

San Francisco Bay Conservation and Development Commission

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October 9, 2020

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: Approved Minutes of September 17, 2020 Commission Meeting

1. **Call to Order.** The virtual meeting was called to order by Chair Wasserman at 1:01 p.m. The meeting was held online via Zoom and teleconference.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted, Commissioners Addiego, Ahn, Beach, Butt, Chan (represented by Alternate Gilmore), Cortese (represented by Alternate Scharff), Gioia, Gorin, Gunther, Lucchesi (represented by Alternate Pemberton), Peskin (represented by Alternate Stefani), Pine, Ranchod, Randolph, Sears, Showalter, Spering (represented by Alternate Vasquez), Techel, Wagenknecht and Ziegler.

Chair Wasserman announced that a quorum was present.

Not present were Commissioners: Secretary for Resources (Eckerle), Department of Finance (Finn) and Department of Business Transportation & Housing (Tavares)

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

Chair Wasserman gave the following instructions: Now, I want to quickly share some instructions on how we can best participate in this meeting so that it runs as smoothly as possible. First, everyone, please make sure you have your microphones or phones muted to avoid background noise. For Commissioners, if you have a webcam please make sure that it is on so everyone can see you. For members of the public, if you would like to speak during our open public comment period or during or a specific item on the Agenda you will need to do so in one of two ways. If you are attending on the Zoom platform, please raise your hand in Zoom. If you don't know how to do this you go to the Participants icon at the bottom of your screen, find your name in the list and press the hand that is to the left and it will raise your hand virtually. If you are joining by phone, you need to press *9 on your keypad and we will call on individuals who have raised their hand in the order that they are raised. We will call on individuals who have raised their hands in the order that they are raised. After you are called on you will be unmuted so that you can share your comments. Remember, you have three minutes to speak on an item. Please keep your comments respectful and focused; we will mute anyone who fails to follow those guidelines or, at worst, dismiss them from the meeting. Every now and then you may hear me refer to the meeting "host" — our BCDC staff are acting as hosts for the meeting behind the scenes to ensure that the technology moves smoothly for us.



BCDC has also established an email address to compile public comments for our meetings. It is publiccomments@bcdc.ca.gov. I have received five emails from parties that have been shared with all the Commissioners prior to the meeting. If we receive any emails during the meeting they will be shared with the Commissioners and be made available on our website bcdc.ca.gov along with the comment we already have received.

That brings us to Item three which is Public Comment. If anyone wishes to address the Commission on any matter not on our Agenda now is the time to do so. You will have three minutes to speak.

Peggy, do we have any public comment?

Ms. Atwell replied: Yes, we have David Lewis. Please state your name for the record and you have three minutes.

David Lewis of Save the Bay addressed the Commission: This is David Lewis, the Executive Director of Save the Bay. Greetings Commissioners, we are very pleased that the smoke is finally lifting and I know everyone is anxious to get back outside and enjoy Nature safely this fall.

We would like to humbly recommend that the Bay is one of the best places to do that.

For the last five years we have led a regional celebration of Bay Day. This year we are being nimble and adjusting. And instead of sponsoring large events on the shoreline we are declaring all of October to be Bay Day and inviting everyone to get out on the Bay Trail.

In fact, Bay Day's centerpiece this year is a Bay Trail Challenge. We are encouraging everybody to take the Bay Trail Challenge; walk, cycle, jog, bike the San Francisco Bay Trail in the month of October; discover trails near you or explore a new section of the shoreline with your family or your safe bubble at the time and place that works for you.

It is a great way to get healthy exercise and reconnect with the inspiring scenery and fresh air and nature and wildlife of the great, natural treasure in our midst.

So there are details on all of this and a place where you can register to take the Bay Trail Challenge at the special website bayday.org.

Many of you have large networks and are active on social media, have newsletters that you distribute to your networks and we would strongly encourage you to share this information which is at bayday.org and encourage everyone to get out and enjoy the Bay and the Bay Trail for Bay Day all through the month of October. Thanks very much.

Commissioner Gioia had a question: So David I did get your email. We are going to help publicize it in West Contra Costa. I live on the Bay Trail. I am walking out there every day. Do I get credit for walking the same part of the Trail every day? Or do I have to walk different parts of the Trail?

Mr. Lewis answered: Well I think we will do this on the honor system but if you go to the website you will see that we have a great partner, not just in the Bay Trail organization but in the All Trails App.

So if you register and take the Bay Trail Challenge you can actually track your miles and win fabulous prizes. We are not going to track you with GPS.

Commissioner Gioia continued: I can walk from my house to Point Isabel every day and get credit for that same route of the Trail?

Mr. Lewis responded: Absolutely. Thanks very much Commissioner.

Mr. Douglas Thron commented: I have a boat at Union Point Marina. I've had it for –

Ms. Atwell interjected: Sir, that is actually Item 10.

Chair Wasserman added: We will recognize you when we come to Item 10.

Mr. Thron stated: I do search and rescue and I'm headed up to Medford, Oregon. So I literally have a few minutes to discuss this.

Chair Wasserman stated: Mr. Thron, I will let you speak now on the item so that you can perform your search and rescue duties.

Mr. Thron responded: Thank you so much. My name is Douglas Thron and I will keep it brief. The homeless encampments have now become very dangerous near the Union Point Park.

I have a live-aboard boat there. And for years the homeless have been there and there have been no issues but now suddenly it has become – there are all sorts of cars there all night. There are gunshots. There are arguments and fights in the parking lot.

My girlfriend's truck just recently got completely totaled when somebody tried to attack one of the homeless people in some sort of fight or altercation.

The harbormaster has said there have been numerous shootings up and down the street. It is no longer safe with my girlfriend and her small child there when I'm out of town frequently.

The homeless have been nothing but nice to me but I am not sure what is going on within the past six to eight months. It has gone completely downhill and it has become super dangerous.

There used to be a curfew in the parking lot. There is currently no curfew. There are cars pulling in at all odd hours. And I don't know what is going on. The police don't seem to do anything there.

And the rat infestation has gotten super bad. One of my car's wiring has been completely eaten out by rats while I was out of town.

It is an all-out, free-for-all there and I would like to see someone doing something about it.

Chair Wasserman moved to Approval of the Minutes.

4. **Approval of Minutes of the September 3, 2020 Meeting.** Chair Wasserman asked for a motion and a second to adopt the minutes of September 3, 2020.

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

The motion carried by a voice vote with no abstentions or opposition.

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

We are cursed to live in a time of plagues. Unfortunately there are way too many plagues right now. Some of them immediate and hopefully short term such as the wildfires and the unbreathable air and the occasionally, unbelievable skies, the wave of the pandemic which is not short term at all, the plague which has been with us for a long time of racial and social injustice which has reached peaks and problems that are on the one hand amazing and yet there is a little bit of hope on that score in the reactions across the country but requires continued vigilance and efforts.

And there is the plague that we have been very aware of and fighting for some time – climate change. The fires are certainly one indication of that.

There have been some very distressing indications of melting and breaking off of glaciers reported in a number of places increasing sea level rise.

It becomes ever more important when we are faced with all of these things that we continue our efforts to focus on what we can do and continue our efforts to support one another in those efforts.

I do want to report that we had a quite successful, first meeting of our formal, education workshop – the fourth wave of our efforts in adapting to rising sea level. There was a vigorous discussion and some very good ideas talked about in the meeting.

As I have before, I welcome any Commissioners to join us and perhaps as importantly welcome you to suggest if you think there are organizations that you are aware of in occupying the space of educating about climate change who you think would be good to have us participate in our efforts. Please let us know that.

This is going to be one of our most important waves because it will create the understanding and basis for the very significant efforts and the significant fundraising that we are going to have to do to adapt to sea level to protect our people and our natural and our built environment.

I am sorry to report that Commissioner Michela Alioto-Pier has reluctantly decided to resign from the Commission due to her simply not having the time to participate. Her MBA program has become different in these times and much more demanding than she expected. I have started correspondence with the Resources Agency and the Governor's Office to facilitate a quick replacement so that we will have a full supply of Commissioners for our efforts.

I would like to ask Commissioner Ahn, Chair of the Environmental Justice Working Group to report to us on its meeting today.

Commissioner Ahn presented the following: The big news item today is that the Working Group was excited to learn that the Resources Legacy Fund (RLF) is partnering with BCDC to support the launch of an environmental Justice Advisory Committee. And that upon agreement with BCDC on the process of conditions RLF plans to provide grants of up to \$6,000 for each organization to participate in this Committee starting in 2021. We will need the Commission's help in getting the word out to make sure that the applicant process for this is strong and diverse and reflects the different geographies that BCDC represents. Also at today's EJ Commissioner Working Group we discussed the actual process for applications and the solicitations involved. We are extremely grateful for this type of public/private partnership and RLF's ongoing support of BCDC's environmental justice work. That concludes my report.

Chair Wasserman stated: I would recognize Commissioner Gunther who has comments about recent events in California.

Commissioner Gunther presented the following: The president of the United States visited California on Monday and I would like to call my fellow Commissioners' attention to a recorded conversation between the president and Secretary of Natural Resources, Wade Crowfoot. To his great credit, Secretary Crowfoot tried to explain to the president that the growing aridity of the West an impact of climate change that was predicted decades ago is a key factor in increasing the scale and intensity of our wildfires. The Secretary asked the president to recognize that addressing climate change in addition to our aggressive forest, land management is essential to meet the threat that this new wildfire regime poses to Californians. And the president responded by saying and I quote, "It will start getting cooler, you just watch." Now while some say, oh – this is just Trump being Trump, I submit to you that the president's statement is dangerous nonsense and we have to treat it that way. It is nonsense because we have known for over 150 years that increasing the concentration of carbon dioxide in the atmosphere will warm the Earth and change the climate. This happens because the carbon dioxide captures heat that would otherwise escape to outer space. The Earth will no more get cooler than the water in kettle on the flame will cool down on its own. His statement is dangerous because we must be preparing Californians for the changes that are coming not make believe that they are not going to happen. And I am very happy that BCDC is the leader in our region on preparing for climate change and I am honored to be a Commissioner in that effort. I would encourage all of my fellow Commissioners to tell their colleagues and their constituents that the president is wrong and that we must let science be our guide as we prepare for the future. I would also like to take this opportunity to publicly thank Secretary Crowfoot for his leadership and I hope all of you will do so as well. Thank you.

Chair Wasserman continued: One of the difficulties, as we know from history, the big lie is that when it is big enough and repeated enough people who should know better start to believe it. We need to guard ourselves against that continually and vigilantly.

Commissioner Gioia noted: I just want to note that Wade Crowfoot was a member of BCDC. He was an Alternate to Supervisor Peskin. It was a great video and some of us tweeted it out. It was great to see that.

Commissioner Wasserman stated: I want to let the Commission know that we will hold a Financing the Future Working Group meeting in two weeks on Thursday, October 1st. Our agenda will include a review of the workshop we held with the Regional Water Quality Control Board in July that explored the needs of financing customers and the options available to financing providers, along with a discussion of a new financing options available to local, wastewater-treatment districts, among other issues. The Working Group will meet at 10:30 A.M. by Zoom.

a. **Next BCDC Meeting.** We will not need to hold our next Commission meeting, on October 1st although we will hold the Financing the Future Working Group that morning. At our October 15th meeting we may consider the following:

- (1) A possible vote on the proposed Bay Plan Amendment to moor an historic ship along the San Francisco Waterfront;
- (2) A public hearing and possible vote on initiating revisions to the enforcement regulations;
- (3) A briefing on potential permit and San Francisco Waterfront Special Area Plan amendments for the Exploratorium; and,
- (4) An update on our Enforcement Program.

b. **Ex-Parte Communications.** Chair Wasserman stated: that brings us to the exciting moment when Commissioners may report ex-parte communications on any adjudicatory matters or other matters that they wish to if they haven't already reported it recognizing that you do need to report it in writing even if you report it now. Do any Commissioners with to make an ex-parte communication report? (No reports were voiced) Seeing no hands, I will turn it over to our Executive Director for his report.

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

It was 233 years ago today, after months of discussions, debates, disagreements and disunion, 39 delegates to Philadelphia's Constitutional Convention signed the document in what is now known as Independence Hall. They represented twelve of the original 13 colonies with only little old Rhode Island not present. I thought of this on Tuesday when Steve Goldbeck and I participated in the virtual, summer meeting of the Coastal States Organization which represents all of the individual states' coastal zone management agencies and works with NOAA of the federal government to ensure that coastal zone management is aligned at all levels of government. Indeed, that federal structure created by our founders 233 years ago lives on as you will hear today when Megan Hall asks you to approve our NOAA-required assessment and strategy.

While many of us have been caught up in the discussions, debates and disagreements surrounding events of the past few years, disunion has never been at top of mind. As debates rage on, for example, NOAA and the coastal management programs continue to conserve and develop our nation's shorelines under bigger budgets. After all, as the great science fiction

writer Philip K. Dick once wrote, “Reality is that which, when you stop believing in it, doesn’t go away.” Of course, after suffering through two more months of electioneering perhaps W.C. Fields actually knew best when he said, ““Everybody’s got to believe in something. I believe I’ll have another beer.”

a. **Budget and Staffing.** As promised, we have a couple of new staff members for you to meet and approve. First you may remember Emily Mann, who has accepted a Shoreline Development Analyst position in our Regulatory Division. Emily is a double Golden Bear, as she holds a Master’s in City and Regional Planning and an undergraduate degree in Political Science from UC Berkeley. She was an intern with BCDC’s Planning Division last summer and provided research and support for the San Francisco Waterfront Special Area Plan update process and rising sea level adaptation efforts. Emily brings a strong background in regulatory issues and project management through her previous work as a paralegal, law clerk and other roles. We think that she will be an excellent addition to our Shoreline Development Permit Team. Unless we hear differently from you she will start on September 28th.

Also, our legal team has a new intern — Margaret Greene is yet another Golden Bear with an undergraduate degree in Environmental Science from Cal. She is currently in the Paralegal Studies program at San Francisco State.

b. **Policy Issues.** Speaking of the legal unit, BCDC and Baykeeper filed our joint opening brief in our litigation against the U.S. Army Corps of Engineers that is now pending in the 9th Circuit Court of Appeals. The Corps’ brief is due in early November, our reply brief a month later. Oral argument will be scheduled by the Court for some time next year.

Earlier this week our Bay Design Analysts Andrea Gaffney and Ashley Tomerlin inspected the new Ravenswood Bay Trail segment that recently opened to the public. This small-but-mighty section of Trail at just over a half-mile now connects more than 80 miles of San Francisco Bay Trail across three counties.

The site visit was important because they met with a group of Bay Trail stakeholders and Laura Thompson, who last month announced her retirement after 21 years of working for the Bay Trail Project. I cannot explain to you the impact that Laura has had on the Bay Trail – it is a remarkable piece of work – as is Laura. Normally, I would wonder what the heck somebody with Laura’s skills at management, negotiation and hard work would do after leaving the position. But, it’s obvious. Laura is leaving the country because she’s fallen in love with a Scotsman and will get married there! She will be living near Glasgow and I am sure that, in a few years, there will be more public access around the area than exist now! It has been an honor for all of us to work with Laura and we’ll miss her tremendously.

Meanwhile, Chair Wasserman and I approved two emergency permits during the past couple of weeks. First, on Friday, September 11th, after consulting with the Chair, I authorized an emergency permit to the city of Sunnyvale to replace a pipeline at its wastewater, treatment facility. The City discovered that an old pipeline that transports waste from one treatment pond to another through a slough owned by the United States Fish and Wildlife Service and is part of the Don Edwards National Wildlife Refuge was leaking untreated waste material into the slough. The city of Sunnyvale requested approval to stop the leak by installing a temporary pipeline adjacent to the existing pipeline. You should know that the new

pipeline will cross a required public-access pathway and the City will cover the pipeline to allow continuous circulation along the pathway. This temporary pipeline will be in place for two to four years while the City finds a permanent solution. BCDC staff is amending an existing permit for the wastewater; treatment plant to formalize the authorization and ensure that maximum, feasible, public access is maintained.

Just a few days later on Tuesday of this week I authorized an emergency permit for San Mateo County that allows the San Carlos Airport to repair the outboard side of a levee that was discovered in early August to be severely eroded. Although the runways are not imminently threatened the eroded shoreline threatens the stability of an airport, service road adjacent to the runway. The County will place approximately 3,450 square feet of riprap in the Bay to accomplish the task and that will be within the footprint of the levee pre-failure. The County does not expect any additional failures along the levee. Rafael Montes, our staff engineer, provided advice to the county staff. There is no public access in the vicinity that would be affected by the work. Please let Chair Wasserman or me know if you have any questions or concerns about these decisions.

One more thing: The next meeting on October 15th likely will not include the San Francisco Waterfront and Exploratorium issues. That will probably be delayed until November. However, I really want to urge you all to be at the October 15th meeting because it will be a watershed event. It will be a watershed event because you will consider major regulations dealing with the Enforcement Program. And our Enforcement Committee and Enforcement staff have been working through over the past 15 months since the audit last May. This will be, candidly, somewhat tedious because when you review regulations you all know that it is not easy. But I very much encourage you all to participate, to take a look at the documents that we send you beforehand because it really demonstrates the breadth and depth of work that the Enforcement Committee and the Enforcement staff and the Legal staff at BCDC have gone through over the past 15 months and it is very, very exciting.

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

Chair Wasserman asked: Are there any questions for the Executive Director? (No questions were voiced)

7. Consideration of Administrative Matters. Chair Wasserman stated: We have received a list of administrative actions emailed on September 11th. Are there any questions on those for Brad McCrea? (No questions were voiced) Seeing none, we move to Item 8.

8. Vote on 2021-2025 San Francisco Bay Coastal Management Program Assessment and Strategy. Chair Wasserman announced: This is a vote on the five-year Bay Coastal Assessment and Strategy required by NOAA. Megan Hall will present the Staff Recommendation and we will take public comment after that.

Coastal Scientist Hall addressed the Commission: Good afternoon Chair Wasserman, Commissioners and members of the public. My name is Megan Hall and I am a coastal scientist at BCDC. Today I will be talking about BCDC's revised 2021-2025 Assessment and Strategy and you will have an opportunity to vote to adopt this document.

As a quick reminder, on August 20th the Commission held a public hearing on the Assessment and Strategy. You will remember, at that meeting both Larry and Becky Smyth of NOAA gave an overview of BCDC's role as a coastal management agency, NOAA's Coastal Zone Enhancement Program and the need to develop an assessment and strategy every five years to receive CZMA Section 309 funds which support BCDC planning efforts.

The Assessment and Strategy outlines how BCDC proposes to use that funding over the next five years.

The funds must go toward developing "program changes," which for BCDC are most typically policy changes or guidance document development.

In today's presentation first I will give you a very brief refresher on the process of developing this document and the two main strategies that it proposes. I will give you a summary of public comments received and how we changed the document to respond. Finally, I will provide staff's recommendation.

In close collaboration with the NOAA Office for Coastal Management and using input from a stakeholder survey, staff prepared a Draft Assessment and Strategy which was released for public comment on July 10, 2020. As I mentioned, on August 20, the Commission held a public hearing on the Draft Assessment and Strategy. Staff then incorporated public comment into the Draft Assessment and Strategy to develop a Revised Assessment and Strategy which was posted last Friday, September 11, along with a Staff Recommendation.

That brings us to today, when the Commission will have the opportunity to vote on staff's recommendation to adopt the Revised Assessment and Strategy.

You will also recall that results from the Phase I and Phase II Assessment fed into development of two final strategies which detail how the Section 309 funding could be used over the next five years to lead to a proposed program change.

The first strategy addresses issues and management priorities raised through both the Wetlands and Coastal Hazards Enhancement Areas and aims to improve the region's capacity to understand and adapt to current and future coastal hazards. This could include Bay Plan Policy amendments recommended through the Commission workshops on rising sea level. It could also include updates to the Suisun Marsh Protection Plan and possible implementation of the Bay Adapt Joint Platform.

The second strategy which addresses issues and management priorities from the Coastal and Estuarine Resources Enhancement Area is to improve management related to water-oriented uses. This could include program changes related to public access and recreational boating and more.

During the public comment period and at the public hearing we received seven public-comment letters and two oral comments from the individuals and entities listed here. I will note that one set of comments was provided in writing and orally which is why you only see eight items in this list.

The comments raised a range of issues primarily related to boating, public access, wetlands and coastal hazards. I'll touch on many of these issues as I walk through the changes made in response to public comments.

And I want to note these were all very helpful comment letters that helped us to make the Assessment and Strategy stronger. So thank you to all for your thoughtful input.

First, comments related to boating, which is addressed through the Coastal and Estuarine Resources Enhancement Area. You likely noticed that we received comments related to boating from Hunter Cutting with the San Francisco Sierra Club, Richard Jepsen with US Sailing, Carisa Harris Adamson of Treasure Island Sailing Center and Howard Strassner, an interested member of the public.

These comments raise the need to include and consider a much broader set of active boaters on the Bay, specifically boat share programs, sailing clubs, commercial boating schools and boaters who use dry-storage on land rather than marinas.

The first draft of this document did have a relatively narrow focus on marinas so we are very grateful for these comments that appropriately expanded the scope of boating-related concerns.

In response to these comments throughout the Assessments and Strategy, the management challenge regarding boating was expanded to address recreational boating needs more generally, including not only live-aboards and changing marina needs, but also how to ensure sufficient access for increasingly popular boating uses such as boat share programs, as well as the description of this issue also clarifies that we are not equating boat use with marina-slip ownership. We recognize that these are two separate types of uses.

Additionally, preliminary data on growth in boat-share programs, sailing clubs and commercial-sailing schools was added to the Phase I Assessment and the need to better understand these trends as well as trends in active boating on the Bay and how we can facilitate boat use on the Bay was added to the Phase II Assessment.

On Public Access, which is also addressed through the Coastal and Estuarine Resources Enhancement Area, the Bay Trail gave comment that the public-access enhancement area should be high priority and equally prioritized as restoration. Although we did not change the ranking, which was largely based on the stakeholder survey, we did add language throughout the Assessments to emphasize BCDC's continued commitment to balancing maximum feasible public access with restoration.

We also expanded the focus of this issue beyond just public access and restoration conflicts but also noted the need to further explore resolution for conflicts between public access and other projects such as transportation projects.

Finally, in the Needs and Gaps of the Phase II Assessment we added the need for regional coordination around public access in order to resolve conflicts related to public access.

On the Wetlands Enhancement Area, we received comments from the Citizens' Committee to Complete the Refuge, who provided a range of comments primarily raising the need for more active work toward achieving the Baylands goals and protecting restorable lands. Additionally, the State Lands Commission raised the need to add a management priority to ensure availability of wetland migration space.

In response to these comments, first staff added a management priority highlighting the need make sure we are doing all we can to protect and provide lands for wetland restoration and migration.

Also, language was added to the Phase II Assessment noting the need to monitor how well BCDC policies are currently doing in achieving Baylands goals, protecting restorable lands and permitting development with restoration goals in mind.

Finally, on the Coastal Hazards Enhancement Area, Arthur Feinstein raised the need to consider cumulative impacts of hardened shoreline protection and consider how placement of shoreline protection further landward could affect these cumulative impacts.

In response, language was added to the Phase II Assessment on the need to investigate optimal placement of hard shoreline protection to minimize cumulative impacts.

Additionally, State lands Commission noted that the report should further discuss the importance of inter-governmental coordination in addressing rising sea level and language was also added to that effect in the Phase II Assessment.

So that summarizes the biggest changes to the document in response to public comments. A more detailed line-by-line response to comments is included in the revised Assessment and Strategy that we sent out last Friday.

In terms of next steps, once the Commission has adopted the revised Assessment and Strategy, BCDC will send it on to NOAA anticipated by October 1. NOAA's Office for Coastal Management will then have two months to review and we hope to receive a final approval by the end of 2020. The funds will then become available for strategy implementation in summer of 2021.

I will note that as we move forward with implementation of any of these projects and strategies we will be working hard to include environmental-justice principles and community and tribal engagement throughout the process.

Staff recommends that the Commission adopt and forward to NOAA's Office for Coastal Management the San Francisco Bay Coastal Management Program Assessment and Strategy for the 2021-2025 Enhancement Cycle. I will now turn it back to Chair Wasserman.

Chair Wasserman continued: Thank you for the presentation Megan. Peggy, do we have public comments?

Ms. Atwell replied: Yes we do.

Sarah van der Schalie of NOAA commented: My name is Sarah van der Schalie and I am with the National Oceanic and Atmospheric Administration Office for Coastal Management. Good afternoon Chair Wasserman, Commissioners and Executive Director Goldzband.

I am the NOAA staff member who has been working closely with Megan Hall and the rest of the BCDC staff over the past several months in developing the strategies that are before you.

I want to share that working in partnership with your program on this project every five years and then supporting its implementation through funding and technical assistance is one of the great aspects of our federal/state partnerships under the National Coastal Zone Management Program.

And personally it is a great part of my role as a liaison to your program.

I wanted to take a moment and thank you for the effort that has gone into developing your 2021-2025 Assessment and Strategies. It has been an absolute pleasure working with your staff as they have been incredibly thorough and thoughtful and responsive throughout the process.

We are looking forward to receiving BCDC's 309 Assessment and Strategies for NOAA's final review as Megan mentioned and to supporting BCDC as you implement your strategies over the next five years. Thank you.

Chair Wasserman asked: Any other speakers?

Ms. Atwell replied: We have Val H. Val, I am going to unmute you but I believe you want to speak about Agenda Item 10. Is that correct?

Ms. Val H. answered: Yes I do. Am I unmuted?

Ms. Atwell responded: You are but we are not on Agenda Item 10 so I am going to mute you and I will unmute you when we get to Agenda item 10. Okay?

Ms. Val H. replied: Thank you very much.

Ms. Atwell noted: Chair Wasserman, we have no more hands raised for public comment for Agenda Item 8.

Chair Wasserman continued: Comments and questions from Commissioners? (No Commissioners voiced questions) Seeing none, I have one question, Megan. There were a couple of comments that counting numbers of marinas and berths was not the best way to address public access. Would you please repeat that information?

Dr. Hall responded: I will first note that we had two separate public-access-related issues. One was looking at public-access conflicts with restoration, sea level rise and equity et cetera. The other was focused on boating-specific issues.

But in terms of the boating issues we did expand – in the Phase II Assessment there is a section where we talk about research needs and gaps. And initially that had been much more focused on counting marina slip numbers and looking at the marina closure trends. But we did add a lot more information trying to understand who all the active boat users are on the Bay, what types of activities they are engaging in, what their entry points are, how active they are; so really trying to get at those kinds of questions and specifically to get a little bit more information about these commercial sailing schools and sailing clubs and boat programs because a lot of the data that was given to us and the boaters themselves agree that this is a great starting point but it would be helpful to fill out that story a little bit more.

And so we did try to add many more metrics that we can explore to understand that better.

Commissioner Gunther was recognized: Megan, did I understand at the beginning of the presentation you noted that the funding needs to result in, or you need to document program changes that occurred because of the additional planning work that was done?

Dr. Hall explained: The goal is to get to program changes – yes. And ideally all of the funding would go towards supporting that kind of change which for us would be policy changes or Commission-adopted, guidance development are typically what that means.

It could mean legislative change although it typically hasn't for BCDC. But there are a range of activities that this could include.

Commissioner Gunther noted: So when I look through the Assessment there was a lot of documentation about what we did. But I was also looking for what difference it made which I thought you were referring to with program changes like this led to something happening and I don't know exactly how NOAA evaluates that. But I am wondering if we have put together a little synopsis of what we did besides just attending meetings and reviewing things.

Dr. Hall replied: So this is actually a strategy for posing what we are going to do over the next five years. And so we do talk throughout the document about program changes that were accomplished through the last Assessment and Strategy that was written in 2016 but this current document is proposing what we plan to do between 2021 and 2025.

And so, in the Strategy you will see in that table, the budget table, it outlines typically a research phase for the first year or two then a background report drafting phase and policy development for the third year typically followed by, ideally, adoption of the change recognizing that the Commission has to adopt it.

So we haven't actually made any program changes on this specific Strategy in this document.

Commissioner Gunther continued: But this document contained the live documentation about what we did in the previous five years. And I was wondering if there is a synopsis of the program changes that resulted from that work.

Dr. Hall responded: Yes, the Summary of Achievements Section which is the first section of the document –

Commissioner Gunther interjected: Okay, so the Achievements are the same thing as the program changes that NOAA is asking for.

Dr. Hall replied: Not all of them but each one says whether it was funded by 309 funds, whether it was just related to a strategy from the last Assessment or if it was related to one of these enhancement areas but not directly called out in the past Assessment and Strategy.

And a table that I added in response to the State Lands Commission's comments also summarizes that.

Ms. Atwell stated: Chair Wasserman, I see no more hands.

Chair Wasserman acknowledged: All right. With no more comments or questions I would now entertain a motion and a second to move the Staff Recommendation.

MOTION: Vice Chair Halsted moved approval of the Staff Recommendation, seconded by Commissioner Ranchod.

Chair Wasserman continued: Peggy, please call the roll. Federal representatives can vote on this motion.

VOTE: The motion carried with a vote of 21-0-1 with Commissioners Addiego, Ahn, Butt, Gioia, Gorin, Gunther, Pine, Ranchod, Randolph, Sears, Showalter, Techel, Wagenknecht, Ziegler, Gilmore, Scharff, Pemberton, Stefani, Vasquez, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO" votes and Commissioner Beach voting "ABSTAIN".

9. **Confirmation of New Design Review Board Members.** Chair Wasserman stated: Item 9 is the confirmation of new Design Review members. Andrea Gaffney, BCDC's Bay Design Analyst, will introduce the item.

Senior Bay Design Analyst Gaffney presented the following: Good afternoon Commissioners. I am Andrea Gaffney, the Senior Bay Design Analyst at BCDC and I serve as the secretary to the Design Review Board. Today I am going to present a hybrid agenda item that will include a briefing, a vote, and remarks from the outgoing chair of the Board.

Let's start with the purpose of the Design Review Board.

As stated in the McAteer-Petris Act:

The Design Review Board was formed in 1970 to advise the Commission on the adequacy of public access for proposed projects in accordance with the Bay Plan policies and the Public Access Design Guidelines.

This volunteer board of professional designers' reviews and makes recommendations to the Commission on the adequacy, appearance and design of proposed projects, evaluating them in light of the policies for Public Access, Appearance, Design and Scenic Views and other related policies.

In other words, the Board's advice informs the public access special conditions and findings in the staff recommendations for permit applications such as the recently-completed, public-access pier at Yerba Buena Island that re-used a foundation from the Bay Bridge.

This project was reviewed by the Board in February of 2018 and staff applied the Board's advice to include permit conditions that ensured the design of the project would be similar to what the Board and the Commission reviewed as part of the permit application including the reuse of the old, Bay Bridge steel and a bathroom facility at this relatively remote location.

This is the other side of the Pier Retention Project in Oakland where you can walk 600 feet out into the Bay and see bicyclists and pedestrians passing by you on the Bay Bridge above. The Board gave advice on the length of the pier and the design of the railing among other aspects of the project.

I started working at BCDC in September 2016 and, this is the only project that has come before the Board, been permitted and built in that four-year time period. Most of the projects that go before the Design Review Board are large-scale projects with long-term development plans which makes the Board's expert advice lasting over the long term of construction.

The makeup of the Board and its basic meeting rules are defined in the regulations.

As such, there are seven Board members with at least one being an architect, one landscape architect and one engineer. These design professions represent the minimum necessary to hold a productive review of a development project.

To hold a meeting we need four members to make a quorum.

It is often a challenge to achieve this quorum given the Board members' schedules and project conflicts because they won't review a project that they have an affiliation with and that is why it is useful to be able to call on Board Alternates in an event that a quorum cannot be achieved. The regulations permit up to 10 Alternates; however, they must be former Board members.

The current Board members comprise the three required design professions as well as planning and urban design of which the addition has been great given all of the large-scale, mixed-use projects that have come to the Board over the past decades.

Below each photo the date indicates the year each member joined the Board. The two dates under Chair Alschuler's photo note the date she joined the Board in 1994, and when she assumed the Chair of the Board in 2016.

In the past the engineer position was held by a structural engineer which was useful at the time when there were so many bridge projects coming to the Commission. Currently, the engineering position is held by a civil engineer who specializes in shoreline projects, that's Bob Battalio.

Given the Commission's focus on climate change adaptation for shoreline development this type of engineer makes sense for the types of projects the Board has been and will be reviewing. It would be great to have both structural and civil engineers on the Board.

The focus areas within the three required design professions is broad and this allows the Commission to be flexible in filling the Board seats as projects and policies evolve over time.

As noted earlier, the regulations require Alternates to be former Board members.

You might wonder: why would you want former Board members as Alternates?

Well, former Board members are a useful resource because they are experienced professionals who have reviewed many projects, they know the procedures and can quickly fill in when the Board members are not available.

The regulations require that an Alternate be of a similar professional background and experience to the member for whom the Alternate is replacing for the meeting. So, we ideally always have one Alternate for the three, required professions. However, we currently have only one Alternate for the engineer profession and lack Alternates for the architect and landscape architect positions and we can only fill these positions with former Board members per the current regulations.

The challenge with building a robust list of Alternates is that there are no term limits for Board members so we end up with very few Alternates because they serve most of their time as Board members. The Board's current Alternate is Roger Leventhal, who joined the Board in 1997 and became an Alternate in early 2019. He has not yet served on a review as an Alternate but we may need to call upon him if Bob cannot attend a meeting.

So that was a quick introduction to the regulations and the current Board composition. Now I would like to talk to you about the Board's succession planning discussions.

Back in 2018 before Roger transitioned to an Alternate and Bob was appointed to the Board (we do use first names at the Design Review Board), the Board members started a larger discussion about succession planning. They recognized that several members had served more than a decade on the Board and this seemed like a good time to consider the future of the Board, including issues of Board professional composition in relation to current policies and issues, revisions to the regulations to introduce term lengths and the ability to appoint new members as Alternates instead of requiring them to be former Board members.

I will quickly walk you through each of these topics.

In addition to the required professions of architect, landscape architect, and engineer, the Board discussed other professions or expertise for which the Board's review would benefit.

The Board recommended considering candidates with knowledge in the following areas based on recent Bay Plan policy changes to Environmental Justice and Fill for Habitat, recent project reviews and known, future developments along the Bay.

These included:

- Architectural Historian
- Shoreline and Benthic Ecologist
- Community-based Designer
- A Designer focused on Equity and Environmental Justice Issues
- Transportation Planner
- Social Scientist
- Designer with developer experience
- Restoration Designer
- Resilient By Design Team Members

The list of desired knowledge areas and expertise was developed at several Design Review Board (DRB) meetings over the span of 18 months. Also during this time staff invited Board members, the public and other staff to submit names to be considered as potential candidates. The Board members and Commission Design staff have broad professional networks and organizations from which they can draw upon for candidates and this is how most of the names were submitted to the list.

Eventually, a list of 38 names was formed. There was an explicit consideration for recruiting candidates from diverse racial and cultural backgrounds as well as emerging professionals.

It is worth noting that we had not yet begun our foray into social media at this time so we were not able to take advantage of our extended outreach that is now available but we hope to use these channels in the future to recruit new candidates.

As noted in your Staff Report, Chair Karen Alschuler and Board Member Cheryl Barton wish to retire from the Board and transition to the role of Alternates. This means that two Board seats would become available for new members.

So, drawing upon the Commission's Environmental Justice Guiding Principle to "Continually build accountability, transparency, and accessibility into its programs and processes," I would like to briefly explain the new member selection process to you.

Based on the succession planning discussions, the Board's current professional composition, and the requirements in the regulations for the three design professions, the Board agreed that the two new members should be professionally recognized as an architect and an urban planner.

The next step was for the Board to form a special committee of the chair and vice-chair to review qualifications and recommend appointment for these two positions from the list of 38 candidates.

The Special Committee sought initial interest from 13 of the 38 professionals based on their profession as an architect or a planner.

The group of 13 included five women-identifying professionals and a diversity of racial and cultural backgrounds.

From these the Committee received qualifications from 10 of the 13 individuals and interviewed the top-ranking, five candidates. From these five, two candidates were recommended.

The Committee looked at the candidates'

- Design experience in waterfront projects,
- Knowledge of the commissions laws and policies
- Design review capability,
- Interest in the future of the waterfront,
- And breadth of professional experience in relation to the larger list of characteristics developed by the Board members.

From this process the Special Committee recommended the appointment of Kristen Hall and Andrew Wolfram.

You might ask: how do these two candidates meet the criteria?

Kristen is an emerging, professional, urban planner and academic who has built her career on large-scale, sustainable, urban developments with a focus on climate change adaptation, community engagement and social equity.

Andrew is a seasoned architect who brings years of experience in historic preservation and reuse along the waterfront and decades of service in project design review.

We recognize that we have not been able to fully address the diversity component with respect to the Board's composition but we will continue to work towards this goal in the future.

Similar to the Commission's recent adoption of the Environmental Justice policies the design professions are increasing their capacity to provide opportunities to a more diverse community within their professional organizations. We will leverage their work on diversity, equity, and inclusion for our future candidate recruiting.

Thinking of future actions brings me to the final topic of proposed regulations changes.

Today is a preview of what staff has been working on for the proposed, regulation changes related to the Design Review Board. The Commission will have an opportunity to fully review these proposed changes and discuss them at a future Commission meeting with a public hearing and vote. Today is just a sneak peek!

As a reminder, the professional composition and actions of the Board are defined by the regulations.

The current regulations allow up to 10 Alternates but require them to be former Board members. The regulations also do not specify term limits for Board members, hence our current dearth of Alternates.

The proposed regulation changes would remove the requirement of the Alternates needing to be former Board members. This would allow the Commission to appoint new candidates as members or Alternates. This does not preclude former Board members from becoming Alternates but gives the Commission more flexibility in the appointment of Alternates.

The other proposed regulation change would introduce term limits. The Board agreed with staff that a term of five years is an appropriate length of time for service with the possibility of serving two or three terms including service as an Alternate.

The next steps for the regulations include:

- Staff to draft proposed regulations
- Staff to share proposed regulations with the Board and Commission
- Regulation Adoption by Commission and OAL

If we change the regulations to allow for Board members to be directly appointed as Alternates then we hope to use our candidate list to fill some of the Alternate slots with a broader range of expertise. With the introduction of term limits we can provide the opportunity to serve on the Board to a greater amount of the design community.

With that, we have one last important detail to cover before we open it up to questions and the vote - who will be the new chair? Current Board member Jacinta McCann has graciously volunteered for the position and her fellow Board members support this transition.

With these proposed changes to the Board we would have three Alternates for the Board although we would still technically need an architect.

With that I will pause my presentation to open it up for any questions and comments and turn it over to Chair Wasserman.

Chair Wasserman continued: Thank you very much. Do we have any public comment?

Ms. Atwell replied: No hands for Agenda Item 9.

Chair Wasserman asked: Any questions or comments from Commissioners?

Commissioner Ahn commented: I appreciate the work done today and I do think the applicants are very qualified to fill these seats. I also appreciate your reference to the Environmental Justice Working Group as well and it would be worthwhile to try to agendize this for future discussion with the Working Group.

The general question is, how much leeway is there in revising some of the professional requirements to sit on the DRB recognizing that it is very difficult work?

The general comments I have are along the lines of architecture is a guild unto itself. There are not a lot of diverse perspectives and backgrounds to draw from given the way the profession is structured.

And the profession exists for a reason but I am wondering how much leeway we have in terms of making regulation changes.

I do like the idea of term limits and then also making sure that we can expand the Alternate pool to build a stronger and more diverse bench.

But I am wondering if we are thinking outside the box in trying to figure out different, professional backgrounds in the DRB.

Ms. Gaffney responded: That is the goal. There is some flexibility in the current regulations with only three of the seven Board members need to meet these professional definitions.

You are totally right about the diversity representation in those professions being relatively low compared to the demographics of the country. And that is something that those professional organizations are actively working on.

But in terms of expanding the fields of knowledge and the persons that can be represented on the Board itself is it a wide field. There are four seats that we can fill that can look at a broader range of issues.

Regulatory Director McCrea chimed in: I want to point out that Andrea is absolutely right. We do have flexibility now. I love the idea of getting this in front of the Working Groups to take a look at the Design Review Board through the lens of environmental justice and rethinking how the Design Review Board best meets the needs of the public as it pertains to appearance and design of public access; for all the Commissioners, the Design Review Board is all about the publicness of the shoreline.

The Board looks at architecture not from the same perspective that a design review board would at a local government. The DRB is looking at architecture in the way that the architecture makes the shoreline more public which is a really unique perspective to look at the built environment.

So the massing of structures, the orientation of structures, the site plan itself is all about getting people to the waterfront and then down and along the shoreline in a way that looks public, feels public and that there are activities there that actually serve the needs of the likely users that are going to be there. And that is usually folks in the community. So let's do it – I love it.

Vice Chair Halsted was recognized: I think the Design Review Board serves a very important purpose for BCDC. It has a really important influence on the quality of the projects we review.

I fully endorse these changes and endorse moving to a somewhat more open process and terms as well. We are headed in the right direction. It is great that the Committee will look at it before it comes back to us. It is a really good step forward and I thank all of those who have served on the DRB. It is hard work. It is a lot of detail work and a lot of hard work and a lot of collaboration.

So, I encourage us to move ahead to improve it. Thank you.

Commissioner Butt commented: The last two or three speakers haven't addressed this but there is not much ethnic and racial diversity on the Design Review Board, as a matter of fact, there is none. And it ought to be a goal to try to increase that. The Bay Area in general is a pretty diverse population. The Design Review Board ought to strive to go a little further in that direction. I know it is tough to recruit people but it can be done.

Commissioner Randolph spoke: I was going to say that for many years we had John Kriken as our chair and it really shows the ability of BCDC to attract extraordinarily talented and motivated people to serve.

I can't recall how many years he served on the Board but it also shows the benefit of keeping the window open for multiple terms if somebody of that standard wants to serve.

Commissioner Gioia was recognized: I wanted to second Mayor Butt's comments about the importance of diversity, clearly racial and ethnic diversity as well as geographic diversity around the Bay.

It goes without saying that we have a policy on this which means we need to think about how we are doing outreach to fill these seats but I would like us to hear more specifically the outreach channels on this because it is a lot about the outreach into diverse communities.

Ms. Gaffney responded: This past round on how we developed the list with the 38 candidates was mostly advertised at the Design Review Board meetings. And we would make a public call in the Design Review Board meetings.

Commissioner Gioia opined: That is not going to be sufficient.

Ms. Gaffney agreed: Yes, it is not sufficient and we did not have the social media channels in place at that point. Using LinkedIn, using our Twitter and Facebook accounts connecting with the professional organizations – we now have a pretty significant list of EJ organizations that we can also use.

Commissioner Gioia requested: Can you send all the Commissioners an announcement so we can send it out to our networks?

Ms. Gaffney replied: Oh, happily. We have to change the regulations first, but I would be happy to do that.

Commissioner Gioia asked: We have to change the regulations on how we do outreach?

Ms. Gaffney clarified her response: We have to change the regulations to the appointments for Alternates because those would be the next members that we would be able to appoint for the Alternate vacancies.

Commissioner Gioia continued: But when you are ready to do that outreach you'll send it to us so we can send it out.

Ms. Gaffney reiterated: Happily, yes.

Mr. McCrea added: Commissioner Gioia and all the Commissioners – you have our commitment that we are going to improve our outreach and diversify the pool of candidates to change the look and perspectives of our Design Review Board.

Commissioner Showalter was recognized: I wanted to say that not too long ago when we talked about diversity in a group particularly as engineers or architects it would have really been about gender.

So I think it is very interesting that nobody has mentioned that. I wanted to bring it up as a very old, female engineer that we have with our urban planners is well represented by women and that is good. But gender diversity also brings with it very different perspectives that are useful.

Executive Director Goldzband commented: Before we get to Karen Alschuler I want to say one thing for a little bit of history. When I served on the Commission I heard Will Travis say a few times that the DRB had very closely worked with the permit applicants and Will would say without fail that no permit applicant could possibly afford the consulting experience and breadth and knowledge that it received by going in front of the DRB.

I want to say that you have our commitment not only to diversify the DRB but to ensure that its quality of design, consultation, architectural consultation and engineering consultation remains as high as it has ever been. And it is a pretty amazing group of people especially, Commissioners, when you consider that they are all volunteers and they meet for hours on end to go through in painstaking detail these plans.

And we need to appreciate that and I know that you do but I just want to mention one more time they do this for the love of the Bay and we need to appreciate that and thank them for that.

Chair Wasserman commented: What is the guesstimate on the timing for the regulation changes?

Chief Counsel Zeppetello replied: We actually have a draft of proposed amendments and the hope and expectation is that they will follow the Enforcement regulations that we will be briefed on next month. I would hope that by the end of the year we will be bringing another package of proposed amendments that will include amendments to the DRB and ECRB composition and membership regulations.

Chair Wasserman continued: So, my recommendation would be that at least for some forms of outreach we not wait for the regulations to be adopted. I have little doubt that they will be adopted. There may be some tweaking and some other issues. I am not sure that the service as an Alternate should count on the term limit just because you have some specific slots you may need but I am sure we will adopt it.

I think we ought to start the outreach because it may take some significant time and talking and letting people get a sense of what the work really is. There also needs to be direct outreach to the associations of minority architects and engineers that do exist. There is a San Francisco chapter of the National Organization of Minority Architects and we need to do direct outreach there in addition to reaching out through the Commissioners and social media and our Environmental Justice and Social Equity groups.

Executive Director Goldzband chimed in: What we will do is we will have Brad, Ashley and Andrea develop that list with the help of Nahal and then go to the Environmental Justice Working Group for comments and go from there.

Design Review Board Chair Karen Alschuler addressed the Commission: Hello everyone. Today I am here with my thanks and my admiration for this Commission taking on the awesome responsibility of San Francisco Bay and bringing it into your lives and hearts as you steward it to its full potential through deep research, public dialogue, and decision-making.

I do hope that the work of the Design Review Board over the last 25 plus years that I served on the Board, and truly enjoyed it and honored to be there, helped and it has served you well bringing our Bay edges to safety and lively, public use and equitable access while ever expanding the Bay's constituents and uses.

I am deeply thankful for the chance to serve as a member and then as chair of the Design Review Board.

I will never forget my first meeting. I understand that was in 1994. I walked into that room and there was a project pulled up for the first review of the night and it was the Golden Gate Bridge. And it went on from there to be one more important than another and we looked at every one of the bridges because of the retrofits going on for all of those years.

We had robust and even poetic opportunities to tell the stories of the Bay along its edge. We were bringing people to the edge, adapting to rising tides and always knowing that there was more to learn.

The DRB has been supported by extraordinary teams within BCDC and I thank them all for that from Joe LeClair to Brad and Ellen and Andrea as direct support and the many analysts and excellent people who were there in the trenches to speak to the proponents and to speak to us.

I absolutely must mention the DRB leadership of John Kriken as was mentioned a few moments ago who spent his many decades as the chair and I was happy to be on the Board with John making clear that the 100-foot band wasn't about doing nothing. It was about providing public access in a positive way and that we wanted to see things happening there. And we have tried to continue and I hope the Board will continue that commitment all along.

Today the Design Review Board has magnificent opportunities to support BCDC initiatives and Bay imperatives. We can be smarter and more proactive because of the environmental justice and social equity policies that are in place and those have already played a big role in our reviews since that moment.

Diverse, ongoing research, more tools in the tool kit, no questions about it, mapping and others and serious planning ongoing – as we know we are facing tough decisions.

We must, as leaders in the Bay community value and realize the tenants of the justice and equity policies following the paths of true, public access back into our communities and making sure that work gets done. I'm telling you it is already changing what we are doing in the information we are receiving.

We must commit to design and engineering that will take us into the next century and beyond and know how we are going to get there.

We have to understand and expand our portfolio of adaptation strategies and see that they are going to be implemented.

We must recognize all water-related forces operating in the Bay – groundwater and creeks and tides and surges and more.

And as the Bay Trail approaches the full embrace of San Francisco Bay we must go back and assure its character and survival. There are some pretty old pieces of the Bay Trail that exist and we have to make sure that access really works for everybody.

We can bring Bay lovers, users and edge developers into the room early and often. We can grow and diversify the Bay constituency as we deliver an edge that is more juicy and attractive and accessible and irresistible than it ever has been.

And you have outstanding professionals on the existing and the new Design Review Board to do that work with you.

I stand ready as an Alternate to join wherever I can bring value and I will be proud to be in that position as well.

And I just thank you. It has been an education and really a privilege. I've learned so much on the Board and as chair so thank you, all of you, so much. I wish you well.

Chair Wasserman continued: Thank you very, very much for your service and your leadership, Karen, and thank you for your willingness to continue to serve as an Alternate.

With that I would now entertain a motion and a second to move the Staff Recommendation to appoint the two, new DRB members.

MOTION: Commissioner Randolph moved to adopt the Staff Recommendation that the two, new members Kristen Hall and Andrew Wolfram serve on the DRB, seconded by Commissioner Gioia.

VOTE: The motion carried with a vote of 20-0-1 with Commissioners Addiego, Ahn, Butt, Gioia, Gunther, Pine, Ranchod, Randolph, Sears, Showalter, Techel, Wagenknecht, Ziegler, Gilmore, Scharff, Pemberton, Stefani, Vasquez, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO" votes and Commissioner Beach voting "ABSTAIN".

MOTION: Commissioner Scharff moved to adopt the Staff Recommendation that DRB members Karen Alschuler and Cheryl Barton serve as Alternates and to promote Jacinta McCann to be Chair, seconded by Commissioner Showalter.

VOTE: The motion carried with a vote of 20-0-1 with Commissioners Addiego, Ahn, Butt, Gioia, Gunther, Pine, Ranchod, Randolph, Sears, Showalter, Techel, Wagenknecht, Ziegler, Gilmore, Scharff, Pemberton, Stefani, Vasquez, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO" votes and Commissioner Beach voting "ABSTAIN".

10. Commission Consideration and Possible Vote on the Enforcement Committee's Recommended Enforcement Decision Involving Revised Proposed Uncontested Cease and Desist Order No. CCD2020.001.00. Item 10 is the Enforcement Committee's recommended decision on a revised proposed uncontested cease and desist order for Union Point Park in Oakland.

Enforcement Committee Chair Scharff will introduce the item.

Commissioner Scharff stated: I know staff has a presentation on this so I will not go into too much detail other than to say we went back and we looked at the deadlines, staff did a really good job working with the city of Oakland and we came to an agreement on all things except for what date the Park needs to be restored. The date we agreed to was April 1, 2022, the deadline to be extended if the City is unable to restore the Park by that date. The City of Oakland actually wanted a year later than that but if we want that Park restored I think we need to have an earlier deadline and I think staff felt strongly about that. I think that was the only area where there was a little disagreement between us and the City at the end of the day.

Staff Counsel Karen Donovan presented the following:

This item is Union Point Park which you saw first in May and are now seeing with our revisions.

I wanted to briefly go over a bit of background on Union Point Park. Union Point Park was created more than 10 years ago on a former industrial site along the Embarcadero in Oakland near Coast Guard Island. This slide shows the location of the Park. The Park was the result of collective efforts by a broad range of community groups, agencies and individuals.

BCDC issued two permits for the Park in 2004 and 2010.

The violations stem from the failure to maintain the required public-access areas and associated amenities of the Park.

For several years there have been unauthorized encampments in the Park and the benches, playground equipment and other amenities that were listed in the permits are either missing or severely degraded.

BCDC opened an enforcement case in 2018 and began discussions with the City in 2019. BCDC staff and City staff began a collective effort to resolve the situation and clear the Park of encampments and restore it to a condition where it would be available for the surrounding community. The result of these efforts was an encampment closure and a Park Restoration Plan developed by the City and a cease and desist order developed by BCDC which is intended to ensure the City executes the encampment closure and Park Restoration Plan.

I wanted to note first off that BCDC is seeking injunctive relief only, which is ordering the City to clear and restore the Park. We are not seeking civil penalties in part because in this case the City's funds are best spent on restoring the Park so it can be used by the public and the surrounding communities as the original funding agencies intended. We would also prefer the City spend money on moving forward with efforts to address the larger issues that created this situation.

The map here shows the adjacent Union Point Park Marina.

The map also shows the areas that BCDC permitted. I point this out only because I believe we do have some speakers present from Union Point Marina and as you will note the Commission has received numerous comments from residents and users of that marina.

In February, the City had begun moving forward with its plans to move all of the individuals in the Park to a defined area and to clear and begin restoring the rest of the Park.

However, before the plans for clearing could be completed, COVID-19 cases began appearing in the Bay Area and state, local and federal agencies put in place guidance and measures to stem the spread of the disease. The result is that the local orders put in place by the Oakland City Council and the Alameda County Public Health Department to control the spread of COVID limit the ability to relocate people in encampments unless they have COVID or other public health needs necessitate relocation. Notably though, these orders do also require that hygiene facilities and restrooms and trash collection be provided.

The result of this pause in the City's ability to address the Union Point Park situation is that the conditions in the Park have deteriorated. I wanted to show these slides because BCDC does recognize this. The attached photos were provided by a manager of the adjacent marina and we do expect that people from the adjacent marina would like to speak about the current conditions in the Park.

Now, to give you a bit of background on this proposed order — Cease and Desist Order 2020.001.00 was first approved by the Enforcement Committee on March 12. Within days the area's shelter in place orders were put in place. The City recognized it would be unable to meet the deadlines in the Order and requested an extension of these deadlines. We then extended

the deadlines and brought a revised order to the Enforcement Committee on April 22. By that time the City was requesting that we consider deferring the entire matter for 90 days. As Commissioner Scharff previously noted, BCDC staff wanted to ensure that this issue was prioritized by the City in their planning and budgeting decisions and thus we did not want to delay putting the requirements in place. The Order was amended to include provisions allowing for the extension of the deadlines if COVID-19 orders made compliance infeasible.

Then this Order came before the Commission on May 21 and there were some questions about the extension provisions and the feasibility of the current deadlines. The Commission then remanded this for further negotiations with the City regarding the deadlines for clearing and restoring the Park.

A revised order was approved by the Enforcement Committee on August 13 and that is the Order before you today.

The main change in this Order is that the deadlines have been pushed out. This Order is not being contested by the City and it is actually based on a Revised Encampment Closure and Park Restoration Plan that was developed by the City.

The key change for clearing the encampments from the Park is that this is now tied to a defined triggering event. In other words, we have not set out specific deadlines. What the Order does is that a triggering event, which is specifically defined in the Encampment Closure and Park Restoration Plan, which is intended to signal that the COVID-19 emergency measures have lifted, will be the starting date by which the City must meet deadlines to clear the encampments from the Park.

Within 60 days all of the encampments that have moved outside of the originally established area will have to be cleared.

I am going to go back just briefly to show you. As you can see by these slides provided by some public commenters, after the City became unable to relocate encampments and move the homeless individuals in order to control the spread of the disease, they started to see the encampments go beyond the originally established zone. By February the City had been able to relocate people to an established area and begin restoring the Park. Once again, we recognize the conditions have deteriorated.

So to take you back to the Order, within 60 days of a triggering event essentially the conditions will be such that all of the encampments have been moved to a designated area and the City can once again begin restoring the rest of the Park.

Then within 90 days of a triggering event we would expect that the City has begun to achieve full encampment closure and the relocation of everybody within the Park.

A triggering event is defined in the City's plan. A triggering event occurs when the first of any of these occurs. The first three are self-explanatory; it is essentially when the orders that currently preclude the City from relocating people would be ended. The fourth item was actually originally included by the City to recognize BCDC's role in this matter and the urgency

we see for closing this area. We would not expect, however, that BCDC would ever request that the City would take actions that would conflict with City and County orders and thus we negotiated language saying that a triggering event could be mutually agreed upon by both the City and BCDC.

The triggering event defines only those deadlines for moving the encampments. There are other deadlines in the Order and in the City's plan for restoring the Park. We have pushed out those deadlines as well recognizing the infeasibility of the original deadlines due to the COVID-19 emergency. I wanted to point out that I highlighted in green the deadlines for reinstalling the missing bike racks because the City is actually ahead of schedule on this. We expect the bike rack installations will be completed soon.

As Chair Scharff noted, the deadline for completing park restoration was originally a subject of disagreement between BCDC and the City. The City is not contesting this Order, although they had originally requested that the deadline for complete park restoration be April 1, 2023 instead of April 1, 2022. Once again, they are no longer contesting the Order and we wanted the 2022 deadline, recognizing that it could be extended if it becomes infeasible because we want to ensure that the City in its planning and budgeting decisions is prioritizing the restoration of this Park.

I am going to hand it back to Chair Scharff to provide the Enforcement Committee recommendation.

Commission Scharff addressed the Commission: The recommendation is to approve the revised Order with the accompanying revised plan, to have the Commission approve it.

Chair Wasserman opened the floor to comments from the public.

Val Hammel commented: I am grateful for the opportunity to speak to you. I must say I am also terrified to identify myself because of fear of repercussions from people in the homeless encampment for speaking out against it. I have had a boat at Union Point Marina for 20 years now. I have been an official live-aboard there for many, many years now.

On a normal day what you would see as you drive into the parking lot is you would see a few pathetic trash cans surrounded by mountains of trash, trash strewn all over the parking lot and the surrounding area. You would see graffiti. You would see rats, not just at night, swarms of rats but during the daytime as well. You would see people bathing themselves and their children and their dogs and their dishes and their clothing in the one open spigot near the public bathrooms. You would hear dogs barking day and night. You would hear loud music coming both from the homeless encampment and from cars parked in the parking lot. You would see people drunk in the parking lot, you would see children, some of them toddler age or younger, playing in the parking lot, playing in the homeless encampment. You would easily see prostitution, sex trafficking and drug deals happening in the parking lot.

Over a year ago, I woke up one morning and my van had had its tires removed and was put on blocks. There is broken glass in the parking lot from break-ins regularly. However, all these things I am describing have been going on for a very long time and this is what I would call the previous, more peaceful normal.

In the last few weeks things have taken a dramatic turn for the worse in terms of violence, aggression and hostility in the homeless encampment. There are now frequent if not daily fights in the parking lot. You can hear the arguments and the fighting from the boats. There are guns. I have seen guns in the parking lot. We hear gunshots from the parking lot. There have been two murders. There are people trying to run each other over in the parking lot and crashing into cars. I am not making this up.

On Wednesday, September 9, close to a dozen Marina residents called the police because 30 people from the homeless encampment got through the Marina gate and started running down the dock with all of their stuff and their kids screaming and shouting and partying and they were going to take over one of the boats that is actually two boats down from mine. They were planning to take it over. Fortunately the police came after enough of us called and were able to remove them.

There are rumors that there is a meth lab, that somebody is cooking meth. Something has taken a dramatic and horrifying turn for the worse in the last few weeks. There are anchor-outs. One morning I woke up and there were anchor-outs not 15 feet from the back of my boat. There are people in dinghies casing out the boats, looking in my windows. Some of us have no options. A lot of people have left because they consider it unsafe to be there anymore. Some of us do not have options. Some of us live there with children.

I beg you for your swift and drastic action. We are terrified. And when I hear mention in this meeting that the homeless encampment might not be cleared until 2022 I feel shocked and desperate. Please do not let that be the case. If you knew what we live with you would do something about this.

Ariel Edwards was recognized: I have been a Marina resident for a little over three years now. I concur with Val to say really the last couple of months there has been a severe uptick in violence and fights. I live there with my nine-year-old son and my dog. My son now knows the difference between tires exploding and gunshots because we hear them so regularly. There was one time during lunch, around noon, there was a fight in the parking lot and they had guns out shooting them up into the air. When we do call the authorities they don't usually come out. There was one time there was a fire in the Park and I called the fire department and even they were hesitant to come out to the area so I don't know if it is just because they don't feel like the area is worth patrolling or if they just have a lot of other things going on.

My truck a couple of weeks ago was recently totaled because there was a woman trying to kill another woman in the parking lot and she hid behind my truck. That will not be replaced. They just paid off the loan and I cannot replace that truck. I have had to flee to Florida. I am calling in from Florida because I am not safe there in the parking lot because I was identified as someone who did contact the authorities when 30 or so of the encampment residents came in with the intention of squatting on the boat to take it over.

I can confirm that there is an active methamphetamine operation going on in the parking lot, both with cooking and distribution. They have an active operation going on, which has not been the case in all of the time that I have been at the Marina but that is why the violence has escalated.

I will not be able to return to the Marina if this is not taken care of because it is just not safe to be there for my son.

And so to hear people discussing bike racks, there is no person who will ever come to that Park and chain up their bike to enjoy the Park, it is absolutely impossible to do that. I have to walk my dog at night and there are no Park lights. Every single light has been ripped out; it is pitch black dark. There is no security. My plea today is for you to empower the harbormaster to be able to take the action that I know he wants to take to make it safer for everybody to be there. But this is no place for anybody to come and enjoy the Park unless you actually take care of the residents. There is no soap, there is no sanitation and this is a COVID outbreak waiting to happen if it hasn't happened already. I also agree with there's loose dogs and prostitution going on as well. It is a really terrible, untenable situation to have people living there.

Michael Tenuto addressed the Commission: I am a tenant at the Union Point Marina and have been a resident for a little over three years. I am an ex-police officer and I am kind of shocked at what I have seen since I have been here, it has escalated. I won't repeat what the previous speakers have said. I agree 100 percent with everything they are doing.

Our harbormaster Brock has done an excellent job in trying to handle this problem but his hands are tied. You have an unsafe situation. So unsafe that I have a permit to carry, which I do carry every time I go in and out of the parking lot. Bike racks, obscene to hear that even mentioned. It is an issue that is unsanitary, unsafe and the next step in this would probably be the Marina not being able to be used because it is that unsafe for people to walk from the Marina to the parking lot. And to hear the date of 2022, it is disheartening.

I do remember when the Park did not have any homeless residents. I do feel for their situation but they have been offered housing, they have been offered many things and basically they decide to live the way they live and do what they do. I have seen many programs in there trying to give them housing, trying to give them a place to go. There is one particular family that is basically the root of all the problems. In the last six months probably 12 shootings where the police have been called, chasing suspects with their car down the sidewalk. In the Marina where the gate is and it is the only opening that you can get into the Marina. It's unbelievable to me.

I beg you to do something. In 2022 you are just going to have a huge problem. There's people parking their cars inside the Park on the grass because there's no repercussions from it, it is insanity. A lot of cars have been towed recently because they were stolen. I have seen drug deals go on. The shootings are the biggest concern for me because they have no concern for anybody's safety. I did witness Ariel's car being totaled the other day. There was a lady hiding behind it and that's why her car was flipped over. It was a truck, it wasn't a small car. Her car was flipped over and totaled. Basically the driver had no insurance and Ariel was stuck to deal with that.

It has gone past the point of absurdity and I have seen a lot in my days, trust me. This is unbelievable what has transpired. The other night when they came down to take over a boat I'm the one who did call the police and actually I am the one who went down and tried to intervene with the police to get them out of here. They did get on the boat, they trashed the boat and they broke many items. It is just the latest of incidents where they're being

unchecked. There are no repercussions for anything they do because everybody points to the COVID. That's not the issue. If anything there may be an issue with COVID there, from what I'm hearing, because there's a couple of the kids who contracted COVID. I try to keep in touch with some of the people in the homeless encampment and this happened in the last week and a half that they have been treated for COVID-19 .

I just ask you to do the sensible thing before it is a situation that is way beyond control. Thank you very much.

Jim Hayes commented: I am the COO of Almar Marinas and we own and operate the Union Point Marina. I don't have to tell you how frustrating this is but it is extremely frustrating.

Somebody said the park has been open for ten years.

Well three of those years or probably more there has been an encampment in the Park. That's 30 percent of the time that that Park has been open that it has been occupied by people.

I have a couple of questions. It says that after 60 days the encampment is moved to a secondary priority area.

Where is that? My other question is, the City has asked for extensions on some of their action plans. Why would we delay anything that didn't involve moving people? You are putting together a plan. You should be able to do that if it had nothing to do with moving people. So we would like to see any extensions that don't require moving people to be denied. I was encouraged the other day, we were able to speak to Mr. Dunston, the new City Homeless Administrator, and I am hoping that the City can prepare so that when the triggering event does happen that we could move forward. All of these delays and delays have just gone on and on and it is enough, we need to do something.

My biggest concern is for the staff that works at the Marina, the people that actually work there. They are required to go to the Marina to try and help the tenants.

That is a terrible thing for us to have to do. Let's see if we can get something done, I appreciate it.

Justin Wertzer was recognized: I have a boat over at Union Point Marina and I also work on a charter boat over at Union Point Marina. I am pretty new to the Marina, I have been here for about two years.

When I first showed up and saw the encampment I noticed of what goes on in Oakland, it is going on in the parking lot. At first I tried to help people and get to know people around there and quickly I realized how bad things were. It was very barbaric. I think Val did a very good job on touching how things are around here. I am a grown man, I am afraid to go in and out of the parking lot at night sometimes. There was one time I was coming back from the charter boat late at night and there was gunshots going off all around me, I had to run into the bathroom and call the police. I literally heard gunshots whizzing by me, I was scared for my life. My window got shot out of my minivan one time here. It is just pure chaos.

I urge the BCDC to please help out the community, Almar, the tenants here, all of Oakland and please hear our drastic plea for urgent help. 2020 (sic) seems to be too long. I don't know if maybe someone could get hurt by then, people here in the Marina. It has been really bad around here. And that is pretty much all I have to say about it, it really needs to urgently get taken care of.

And it is a park also. I would like to also add that this is a park and there are many parks in Oakland that this would just not even be close to allowed at. Like they said, it was only built ten years ago and 30 percent of the time it has been occupied where people can't use the Park. I would love to see where the Park could be used by kids and families like it was built to be. That's all, thank you.

Brock de Lappe gave public comment: I am the harbormaster and Marina manager for the Union Point Marina. I would like to use a little bit of my time to address the issue about the Bay Trail, which I was not able to address earlier in the meeting. There is section of the Bay Trail beyond that which exists within Union Point Park which is on the west side of the bridge that goes to Coast Guard Island. That portion of the Bay Trail, which you exalt in in terms of how wonderful it is around the Bay, has been totally occupied with an encampment. This is not part of the Union Point Park although it is an encampment where there was a murder in late February where an inhabitant of the Park bludgeoned somebody to death in that section. My question to you is: why is there no enforcement on preserving the Bay Trail as it was intended? Or in this day and age of COVID is that a green light for people to camp out wherever and however they want, anywhere on public property? That is a travesty.

As far as what is going on in the Park, you have heard from many of the people there. There has been great expense spent over the last couple of years doing clear-and-cleans of the Park and every time that happens people are allowed to move back in. And lately there are people parking their cars right in the Park proper, not in the, quote, containment area. Why go through that effort? You are just repeating yourself over and over again. There is no enforcement.

There is no enforcement of the parking regulations in the parking lot. People are supposed to have permits to be able to park overnight; there is no enforcement of that.

People in the Marina come to me and expect me to do something. I don't have the authority to tow cars out of the parking lot, that is the city of Oakland's responsibility, they are not doing it.

The situation there is completely unsafe. There have been murders right in the parking lot. There are gunshots frequently. There is a huge rat population. You should talk to the Alameda County vector control to see how totally out of control that is. It is not a safe environment for anybody to live in and there are very small children there, very small children. Why isn't Alameda County Child Protective Services engaging and getting those people out?

And as far as the city of Oakland goes, during our recent discussion with Mr. Dunston we asked what the census was of the people that are there. Because you would think that if the City was intent on doing anything about it they would at least perform a perfunctory census of how many people they have to deal with, and he said it was between 20 and 30. So we have 20

or 30 people that are taking over a multimillion dollar park and not allowing the public to use it as it was intended. We have 20 or 30 people that the city of Oakland can't find housing for. How ridiculous is that?

In San Francisco the City was able to relocate hundreds of people out of the Tenderloin but in Oakland they can't prioritize and move 20 or 30 people out of this Park. This is a travesty.

And by the way, for everybody to hide behind what CDC says about dealing with encampments and the COVID crisis, CDC says the most important thing is to find people suitable housing. They never ever said, don't close the encampments; they said the priority was to find them housing. And I know that the city of Oakland has gotten millions of dollars from the state and federal government and yet they can't find housing for 20 to 30 people? Give me a break. This is a travesty. This is an absolute nightmare for the people that are forced to live there. And it should not go on and it has gone on way, way too long. And I would think that you BCDC as the permit holder, would certainly hold the City's feet to the fire on this and get them to do something sooner than two or three years down the road, that's absurd.

And by the way, this is having a tremendous impact not only our business but many businesses along the Oakland Embarcadero. And why should these businesses suffer because the City can't find housing for 20 or 30 people? It's an outrage.

Chair Wasserman thanked the public speakers and opened the meeting to comments and questions from Commissioners.

Ms. Donovan stated: Chair, I would like to note before we move to that that we do have representatives of the City here if you have any questions for the City. And also just to note once again, the encampment closure, the deadline for moving people out of the encampments according to the terms of the Order, the deadline for that is not 2022, the deadline for that would be a complete clearing of the Park 90 days after a triggering event which signals the end of the COVID-19 emergency.

Chair Wasserman asked: Who is present from the city of Oakland?

Ms. Donovan replied: We have Joe DeVries and we also have Michael Branson from the Oakland City Attorney's Office.

Commissioner Randolph commented: I am sympathetic to what the public speakers just shared with us. We can't at BCDC deal with all the encampments everywhere but this one is actually to some degree on our watch, we do have a level of jurisdiction, as well as on the City's. I am reminded that not long ago, maybe two months or three, we had an uncomfortable decision to make around Galilee Harbor in Sausalito where anchor-outs were coming in and using the pier that we had permitted and the residents there at the harbor provided evidence and the local police provided evidence that there was dangerous and rowdy behavior going on. Loath as we are to take out public access we voted to allow the pier to be taken out.

That was a much less threatening situation than what we are hearing about today. I think we should listen very carefully to what we are hearing today. I think it is very hard to tell people that we are not going to really use our authority or apply it directly until some indefinite date in 2021 or beyond that.

Commissioner Butt chimed in: Like Commissioner Randolph I have an incredible amount of sympathy for the speakers.

But from a practical standpoint, regardless of what BCDC does, this is not going to go away. It is really a city of Oakland problem and they for a variety of reasons, some of which are legitimate; they are not going to act. I think if people are expecting that whatever action we take is going to solve the problem it is just not going to happen.

I think there are only two ways to do this and it is to put political pressure on the city of Oakland or to litigate. Litigation has proven to be probably the most effective way to deal with something like this and that is what I would advise people do. The other remedy is they can all move to Richmond. We have got lots of space at Marina Bay and Point San Pablo Harbor and Brickyard Cove. We don't have any encampments at those areas or in the parking lots so come on over to Richmond.

Mr. McCrea thanked Commissioner Butt for his comments and stated: Commissioner Butt has put forward that there is nothing that we can do, "we" being the Commission, that the Commission can do and that this is up to the city of Oakland. Can you talk a little bit about if this Order is issued what happens if there is a failure to comply with that cease and desist order?

Ms. Donovan explained: We have provisions in the McAteer-Petris Act that would allow us to enforce the Order and begin imposing penalties if the City is not complying with the provisions We recognize that the most important thing the City needs to do to ensure the safety of the surrounding community is to clear the Park of its encampments and Joe can address how that is going to happen.

Mr. McCrea interjected: Before he does, Karen, can I just finish this line of thought, please? Marc, do you have anything to add? If the City fails to pay those penalties that we impose what happens?

Mr. Zeppetello stated: There could be a referral to the Attorney General's Office to enforce the Order and imposed penalties through a judicial proceeding.

Commissioner Addiego was recognized: I just wanted to share, Chair Wasserman, I have heard public comments for the decades that I have served in government and never have I heard more compelling arguments from citizens and it is going to be very hard for me to want to be party to a decision that potentially puts off the solution for one and a half years.

I appreciate Brad sharing the information that we can put some pressure on the local government to take better care of their citizens.

Commissioner Gunther commented: I am trying to understand the concept of a triggering event. Which the decisions that would lead to that are about public safety related to COVID and yet I am hearing incredible, compelling testimony of extraordinary public health and safety dangers and we are proposing that those do not qualify as a triggering event, it is only related to questions about the County deciding that there is no longer a COVID danger.

There are other dangers. We have had this explicit testimony about what is going on and I am not quite sure why what we are hearing does not qualify as a triggering event for moving forward with the conditions in the cease and desist order.

Chair Wasserman called on City personnel to comment: Joe, I know from a number of circumstances the yeoman work and struggles you are dealing with but will you please address your and the City's view of this issue? Joe DeVries, City of Oakland, responded: Absolutely.

Thank you, Chair Wasserman and to the entire Commission.

Really first I want to offer my empathy to the members in the Marina that are having to experience this. They are absolutely right; we have seen a significant uptick in violence in the vicinity of Union Point Park. One murder suspect who was taken into custody had actually threatened to murder me and so I know him personally; sadly he did commit an act of murder near the Park and was taken into custody.

There have been other shootings in the vicinity.

We are aware of that and I have been actually emailing the captain, the area commander, while this meeting has been going on to try to get some more details about the open projects that he has. As you know the police are in a very unique situation right now across our country but they still do take violent crime as their highest priority and I know that this area and the violent crime that has been happening there is the highest priority for the area's commander. When it comes to criminal activity that hides in a homeless encampment, we really need to separate the criminal actions with the status of homelessness and we do look at them differently.

I will point out that we have Union Point Park on our radar to close sooner rather than later. We have a new policy that the City Council adopted when COVID hit that only allows us to close an encampment if there is an eminent, public safety and public, health risk. It is hard to hear what we are hearing today and not see that this is an eminent, public-health and safety risk, it is. I have also had our new homelessness administrator on the phone while you have been deliberating to let him know that we may need to pull our own internal trigger at the City faster than a county health order would pull it.

I will draw a reference, a comparison for you. The only encampment that the City has scheduled to close since the new order came out with the pandemic is scheduled to close next week. It is under the BART tracks near 81st and 85th in San Leandro. That encampment has had several large fires that have shut down the entire BART system and actually caused damage to the BART structure. We felt that was enough of an eminent threat that that encampment is being closed next week. Once that is done I think the City could really take a look at Union Point Park and see if it can get that on the list. It is not just about finding housing for 20 or 30 people. As this Commission may know, and I know the Enforcement Committee knows, we have offered many housing options to many of the people in this encampment and they have not taken us up on the offer. Usually if we have shelter to offer at the same time that we are conducting a closure we get more of an uptake.

I also want to remind the Commission that one of the factors in allowing this encampment to get so bad was in fact litigation. We were closing Union Point Park of encampments, we were slowly cleaning it, when a federal injunction was entered against the City. I was personally named in it. We spent some months in federal court in a settlement conference with some of the encampment residents that ultimately we prevailed but they didn't agree to what we were offering.

Their attorneys didn't seal the deal and we were able to close the southern parking lot and that was when we were able to resume cleaning. We are in a precarious position because we have six active federal cases against the City around our encampment activity. Although we have won every one we have only done so by being extremely cautious in taking action against the encampments.

So it is not going to be 2021 or 2022 when this encampment gets closed. It will be 2022 that we finish the full restoration of the Park which we are estimating at about \$1.2 million right now. We have had conversations with our Capital Improvement Project Team to get this on the list and we have briefed the City Council about it as well. We are moving in the right direction but I acknowledge how absolutely unacceptable the conditions are currently out at the Park.

Commissioner Showalter commented: I do not understand why the police chief is not here. What we have heard about is a lot of criminal activity and it really should not be the job of the supportive housing or homeless department to be dealing with this. Criminal activity is supposed to be dealt with by the police department; so where are they? I would say that, as people said earlier, we are really hearing about egregious behavior. I know in our community that is not what we experience, fortunately. I think that we have to separate out here what is criminal activity versus what are people who are just sadly very poor; and there are many homeless people who are very well behaved. This is a really distinct situation and it calls for the police.

Commissioner Scharff added: I wanted to say some things about where we have come and where we were. I actually do not support this Order and I do not think most of the Committee really does either; but we had an Order that we did support, which was our April Order, which did not have this concept of a triggering event. The concept was different, the concept was we would set dates and if the city of Oakland was working in good faith and there were reasons not to have those dates the Executive Director would have the authority to extend those dates. When we went to the Commission with that the Commission basically said no and said, as long as COVID is in effect you will not remove people from the Park, and that is where the triggering event comes in.

So when I hear the relocation will occur earlier. I do not think COVID ends until the middle of next year in terms of a widely done vaccine when you come up with a triggering event. That is probably 90 days. So yes, I think this encampment lasts under this Order through most of 2021. Yes, the city of Oakland can get to it and decide that that is what they are going to do but I do not believe that will happen. I really hope but I know you are really overworked, Joe, and I know that you have lots of homeless encampments and I know you have lots of problems and I know that the City Council has a lot of issues around this.

If we support this I think that is what we are saying.

And it is extremely egregious out there. But we as a Commission at the last meeting when this came to us said no, we do not want to remove people until after COVID. So you can send it back to us again or you can hear it, but you have made the decision if you do this that that triggering event probably does not happen until the middle of next year. I would love it to happen earlier but that is my gut sense of it.

I do think it is a very different tone this time when we came to the Commission and I think the speakers really highlighted it, so maybe we did a poor job as the Enforcement Committee not explaining in detail with pictures and with all of that of how bad it really is out there. That was why we were working to get the encampments removed as quickly as possible while being compassionate and humane at the same time and giving an order when the city of Oakland could then find housing, but it becomes the city of Oakland's priority as opposed to not being a priority, and that is what we were looking for. So I think that is how we ended up here. That is really the decision today is — are we happy with the idea of a triggering event or do we think this needs to happen much quicker?

Executive Director Goldzband interjected: I want to finish your sentence, Greg. Your last sentence was – a triggering event or; how did you end it?

Commissioner Scharff answered: I said, or have dates. Executive Director Goldzband continued: Or have dates, comma, that the Executive Director could have the authority to change based upon circumstances. Which is what the previous Order had said; is that correct?

Commissioner Scharff replied: That is correct. I am glad you clarified that Larry because that is what we were looking at. We were looking at holding the city of Oakland's feet to the fire while at the same time giving some flexibility given the circumstances with COVID-19, given the circumstances with the city of Oakland and allowing the Executive Director to work with the city of Oakland while making sure that it stays on the top of their list of something they need to resolve. That is why I believed in the first Order. But when we came to the Commission we did not have support for that so we came back and came up with the triggering events.

Commissioner Vasquez was recognized: I think Greg pretty much said it. As a member of the Enforcement Committee I was very happy with the Order we had sent forward on May 21st, Item 9. If you go back to the minutes you will see that those of us on the Enforcement Committee talked about how we had worked through this and listened to the community; that we thought we had a good Order. I believed at that time the flexibility was there for the Executive Director to make those kinds of changes. It was rejected by the majority of the Commissioners in a 20 - 2 - 1 vote to go back to us. I voted not to send it back to us because I thought it was a good Order to begin with. And I say it again, the last Order was better than this one.

Commissioner Pemberton had a question: I just had a clarifying question. Is the only way to remove the triggering event to take this back to the Enforcement Committee and have them re-recommend an action without a triggering event or is there another way that the Commission could consider moving forward on this without the triggering event?

Ms. Donovan explained: There is a fourth triggering event definition which would be a date that the City and BCDC mutually agree to. It does say mutual agreement so the City would need to agree that we would move forward before either the County Public Health Order is lifted or the City Council changes its resolution. What I am hearing Joe saying is that they might be able to prioritize it but that is how the Order is currently phrased. There are four possible triggering events and the fourth of those would be that we mutually agree that the encampments will be removed earlier than the occurrence of the other events.

Chair Wasserman commented: I appreciate that observation but I am going to restate Sheri's question, what are our options today?

Mr. Zeppetello replied: The Commission regulations do limit your options today. You can accept the Order or you can remand it to the Enforcement Committee or you can decide to hear this matter yourself de novo and the staff could bring it back, a revised order back to the Commission at the earliest opportunity. But you cannot modify the Order before you today.

Chair Scharff asked: You cannot approve the April order, can you, today? Ms. Donovan replied: No, you cannot.

Chair Wasserman continued: But it was a good question. When is the next Enforcement Committee meeting?

Enforcement Policy Manager Njuguna replied: On October 8.

Commissioner Ranchod opined: I do not want to repeat the comments of the other members of the Enforcement Committee but I share the sentiments. I do believe that what we have heard from the members of the public, the photos that were submitted and the public comments we heard today, and I thank the people for making time and expressing all of that detail to us and empathize with what they are going through. It is a public safety crisis there. What we have heard about what has occurred over the past few weeks is certainly different and a whole other level it seems from an already bad situation than was occurring before. I just wanted to highlight that there are new additional facts here that we should take into account and that the City should be taking into account and I would prefer a stronger message with the agreement here. Chair Wasserman stated: I am going to exercise the Chairman's prerogative. I would entertain someone making a motion to return this to the Enforcement Committee with an indication that some of us certainly believe that we should have approved the prior Order, given what we are hearing today.

Commissioner Scharff stated: I will make that motion. Commissioner Randolph stated: I will second.

Chair Wasserman asked if there were any comments or questions on the motion.

Commissioner Pemberton chimed in: Not really a comment or question on the motion but just in terms of process. If this action is approved by the Commission today when would the full Commission potentially reconsider an action on the Enforcement Order?

Chair Wasserman noted: That was going to be my comment and I would suggest at our meeting on the 17th.

Executive Director Goldzband stated: It is October 15 when the Commission meets. The question is whether it is possible, and I go to Marc and Karen, for the Enforcement Committee to take an action on October 8 and they have it available on October 15 at the Commission meeting.

Ms. Donovan replied: It is a tough lift, to give you the straight answer. We typically do our mailings on Fridays and you need ten days under the regulations, so that would actually preclude that.

Executive Director Goldzband clarified: So what you are saying, Karen if I can interject, if the Commission says that it wants this back on the October 15 date there would need to be an Enforcement Committee meeting prior to October 8 that would give you the time to have an Enforcement Committee meeting and send information out to the rest of the Commission; is that correct?

Ms. Donovan replied: Yes. Ideally we would want an Enforcement Committee meeting prior to October 3 in order to be able to turn the materials around and do a mailing for you on October 15.

Chair Wasserman asked: So would the maker and the seconder of the motion accept a friendly amendment to say if possible to have a special meeting of the Enforcement Committee so that this matter could return to the Commission on the October 15 scheduled meeting?

Commissioner Scharff replied: Yes.

Commissioner Randolph replied: Yes.

The Reporter: Chair Wasserman, this is John in Sacramento – just a potential point of order here. Does this mean that the scheduled motion and second which was to according to the Agenda here, “approve the revised uncontested order” – is that now null and void?

Chair Wasserman replied: Correct.

The Reporter: Okay, thank you.

Michael Branson, Deputy City Attorney for the city of Oakland commented: I understand the frustration that is being heard here. I think when we were working with BCDC staff it was under an assumption that conditions had not deteriorated to the state that is being discussed today. I do still think if we together want to get some quick action on this I do think it makes sense to actually have a cease and desist order in place, which is the option that can happen today. The City supports the proposed CDO as drafted.

Before this conversation happened we did not think this was the end of the discussion with BCDC or staff and we certainly would be open to having further discussions about that fourth triggering event, but also acknowledging that we have some obligations under the permits and under the CDO to maintain this properly as well and so that is sort of a separate lever.

Chair Wasserman stated: I appreciate the comment, Michael. There is some merit to it. The difficulty here is I think the Commissioners recognize that both the challenges faced by the city of Oakland, but also the competing forces on the city of Oakland could well result in

something where the City could not mutually agree with us to an earlier triggering event and I think you heard the consensus of the Commission that that is probably not acceptable. In terms of the ability to deal internally in the City, I think you can reasonably guess and predict that something very, very close to the April Order recommended by the Enforcement Committee will be approved by this Commission on October 15 if we can do that, if it is at all possible to do that.

The one other comment I would make, and a plea almost to the members of the Enforcement Committee, I would hope this would not be a lengthy discussion for the Enforcement

Committee and therefore perhaps make a special meeting somewhat easier.

MOTION: Commissioner Scharff moved to remand the Cease and Desist Order to the Enforcement Committee with the indication that some Commissioners believe they should have approved the prior order. The motion was amended to say, if possible to have a special meeting of the Enforcement Committee so that this matter could return to the Commission for the October 15 scheduled meeting. The motion was seconded by Commissioner Randolph.

VOTE: The motion carried with a vote of 18 - 0- 1 with Commissioners Addiego, Ahn, Butt, Gunther, Pine, Ranchod, Randolph, Sears, Showalter, Techel, Ziegler, Gilmore, Scharff, Pemberton, Stefani, Vasquez, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO" votes and Commissioner Beach voting "ABSTAIN".

Chair Wasserman stated: I thank you all and I certainly

thank, as other Commissioners did, the residents and operator of the Marina who brought very graphically, figuratively and literally, to us the rapidly deteriorating situation there that I think does raise an issue of eminent health and public safety that may not have been there before but certainly is now.

11. **Adjournment.** Upon motion by Commissioner Ahn, seconded by Commissioner Pemberton, the Commission meeting was adjourned at 3:46 p.m.

Respectfully submitted,

LAWRENCE J. GOLDZBAND
Executive Director

Approved, with no corrections, at the
Commission Meeting of October 15, 2020.

R. ZACHARY WASSERMAN, CHAIR

BCDC MINUTES
SEPTEMBER 17, 2020