio Garcia and Nuestra Casa. It is important to remember our resilient communities when making these changes. It is important to dismantle the injustices and inequities our communities have faced throughout the years. It is important to remember the lack of outreach, education, and involvement of our communities on a daily basis.

Our resilient communities deserve the same love, attention, and affection as others.

It is important to include the voices of our resilient communities who face struggles like language access, water quality, air quality, housing affordability and stability, lack of jobs, transportation, and food security every day in their lives.

It is important to create a safe space for our communities to be able to be seen and heard. Thank you.

Ms. Sheridan Noelani Enomoto: My name is Sheridan Noelani Enomoto and thank you for saying my Hawaiian name correctly. I am with Greenaction for Health and Environmental Justice. I do recognize that it is a privilege for me to stand here especially for the communities in which I serve that aren't with me but are always with me.

And I am also grateful to stand next to Ms. Terrie Green who is definitely a huge support. I also want to thank Commissioner Ahn for visiting Bayview Hunters Point Environmental Justice Task Force in the community last night and honoring Ms. Marie Harrison and I want to call her in the room as well.

Because if it wasn't for the people before me and for all of us, we wouldn't even be here and we wouldn't be here for all of the legislation, civil rights, and environmental justice that came a generation before me.

In July of 2017, I was here in front of the Commission and I said two things – water is a “we” and water doesn't need time but we need to be on time. And here we are and now, the time is before us.

These policies before you give BCDC staff concrete guidelines for how to review and manage proposals like this in a transparent, equitable, and accessible way.

We look forward to working with the agency and community members to build a resilient San Francisco Bay Area where even the most vulnerable among us can thrive.

I am very, very grateful that I can come back to this Commission today and say this. And I look forward for more good things to come. Thank you.

Chair Wasserman continued: Thank you. That concludes the speakers. We will now go back to Commissioners questions and comments. And there is the question on the floor from Commissioner Scharff—just to keep my word. (Laughter)

Ms. Bennett spoke: Thank you for that question. First, I want to echo something I have already said and that is that we are not amending the McAteer-Petris Act. So our authority and jurisdiction remain the same.

More specifically than that, we haven't had discussions around these new policies in our enforcement cases and I think that is something we can definitely have going forward and seeing how using these principles would affect those decisions, but those are conversations that we haven't had yet.

Commissioner Nelson was recognized: I would also like to thank the staff and the Working Group and the community members for this exhaustive effort. I've been involved in efforts like this in the past and in the previous generation of efforts to adopt environmental justice policies, those were often done with policies stapled to the end of existing documents. And the effort here to work through the full scope of the Commission's work and integrate these policies into all of our work is enormously more time consuming and much more likely to have a lasting effect.

My first question is that it is clear that there are resource implications of implementation in terms of additional outreach and language. I know we are hiring some additional staff, but I want to ask if you have a sense yet of what additional resources are going to be required to fully implement these policies.

Executive Director Goldzband fielded this question: That is a great question. As part of the governor's budget for this year BCDC has been provided with a new staff person whose responsibility it is to do the outreach and help prepare the guidance as Clesi said.

To be candid - beyond that we don't know because we don't know what this truly entails. I will tell you that the thing that I am most pleased by with regard to how our staff helped the Commissioners develop this has been the enormous collaboration between the planning unit and the regulatory unit.

And Eric led the charge from the regulatory side to make sure that these Bay Plan amendments were not drafted within a vacuum.

There is no doubt that as we move forward on implementation, regulatory will need to be involved and as we go through that process, we will end up essentially making a list of that which we need to change and the resources that we need to get in order to make those changes.

Commissioner Nelson continued his questioning: We got a letter that was in our packet this morning with additional comments from Paul Campos with BIA (Building Industry Association) in October and I am not sure I fully understood the question but it essentially was – can we provide clarity about whether we are changing our mitigation requirements beyond our traditional public access shoreline requirements?

I wanted to ask staff to respond to that.

Mr. Marc Zeppetello responded: The Building Industry Association and a number of groups raised some comments at the public hearing. We responded to those comments and this email that was submitted requested clarification with respect to BCDC's authority to mitigate for projects solely in the shoreline band.

And in an attempt to provide that clarification, it is correct that the Commission can only deny a project in the shoreline band for failure to provide maximum feasible public access, but it also true that under 66632.f, a permit shall only be granted if a project is either necessary to the health, safety, and welfare of the entire Bay Area or if it is consistent with the McAteer-Petris Act and the Bay Plan.

And the statute goes on to say that to effectuate those purposes, the Commission can impose reasonable permit conditions.

So in working on this response to comments, I went back to the staff reports for the mitigation policies and they are premised on the principle that imposing reasonable conditions to ensure consistency with the McAteer-Petris Act or the Bay Plan policies is the basis for requiring mitigation.

It is difficult to answer this question or provide clarification in the abstract without a specific site or a specific project. But I don't believe that the Commission's authority for a project in the shoreline band is solely and exclusively limited to public access.

I do agree that the Bay Plan policies in the McAteer-Petris Act are primarily focused on the Bay and with respect to the shoreline, they are focused on public access but two examples of where the authority to mitigate may go beyond that would be shoreline protection, where an applicant is proposing a shoreline protection structure within the shoreline band that may now or in time, result in offsite impacts and that would provide a basis for mitigation in that respect.

Another example would be the wildlife policies, or fish and wildlife and other organisms' policies – for example if there are birds or endangered species that may be present in the shoreline band, that would be impacted by development that those policies would allow for mitigation that goes beyond solely public access.

Commissioner Eckerle commented: I am also going to echo the thanks to staff and all your hard work along with the Commissioner Working Group and the Review Team and the members of the public.

I want to flag a question regarding to or related to the California tribes. I really appreciate that there is a guiding principle included that acknowledges California Native American communities. And I understand the decision to address the issues related to tribes in a separate amendment process as those issues can overlap with environmental justice and social equity but they also have aspects that are distinct and unique to indigenous, traditional, and cultural uses and values and rights.

However, I think it is critical that we prioritize tribal engagement and partnership in the work that we are doing and to be clear to the public that this is a priority of this Commission.

I think it would be really helpful for us to understand the anticipated timeline for initiating the essential relationship building with tribal communities in advancing a Bay Plan amendment on that issue.

Commissioner McGrath was recognized: I'd like to thank the whole team and I use the word advisedly because creating a team out of disparate interests is what created this and everyone gets credit. I'd also like to make a shout-out to Carl Anthony who was one of the lights that guided me through environmental justice and helped guide me through the environmental justice issues in West Oakland and I hope he is well.

This is personal to me. I have a grandson who is disabled. I notice the disabled access aspects of this. I have been a participant with my daughter in trying to assure the access rights to education that he has a right to. So being on the right side of the struggle is important.

I support this and why I think it matters is I know from my activities around the Bay that there are communities that use areas now informally. I will mention two of them.

There are Pacific Island outriggers who bring a big group of canoes to a place and there are fisherman and fisherwomen and these are people as I read this – this now helps define adequate public access in terms of making sure that we don't plan for developed uses that would ignore those existing uses and if they are not provided for, unless there is a really good reason that they can't be provided for, we can deny that project because it doesn't provide maximum feasible public access. And if this is true, then I am really happy with that.

Just to my colleague about the Port of Oakland and access—let me assure you that the Port of Oakland was asked to provide more public access with every project that I brought to this Commission, but there is a tough issue in there that I don't think we address here but I want to flag it.

And that is the problem of access that is created; if the Port of Oakland provides a development that requires access as mitigation, it has to maintain that access for the life of the project. If the Coastal Conservancy funds a public access dock somewhere and the city is not able to maintain it and it is not done as a requirement and it wears out – there are no assurances.

So sometimes it is a benefit to actually have a requirement as a mitigation of access. But the problem of things wearing out and what it takes to make sure that you are in line with the Coastal Conservancy is a big problem and it applies to something like Union Point.

I am going to support this. Thank you.

Commissioner Scharff commented: I wanted to respond to Commissioner McGrath just briefly. I wasn't really talking about access. What I was talking about was that the document basically indicates that we at BCDC have exacerbated environmental injustice by continuing to build out our ports and concentrating areas, which has been unfortunate, in low-income areas.

My real question was; yes, that was a bad thing that happened which was clearly unfortunate, but the question is on a going-forward basis, I don't see us building a new port somewhere else so maybe that is not an issue.

But my real question was, okay, I agree that this is bad that this has happened but what does it mean to put this in here? And what I got back as a response was satisfactory which was—well, we are just saying this is a historical issue. We are not really saying how we are going to interpret this in the future and what we are going to do because I do think that if we were to pass this and we believed that we could no longer expand the Port of Oakland by just doing this then that would be a problem. And I don't think anyone meant to say that, I just wanted to get clarity because I thought this was a little prescriptive about particular items. I just thought it needed a little fleshing out.

I am also going to vote for this and I want to make that clear. I just think it is important and that is why I asked about the homeless issue because this comes before the Enforcement Committee all the time and we aren't thinking about it in a certain way and if Commissioners wanted us to start thinking about it differently, I wanted to see if any of you were going to speak up and say – I mean there are two things; we are proceeding under, without having any guidance on this at the moment, and we are going to continue to proceed like that until we get guidance, but I did open the door there for Commissioners to say “no, I want you to wait and see what our groups says.” I was raising the question to see what people were thinking about it.

Commissioner Arreguin commented: On that last point, clearly there needs to be guidance as to how these policies and regulations are going to be implemented and that needs to be provided in terms of how the enforcement process is going to work, but I would argue that this would require us to think about how enforcement happens and compliance happens in a way that is compassionate and is humanitarian and I think that is a good thing for a regulatory agency to do.

I want to acknowledge that this is a very unique thing for a state or governmental agency to do. And this framework is something that we are going to use in my city as guidance to develop environmental justice and social equity principles for our climate action implementation, as well as other land use and other policies that we are going to be implementing.

I also want to express my deep appreciation at BCDC for initiating this process and acknowledge that this came from the community. And the level of engagement and collaboration that has occurred between the various environmental organizations and stakeholders and this agency is really incredible and I want to express my appreciation for that.

Implementation will be key as we move forward, but I think this is a really exciting moment not just for BCDC but for the State of California and to make sure that we are addressing these historic inequities that have permeated throughout the many decades in the Bay Area and to make sure that we are planning the future of our Bay in a way that is equitable and that is sustainable and that is inclusive of everyone in our region. Thank you.

Executive Director Goldzband commented: I want to say something that means a lot to me from a process-oriented perspective. There are three coastal zone management agencies in the State of California. They are the Coastal Commission, the Coastal Conservancy, and BCDC.

We try to work together on issues that affect us all. Our jurisdictions are non-intersectional, as well as overlapping. Our roles are definitely different. Our policies are different. I want to make sure that you all recognize that there are very, very specific times when it is really good not to be a first mover.

The Coastal Commission has spent an awful lot of time developing its guidance and its environmental justice program. The Coastal Conservancy followed.

I think one of the great benefits to being the third coastal zone management agency to do this, is that we learned from them.

In addition, I want to point out that the State Lands Commission, although not a coastal zone management agency, also has been working on this for a longer period formally than BCDC.

When you take a look at the way the coastal zone management process works, I think as Californians, we all can take tremendous pride in knowing that the coastal system now has what we think is a pretty well-informed and robust environmental justice program overall.

And I want to thank my peers, Jack Ainsworth and Sam Schuchat and Jennifer Lucchesi for their leadership in this because it is really, really important that we do this from a 30,000-foot level in addition to the level that you all are looking at it now. Thank you.

Chair Wasserman continued: On Public Access Finding C on page 15, I want the record to be very clear that this policy does not preclude private use in the appropriate circumstances in public access areas. It is not a change in our policy. The public access policy is being reviewed and there may be some changes that come out of that review.

This policy to public access doesn't eliminate that appropriate and appropriately permitted private use.

We all need to be aware that this does not go into effect immediately. The government process is a slow process. This needs review by the state and by NOAA. It is not going to take years for that to happen, but it is going to take some months.

And we are not going to stand still and be asleep during those months. We are going to use that time to communicate with people, hold workshops, and have discussions on the implementing guidelines. And a number of the questions that have been raised by Commissioners as well as by those who submitted comments will be further addressed in that process.

And then this is a new policy, a very important policy. And as we implement it on particular projects there will also be development and hopefully that development will only require changes in the implementing guidelines and relatively easy to change as opposed to a change here.

If it requires a change here, we will make a change here. This is not written in cement or concrete. It is a living, evolving document.

Finally I have a question – is there a reporter in the room? (No reporters were in the room) Yes, I was afraid that was the case. I very much appreciate that John King was here when we did the Bay Fill Amendment and I mostly appreciated the article he wrote afterwards. (Laughter)

I am disappointed that there isn't a press person here because even though it has been pointed out by our Executive Director we are not the first coastal management agency; we're actually the third—this is still groundbreaking. This is still very important.

And so we need to work on how we can get that word out simply because it is groundbreaking and historic and secondly, because we need to start, and the process of adopting the guidelines will be a significant piece of that, getting the word out that this is in place and people are going to have to comply with it.

Clesi, will you restate the staff recommendations.

Ms. Bennett read the following into the record: The staff recommends the Commission adopt two resolutions; Resolution 2019-07 commits the Commission to the Environmental Justice and Social Equity Guiding Principles. And Resolution 2019-08 adds a new Environmental Justice and Social Equity section to the Bay Plan and revises findings and policies in the Public Access, Shoreline Protection and Mitigation sections.

Chair Wasserman continued: I would entertain a motion and a second on Resolution 2019-07 adopting the Guiding Principles.

**MOTION:** Commissioner Scharff moved approval of Resolution 2019-07, seconded by Commissioner Pemberton.

**VOTE:** The motion carried with a vote of 21-0-0 with Commissioners Addiego, Ahn, Arreguin, Gilmore, Scharff, Eckerle, Pemberton, McGrath, Peskin, Pine, Nelson, Randolph, Sears, Showalter, Vasquez, Nguyen, Techel, Wagenknecht, Ziegler, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO", votes and no abstentions.

Chair Wasserman announced: The motion pertaining to Resolution 2019-07 passes. I would ask for a motion and a second on the staff recommendation for Resolution 2019-08, Bay Plan Amendment 2-17.

**MOTION:** Commissioner Ahn moved approval of Resolution 2019-08, seconded by Commissioner Vasquez.

**VOTE:** The motion carried with a vote of 21-0-0 with Commissioners Addiego, Ahn, Arreguin, Gilmore, Scharff, Eckerle, Pemberton, McGrath, Peskin, Pine, Nelson, Randolph, Sears, Showalter, Vasquez, Nguyen, Techel, Wagenknecht, Ziegler, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO", votes and no abstentions.

Chair Wasserman continued: I would like to make a brief statement which is primarily directed at the representatives of the press who are not here, but I think it is important to have it on the record. (Laughter) I want to join the other Commissioners in thanking the Commissioners, the public participants and the staff for what we have just accomplished.

In 2015, BCDC initiated its NOAA-funded Policies for a Rising Bay Study and the Commission's workshops on rising sea level. Our Commissioners found that BCDC's policies inadequately addressed environmental justice and social equity issues especially in light of the challenges faced by disadvantaged communities due to climate change.

Therefore the Commission voted two years ago to begin the amendment process and created the Environmental Justice Working Group.

I want to particularly thank Commissioners Ahn, Pemberton, Showalter, Vasquez and former Commissioner Alvarado for their leadership and active participation in this effort.

During the last 19 months the Commissioners, our partners and collaborators, various interest groups and the staff have analyzed the potential intersections among environmental justice, social equity, public access, shoreline protection, adaptation, and mitigation.

As a result of this amendment, the Bay Plan, our governing document, will acknowledge, for the first time, the history of environmental justice in the Bay Area.

The Bay must be shared and enjoyed by all. Public access must reflect the needs and desires of shoreline and adjacent communities and diverse users of the Bay.

Adapting to rising seas will pose huge challenges to all communities but especially those with fewer resources.

This amendment will help us strive to ensure that all our policy decisions incorporate the results of meaningful and robust community involvement to lessen disproportionate impacts.

Internally, BCDC will create an implementation plan to make the Commission per se more accessible to the public. Simply put, the Commission will fulfill its responsibilities by looking through additional, different, new, and important lenses. I believe our view of the world will be improved by these lenses we are adopting.

It is important to note that BCDC and the San Francisco Bay Plan emerged from a grassroots movement started almost 60 years ago by community members who themselves viewed the Bay through different lenses than the establishment.

Our new policies would not be as strong as they are without the participation and contributions we received from those grassroots organizations that exist now, relying on some that no longer exist, but including today those on the Environmental Justice Review Team, which was funded by the generous support of the Resources Legacy Fund.

Those organizations include Greenaction for Health and Environmental Justice, Breakthrough Communities, ShoreUp Marin City, Nuestra Casa and EcoEquity.

As we did two weeks ago, BCDC broke new ground today. Like the Bay Fill for Habitat Amendment, the Environmental Justice and Social Equity Amendment will require BCDC, the staff, and Commission to think critically about the Bay's resources, both natural and human, in an uncertain future.

I urge all of us to use these guiding principles we adopted today as a North Star to shape our work going forward. And I thank you for your efforts. (Applause)

**9. Vote on Proposed Amendments to Commission Permit Application Fees.** Chair Wasserman stated: That brings us to Item 9, a staff recommendation on proposed amendments to Commission permit applicant fees. Chief Counsel Marc Zeppetello will provide the staff recommendation.

Chief Counsel Zeppetello presented the following: Good afternoon Commissioners. On March 1st of this year the Commission issued a Notice of Proposed Rulemaking to amend the permit fee regulation which is Appendix M to your regulations.

The proposal in summary was to double all the existing permit application fees and to increase from 20 percent to 40 percent the target revenue that would be collected from fees, the percentage of the Commission's total regulatory program costs.

The issuance of the Notice of Proposed Rulemaking commenced the public-comment period under the Administrative Procedures Act that was over 45 days long.

On April 18th the Commission held a public hearing at which two commenters submitted comments and at which a number of Commissioners raised questions and made comments.

By the close of the comment period we had also received three public-comment letters. At the conclusion of the April 18th hearing the Chair concurred in a suggestion that had been made to convene a Commissioner working group to meet with staff and interested parties to discuss some of the issues that had been raised at the hearing and in the comments and to report back to the Commission.

The Permit Fees Working Group met three times and at their final meeting on September 11th the Commissioner members of the Working Group agreed to recommend to the full Commission that it adopt the proposed amendments to Appendix M that had been initially proposed but with certain modifications that we had been discussing and developed during this series of meetings.

I will summarize the proposed amendments as modified and as set forth in Attachment A to the Staff Report that was circulated and dated on October 3rd.

The first, basic amendment is to double the existing permit fees, but in response to comments that were made by the public participants in the Working Group, including the Bay Planning Coalition, to do the increase in two steps. So the proposal as outlined in the amended subsection B is to increase the fees 50 percent, halfway to doubling them for two years starting next July 1st. So for two years the fees would go up 50 percent and then after that the fees would take a step up to the full level, double the existing fees.

That change led to the next change. The existing regulations provide a process for assessing whether the fees should be adjusted every five years, based on five years of program-cost data and permit-fee revenue. It was decided to propose that we still do that assessment after five years from the new fees going into effect but based on three years of data, the final three years once the fees go up and that thereafter we do the process again every four years but based on three years of data.

And the disconnect there is that the amended regulation would allow a full year from the end of a three-year period to do the calculations and to provide notice to the regulated community and then the fees, if adjusted, and they could be adjusted either up or down, would go into effect the following July 1st shifting under the current regulations to an annual, calendar year basis to a state fiscal-year basis.

The final substantive change recommended by the Working Group was we developed an approach to provide a fee reduction for projects for restoration projects, specifically projects that received grants from the San Francisco Bay Restoration Authority, the Measure AA funds.

And the proposal is that the permit fees are calculated based on total project costs, which I will discuss a little bit more in a minute. There would be a dollar-for-dollar reduction. The amount of the grant would be reduced or subtracted from the total project cost for the project and the difference would be used to calculate the application fee.

Attachment B to the Staff Report is a memorandum that we submitted to the Working Group that looks at the projects that received grants in 2018. There were 10 projects and the fee reduction based on the proposal in the amendment would reduce the fees to the Commission by approximately \$77,000, which might happen over one year or it might happen over two or three years just depending on the processing of the applications.

The amounts of grants represented by that is approximately \$28 million, but because the permit fees are based on a small percentage of total, project costs it translates to a fee revenue reduction of approximately \$77,000.

The Staff Report includes the comments that were submitted as well as a response to those comments. I would like to discuss one of those issues. Most of them are self-explanatory and set forth in the response to comments. But one issue was also raised in two letters that you received over the last week or two on this agenda item.

And that is that commenters have suggested that the Commission application fees should not be based on total project costs as they have been since 1975, but rather should be based only on the proportion of project costs for the portion of a project within the Commission's jurisdiction.

As discussed in the response to comments, the California Constitution authorizes state agencies to impose a fee for the reasonable regulatory costs incident to issuing a license or a permit.

Basing the Commission fees on total project costs complies with and meets the requirements of that constitutional provision, as discussed in detail in the response to comments.

The fees determined based on total project costs are reasonable because such fees are proportional to the amount of staff time and Commission time, and therefore the costs associated with processing an application and are reasonable. In simple terms, larger more complex projects take more time, and it costs more for the state to process those applications than for small projects.

Basing fees on total project costs is also reasonable and appropriate because even if a portion of a project is outside the Commission's jurisdiction, the portions inside and outside the Commission's jurisdiction are inter-related and staff and the Commission need to look at all aspects of the project and the inter-relationships between those components. Public access, shoreline protection, stormwater are all examples of how what happens upland may impact the portion of a project within the Commission's jurisdiction.

Total project costs are a widely-used measure of the relative complexity of a project and the associated time and costs incurred to review a project.

As you may recall, before we initiated the rulemaking staff conducted a survey of the permit fees charged by a number of other Bay Area cities and counties and also the State Coastal Commission, and for each one of those agencies the permit fees are based on total project costs.

For the cities and counties, not surprisingly since in those cases projects will be in their jurisdiction and there is not a jurisdictional line, those fee schedules don't address a situation where a project may be partially in and partially out. But I would note that the Coastal Commission has essentially the same definition as this Commission. They base their permit fees on development costs and development costs are defined in the Coastal Commission's fee schedule as including all costs associated with a project both within and outside the Coastal Commission's jurisdiction.

The commenters' suggestion that fees should be based only on costs for portions of a project within the Commission's jurisdiction; it is unnecessary and inappropriate for the reasons discussed—that the fee schedule as it exists and as the Commission has applied it is reasonable and appropriate under California law.

But if the Commission were inclined to consider those comments I would offer three points for your consideration. The first point is that we do not have the data that would allow the Commission at this point to develop a fee schedule based solely on the portion of project costs within its jurisdiction because the database that we have has been based on total project costs. So I don't know how exactly we would go about doing that.

But even if the Commission directed staff to attempt to do that, I would point out that you would still be entitled to recover the same amount, whatever your target is or the same percentage of regulatory costs. So ultimately what would likely happen is that under for example the existing fee schedule a fee may be based on 0.1 percent or 0.2 percent of total project costs; you'd likely instead base it on 0.5 percent or one percent of total project costs within the Commission's jurisdiction, which would just result in increased fees in relation to that portion of the project within your jurisdiction so that you could still recover the same fee revenue. So ultimately it is likely that it would not satisfy the commenters who are complaining about the current basis for assessing fees.

And the final point, as the Executive Director and others have mentioned, you recently adopted Bay Plan amendments for fill and for habitat. If you were to adopt a fee schedule that limited costs to portions of the project within the Commission's jurisdiction it would likely have a greater impact on restoration projects because those projects are almost exclusively within your jurisdiction and it would be the mixed-use development projects or developers that put the commercial and retail upland that would have a lesser impact, where they put the park and the open space in the shoreline band and their high-cost items upland. Although commenters suggest that they are concerned about the impact of fees on restoration projects, I think it would cut the other way.

Finally, in terms of next steps, if the Commission were to vote today to approve these amendments the fees would not go into effect immediately. The next step in the process is that we would finalize the rulemaking package and send it up to the Office of Administrative Law in Sacramento for them to review under the Administrative Procedure Act and, assuming they were to approve it, the fees would go into effect in July of next year.

So I am happy to answer any questions either now or at the appropriate time. Thank you.

Chair Wasserman continued: Let's hear from the two speakers before we ask our questions. The first speaker is Bob Wilson.

Mr. Wilson addressed the Commission: We appreciate the opportunity to provide feedback on the topic of these proposed fee increases.

We want to clearly state that we oppose them. The staff at BCDC has not made the necessary reforms outlined in the California State Auditor's Report. Frankly it seems business as usual and staff has not yet recognized the gravity of this situation.

Second, we see no evidence of any process improvements in BCDC's permitting efforts. And that is really the core of what we are talking about here. What is going on with permitting?

And while we are encouraged that the Enforcement Committee now meets regularly, there is no evidence yet of a fair and enlightened approach to the more than 280 open enforcement cases.

Those enforcement cases could be an indicator that there is a problem in the permitting process. We ought to be looking at those enforcement cases before we say the permitting process is just fine.

BCDC is wasting existing resources on needless expenditures. We just saw a \$5 million expenditure to move staff into this building. It is a great building. Do we need this building? Three million of that is already gone and two million of that will be spent over the next two years. If we are really concerned about costs, why did we do that?

There apparently has been no real review of the process improvements that the Bay Planning Coalition suggested almost two years ago. This report was well done by people who are involved in the permitting process all the time and it just doesn't seem to be thought through or accepted as at least something to be debated.

We also agree with the position outlined by the Bay Planning Coalition and five other leading community organizations that permit fees should only apply to the portion of the project that the 100-foot of the McAteer-Petris Act gives you the authority to regulate.

Now I want to be careful about this – this is not personal. We all have different views about how we come to make a change and how we go about moving forward. But based on the reactions we have seen in the last six months or so to the constructive and blistering findings from the California State Auditor it is really clear we need new leadership at BCDC to address problems.

The problems of the loss of trust and the problems that we are seeing in some of these excesses.

Only with new leadership can organizations generally move forward and tackle core underlying problems. And that is why we believe before we look at more fees, before we make major changes here we really need to look at the leadership. Thank you for your time.

Ms. Emily Lopper commented: I am with the Bay Planning Coalition. We certainly recognize the financial constraints that your agency faces and we want to ensure that you are adequately resourced to do your critical mission and do your job here but we have concerns about the proposal about doubling permit application fees just because of the potential impact it could have on future restoration and development projects around the region.

This is at a time where our region is facing severe climate and housing crises that requires us to move forward very quickly to implement these projects.

We all know that sea level rise poses a severe threat to the Bay Area and our economy and climate adaptation projects can help mitigate those impacts to shoreline communities.

We also see that under-utilized shoreline areas offer a really unique opportunity for the region to meet its housing goals. In San Francisco alone nearly half of all the housing units in the housing development pipeline are concentrated on the waterfront and touching BCDC's jurisdiction.

So we think it is really important that we move forward very quickly – expedite project delivery and reduce costs associated with these projects that we think will protect shoreline communities, provide new housing opportunities for the region, and maintain future economic growth.

As was mentioned, we submitted a joint letter with some other business organizations, Bay Area Council, Building Industry Association, North Bay Leadership Council and SVLG, and we highlighted a shared concern about how the current fee structure may make some projects prohibitively expensive to deliver. And so we highlighted our interest in amending the fee structure so it aligns better with BCDC's jurisdiction and we are also committed to working with you to find other potential funding sources that could help fill gaps in the budget. Thanks very much.

Executive Director Goldzband commented: I have a couple of clarifying comments. I want to remind the Commission and the public that BCDC never sees the revenue that is associated with application fees. That revenue goes directly into the state's General Fund, unlike my understanding of local governments in which in many respects permitting fees actually pay for a substantial portion of regulatory programs.

While BCDC has historically struggled for funding, should the Commission approve this proposal it will have no effect whatsoever on BCDC's budget. Those dollars do not go to BCDC. Those dollars go to the General Fund.

Second, I think that revisiting Marc's comments about the really well done letter from the Bay Planning Coalition and the like really needs to be stressed.

The first is that we have been asked by the Department of Finance to do this. And so that is why staff proposed it to the Commission.

That request is to move BCDC from having the state General Fund recoup 20 percent of the regulatory costs of BCDC to 40 percent of BCDC's regulatory costs. If that 40 percent level is not changed yet the type of valuation is changed – then it simply means that the fee on that portion of the project which is in BCDC's jurisdiction will have to be massively increased to reach that 40 percent level, which means that fees will go up anyway.

And then finally Marc's third point is really, really important and I say this on behalf of the Bay Restoration Authority and the Coastal Conservancy especially, which is that the Commission two weeks ago broke ground by ensuring that it will enable more and more fill to be put within BCDC's jurisdiction. That means that if BCDC were to move toward what has been recommended by the two speakers, which is to only value or only account for that portion of the project within BCDC's jurisdiction, unlike the Coastal Commission, that means that the cost to the project proponents to do fill in the Bay for habitat restoration will increase mightily compared to the cost of those who will have projects which include portions of BCDC's jurisdiction but have major portions outside of the jurisdiction.

So you are faced with a very difficult decision and we knew that coming in and that is what staff told you before because you have been requested to do this by the Department of Finance.

But I wanted to make sure that those points were stated again as clearly as possible. And we are happy to answer questions as staff. Thank you.

Commissioner Showalter was recognized: The direction from the state; is this a request?

Executive Director Goldzband answered: A request.

Commissioner Showalter continued: It is a request. It is not a requirement.

Executive Director Goldzband replied: Correct.

Commissioner Randolph chimed in: I want further clarification as to how exactly the letter from the Bay Planning Coalition has been addressed. Have their issues been addressed? Are they reflected in the current proposal in any direct way?

Mr. Zeppetello replied: They submitted a comment letter and they made comments at the public hearing in April and those comments are responded to in the response to comments. They also participated in the Working Group meetings and one of the points that John Coleman requested or stressed was the idea that it would be, I think he used the words “well received” or it would be “appreciated” by the regulated community to have the permit fees go up in two steps rather than a single step. So we incorporated that change. I think their other comments we responded to but did not result in changes to the text of the proposed amendments.

Commissioner Nelson commented: I appreciate the comment from the Bay Stewardship Alliance that we are still in the process of responding to all of the recommendations from the Enforcement Audit, but I have to say I just don’t see the nexus between responding to that enforcement program and permit application fees.

The change in the fee schedule is not a trivial one. So I think the staff’s recommendation on the Bay Planning Coalition’s recommendation that we do it in two steps is a wise one for projects that are in the planning process.

The last thing I would like to address is this question about applying the fee to the whole value of the project as opposed to the portion in the shoreline band. I am thinking back to the presentation we had recently about developments in the Hunters Point area and thinking back farther to the presentation we’ve had many times with regard to development proposals on Treasure Island – those presentation and the work the staff has to do are always based on the entirety of the project. They are not based solely on what is in the shoreline band and what is outside of our jurisdiction affects what is inside our jurisdiction.

Those projects are always dramatically more complicated. And having worked with the Commission for a long time but prior to it as a stakeholder, those big, complicated projects are dramatically more work and that work is not defined just by what is inside the shoreline band.

So beyond the legal justifications that Marc outlined, I think he is absolutely right that from an equity perspective it makes sense for us to base that fee on total project costs.

Marc mentioned the potential implications for restoration projects. I also want to mention an equity issue. Small projects are almost always entirely inside our jurisdiction or frequently entirely inside our jurisdiction. And just from an equity perspective, given that the work required for those big projects much of which is outside of our authority, I don't think it would make sense for us to adjust those formulas in a way that would push more of the burden onto those smaller projects.

Commissioner McGrath weighed in on the issue: I want to echo Barry's comments. I have done this work as a staff person. I've done this work as a Commissioner. There is a saying, don't let perfect be the enemy of good.

Certainly you can articulate an argument that we should charge more for those projects that are really difficult to figure out than those that are really simple. You would spend more time trying to figure that out and establish a set of regulations than you would gain in doing that.

This is a reasonable relationship which is all that is required. It has to be reasonably related to the complexity of the project. It doesn't have to be a perfect match. And I think what is before us does that.

Chair Wasserman added: Permit fees for most government agencies in California are calculated to recapture the full cost of the work on the permit application. Even with doubling, we are not really coming close to recapturing the full cost.

As has been pointed out, the money doesn't stick with us, it goes to the state. And, yes, the state Department of Finance has not required us to do this but the reality is we don't have enough resources today to do what we need to do, including on enforcement but not limited to that.

The Department of Finance has not given all that we have asked for or approved all that we have asked for through the Governor's Office. But they have increased our budget and they know we are coming back for more increases in order to effectively do the job of carrying out our mission, protecting the public and figuring out how we are going to adapt to rising sea levels.

In that context their request seems to be reasonable and it seems to be reasonable to agree to do it. Nobody on the paying side likes increases in permit fees and it's not that we like increasing them, but given the length of time in which they've not been increased and given the comparative subsidies that are still being paid by the state to permit applicants, this seems a very reasonable thing to do.

Marc will you please restate the recommendation.

Mr. Zeppetello stated: The Executive Director recommends that the Commission adopt the revised proposed amendments to its permit, application-fee regulation which is Title 14 of the California Code of Regulations, Division 5, Appendix M, as set forth in Attachment A to the October 3, 2019 Staff Report.

Chair Wasserman announced: I would entertain a motion and a second.

**MOTION:** Commissioner Vasquez moved the staff recommendation, seconded by Vice Chair Halsted.

**VOTE:** The motion carried with a vote of 20-0-0 with Commissioners Addiego, Ahn, Arreguin, Gilmore, Scharff, Eckerle, McGrath, Peskin, Pine, Nelson, Randolph, Sears, Showalter, Vasquez, Nguyen, Techel, Wagenknecht, Ziegler, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO", votes and no abstentions.

**10. Commission Briefing on Emergency Permits.** Chair Wasserman announced: Item 10 is a Commission briefing on the emergency permits. Brad McCrea will provide the briefing.

Regulatory Director McCrea presented the following: Wet weather is coming and with winter storms comes sometimes damage so we thought this would be a good time to brief you on the emergency permit process that the Commission has.

As defined by BCDC's regulations emergency permits are granted for situations that pose immediate danger to life, health, property or essential, public services.

The situations must also demand action by the Commission more quickly than the Commission's normal procedures would allow.

Emergency permits are often requested in the winter months during stormy weather.

The Commission's first emergency permit was granted on December 13, 1966 for repairs to a levee in San Raphael and the most recent emergency permit was granted last February to the California State Coastal Conservancy to reinforce a levee near Bel Marin Keyes in Marin.

Over the past 43 years BCDC has issued 167 emergency permits - on average about four a year. Last year between fall and spring we issued three.

Applications for emergency permits should be made in writing, if time allows, and emergency permit requests must describe the nature of the emergency, the reason for the emergency and the location, also photographs are very helpful for us to respond quickly. The names of local government contacts are helpful and property documents are required.

These materials are all quickly reviewed and analyzed by the staff. The staff verifies the facts in so far as time allows and then the Executive Director may grant an emergency permit usually verbally on the phone and/or by email upon making two findings – one, that the emergency actually exists and requires action more quickly than can occur through the Commission's normal, permit process and two, that the proposed work would be consistent with BCDC's laws and policies and regulations.

The turn-around time to grant an emergency permit is from almost immediately to about four days. If time allows the Executive Director consults with the chair before granting an emergency permit – again, usually verbally on the phone or by email.

If time does not allow that consultation the Executive Director must notify the chair as soon as possible after granting the emergency permit.

The Executive Director then reports to the Commission at the next Commission meeting the emergency permits that have been recently issued.

On the permittee side, the person receiving the emergency authorization – the permittee that receives the emergency permit must do two things within five days. First they must submit descriptive materials that are similar to the documentation required for administrative permits and two, they have to submit a permit fee.

And lastly I would like to underscore the point that the staff issues emergency permits for real emergencies that need fast action. The staff has discretion in that regard.

And the determination of what constitutes an emergency is based on decades of practical experience as well as good judgement and common sense.

So that concludes my report.

Chair Wasserman asked: Any questions for Brad? (No questions were voiced).

Executive Director Goldzband chimed in: The chair and I when we get an emergency permit application in, we huddle together as a staff to make sure we agree. I think there has only been one time in the entirety of our seven-year relationship here in which I have not been able to get hold of Chair Wasserman. And that occurred when the Asiana Airlines plane hit the levee of the airport and as soon as I heard about it I called Martha Whetstone who is the SFO government relations person whom I had known for quite a long time and I said - you just go do whatever you need to do. And then I asked for forgiveness from the chair.

For the most part it is almost seamless. And if I am not around then Brad and Steve through the delegation of authority that we have at BCDC do exactly the same thing.

I just want to assure you that the process actually has worked pretty well over the past seven years.

Commissioner Pine chimed in: I would be curious to know how often do we deny these emergency permits?

Mr. McCrea responded: I can't think of the times when we have denied the permit application. It is not uncommon for us to disagree that the situation is actually an emergency.

Commissioner Pine clarified: That is my question right now.

Mr. McCrea continued: And that is not uncommon. How often - I don't know - but it is not uncommon. I would say it happens almost every year where someone feels they have an emergency and the staff disagrees with them.

You remember the saying - Your failure to plan is not an emergency on my part. Sometimes we have this situation.

Chair Wasserman added: The issue is not even so much on whether it is an emergency but why was this allowed to happen? What are we doing? What is the applicant doing about maintenance or making sure that things do not become an emergency? So we might ask – going forward how is this issue going to be addressed?

Mr. McCrea continued: Lastly I would add we often are able to work with people who have real urgent situations to facilitate a normal, permit process in an expedited manner to achieve their objectives.

**11. Briefing on BCDC's Oil Spill Program.** Chair Wasserman announced: Item 11 is a staff briefing on the Commission's Oil Spill Program. Cody Aichele-Rothman will provide the briefing.

Planner Aichele-Rothman presented the following: Good Afternoon and thank you all for sticking around. My name is Cody Aichele-Rothman and I am here to tell you about BCDC's Oil Spill Program.

San Francisco Bay is a working harbor and a very busy place. Vessel traffic in the Bay consists of a complex variety of inbound and outbound vessels, wholly in Bay vessel movements, tugs, government vessels, ferries, recreational boats, commercial and sport fishing boats, and personal watercraft such as kayaks. Each trip whether recreational, commercial, or commuter has its risks.

In addition to the five ports in BCDC's jurisdiction there are a number of oil terminals as well as two additional ports upriver.

Here at BCDC we work with federal, state and local partners to prevent spills that could damage the health, environment and ecosystems of our Bay. There are plans in place to minimize impacts and we are trained to respond when incidents do occur.

For a bit of background in 1990 the State Legislature enacted the Oil Spill Prevention and Response Act. The goals of the Act are to improve the prevention, response, clean-up and mitigation of oil spills in state waters.

Today we have a special guest, Kathleen Jennings, the Environmental Response Branch Chief from OSPR, to speak more about their agency.

Ms. Jennings addressed the Commission: I am the Environmental Response Branch Chief for OSPR under the California Department of Fish and Wildlife.

OSPR was created as a result of two major, oil-spill incidents. The first was the tank vessel the Exxon Valdez in March of 1989 where this vessel ran aground in Prince Williams Sound in Alaska and lost 11 million gallons of Alaska North Slope crude. And not even a year later we had an incident in California – the tank vessel American Trader ran over its own anchor and lost approximately 400,000 gallons of crude oil.

So the resulting pollution laws SB 2040 created OSPR in the California Department of Fish and Wildlife which is fairly unique in the nation. This was followed a month later by the Federal Oil Pollution Act, OPA 90 and that passed just a month later and set up a process for conducting oil spill response nationwide.

And that involved mandates to create local-area committees and develop area contingency plans for oil spill response.

OSPR expanded its program that was primarily focused on the marine oil spill response in June of 2014. Part of the reason for that inland expansion was that there was a trend away from marine transport of petroleum more toward inland transport via rail and pipeline.

There are approximately 4,400 miles of rail in California and over 9,000 crossings over surface waters. And there are approximately 4,000 miles of petroleum pipelines in the state as well.

There are two funding streams for OSPR, but we get a 6.5 cent per barrel fee from petroleum produced and coming into California regardless of mechanism, and this funds the day-to-day operations of OSPR.

The Oil Response Trust Fund is set aside for responses where we do not identify a responsible party immediately. It has a current balance of \$55 million.

We have mission areas – prevention, preparedness, response and restoration. For prevention we have harbor safety committees, monitoring of vessel traffic service, tug escorts. We work with the Coast Guard to monitor the marine transport of petroleum.

For preparedness we work in preparing area contingency plans with the Coast Guard and other agencies including BCDC. We require industry contingency plans. We run industry drills and exercises to test those contingency plans. BCDC also participates in the drills and exercises.

We also rate OSROs which are oil spill response organizations that conduct oil spill clean-ups. And we require COFERs – certificates of financial responsibility which are insurance policies for conducting large-scale oil spill response.

For response we operate with three response teams throughout the state - northern, central and southern. We respond with multiple agencies – Coast Guard on the marine side, EPA inland. BCDC is part of those responses.

We also have geographic information system capabilities. We work on applied response technology certification. That is things like dispersants to break up oil and burning of fuel as a mechanism of clean-up.

And then finally restoration – we work with other natural resource trustees to conduct natural resource damage assessment to restore resources that are impacted by spills as close to pre-spill conditions as possible.

The Oil Spill Act as described by Kathleen created the Harbor Safety Committees for the major harbors of the state of California to plan for safe navigation in order to reduce the risk of oil spills and prevent adverse impacts to the bays and shorelines.

Harbor Safety Committees work together to plan events across their respective regions and reduce the potential for possible conflicts. Members are appointed by OSPR and BCDC is a voting member here in the Bay.

The other harbor safety committees are LA/Long Beach, San Diego, Humboldt and Hueneme.

The San Francisco Bay Harbor Safety Committee area of responsibility reaches from outside the Golden Gate through San Francisco, San Pablo and Suisun Bays and the Sacramento River to the Port of Sacramento and the San Joaquin River to the Port of Stockton. It is a rather extensive area as you can see and a journey of almost 100 miles.

Across the planning area the Bay has a number of hazards to navigation such as strong tides and currents and variable bottom depths which confine large vessels to specified shipping lanes within the Bay.

The maritime community and state and federal agencies together develop practices to prevent accidents, collisions or allisions. These are the agencies and organizations represented in the Committee.

BCDC participates at the full Committee level and with all the work groups.

The Harbor Safety Plan maintained by BCDC is updated on a regular basis and contains best maritime practices for safe navigation in the Bay.

From this work we have the Commission's Navigation Policies seen in the Bay Plan.

The committee chair appoints a series of work groups seen here to revise the Regional Harbor Safety Plan as needed to advance safe sailing operations.

All committee and work group meetings are noticed to the public.

BCDC also is a member of the Bay-Delta Area Contingency Planning Committee. This committee as well as OSPR designs the natural resource protection strategies that include floating boom used in the event of a spill.

Knowing where to protect is dependent on local knowledge and expertise. Sensitive sites around the Bay have been identified as potential, sensitive areas that could be impacted and for each a natural resource protection strategy has been developed. If a spill were to occur nearby each site has a plan in place for the best way to reduce harmful impacts.

There are approximately 200 sites around the Bay and new sites are identified as restoration projects arise.

This is a closer look at an individual protection strategy which shows the recommended type of boom and boom placement for optimum protection. As you can see here these plans are specifically around wetlands and marshes and where inland water features connect with the Bay.

Most marinas have their own safety plans that they implement with local and regional responders such as fire departments.

In the event of an incident BCDC participates in response management.

Ships, vessels and port facilities are required to report spills of any size to the Coast Guard and the state. In the event of a significant spill BCDC is prepared to participate in the Incident Command System, a coordinated response structure used across the nation. A Unified Command is generally established for larger spills.

BCDC participates in the Liaison role where we connect agencies and stakeholders with the information they need to work collaboratively to address an incident. This framework can be expanded or collapsed as the spill evolves to meet the needs of the situation until the incident has been resolved.

Thank you for your time and attention. Kathleen, Linda and I are now available for any questions you may have.

Chair Wasserman asked: Questions?

Commissioner Pine commented: I was curious about how often we have spills even minor ones.

Ms. Jennings replied: We have hundreds of spills annually. And the smallest spills that threaten water are required to be reported. These spills range from a few drops during a fueling operation to the larger scale spills like the Cosco Busan.

Commissioner McCoy asked: How many are in the Bay and where are they located in the Bay?

Ms. Jennings explained: They are all over the Bay and the Delta. And they are caused for a variety of reasons. The Bay has the most sensitive sites and the most activity. A large number of spills happen in the Los Angeles Bay Area and the San Francisco Bay Area.

What we see is that the smaller spills happen very regularly and we address those pretty quickly which many never make the news.

**12. Adjournment.** Upon motion by Commissioner Showalter, seconded by Commissioner Nelson, the Commission meeting was adjourned at 3:36 p.m.