

San Francisco Bay Conservation and Development Commission

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December 15, 2023

TO: All Commissioners and Alternates

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

SUBJECT: Draft Minutes of December 7, 2023 Hybrid Commission Meeting

1. **Call to Order.** The hybrid meeting was called to order by Chair Wasserman at 1:03 p.m. The meeting was held with a principal physical location of 375 Beale Street, San Francisco, California, and online via Zoom and teleconference.

Chair Wasserman opened the meeting: Good afternoon, all, and welcome to our hybrid BCDC Commission meeting. My name is Zack Wasserman, and I am the Chair of BCDC. Before we get started, I want to inform you that both Item 8 regarding a contract with the Port of San Francisco, and Item 11 regarding the update of sea level rise guidance have been postponed, hopefully to our next meeting.

Chair Wasserman asked Ms. Ruiz to proceed with Agenda Item 2, Roll Call.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Eisen, Commissioners Addiego, Ahn, Beach (represented by Alternate Williams), Burt, Eckerle, Eklund, El-Tawansy (represented by Alternate Ambuehl), Gioia, Gorin, Gunther, Hasz, Lee (represented by Alternate Kishimoto), Lucchesi (represented by Alternate Pemberton), Moulton-Peters, Peskin, Pine, Ramos, Ranchod (represented by Alternate Nelson, Showalter (joined after Roll Call), Tam (represented by Alternate Gilmore) and Zepeda. Assembly Representative Ting (represented by Alternate John-Baptiste) was also present.

Chair Wasserman announced that a quorum was present.

Not present were Commissioners: Association of Bay Area Governments Department of Finance (Benson), U.S. Environmental Protection Agency (Blake), Solano County (Mashburn), Governor (Randolph).

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

Chair Wasserman added: I do want to remind you all of the unfortunate increase in this terrible word, Zoom Bombing, of both local and regional agencies and their meetings. Everyone, please do note, as was said in the introductory video, that BCDC will not tolerate any form of hate speech or threats against any groups or individuals. And as Chair, I want you to know that I will wield a very heavy hammer on those issues.



No members of the public addressed the Commission.

Chair Wasserman moved to Approval of the Minutes.

4. **Approval of Minutes of the November 16, 2023 Meeting.** Chair Wasserman asked for a motion and a second to adopt the minutes of November 16, 2023.

MOTION: Commissioner Moulton-Peters moved approval of the Minutes, seconded by Commissioner John-Baptiste.

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

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

a. **Next Meeting.** Our next meeting will be held on December 21st. At that meeting we may take up the following matters:

(1) Consideration of a contract with the Port of San Francisco regarding the San Francisco Waterfront Special Area Plan that we postponed today;

(2) A potential Commission vote on the proposed Oakland turning basin expansion; on which we are holding a public hearing today;

(3) A briefing on the update of state sea level rise guidance from the state, also postponed from today;

(4) A briefing on the Suisun Marsh in Solano County; and

(5) A briefing on Bay Adapt.

b. **Chairs Comments.** Just a couple of brief comments. As I noted earlier, slightly joking, this is going to be a brief meeting. Enjoy the gift of time. I think the next meeting will be a bit longer. As we move into the new year, I think they will be longer. I think we are going to start taking on in more depth some of the policy issues we have been discussing and I am certain there will be some interesting hearings along the way.

There was an international scientific report actually issued in November that noted that over the last 10 years give or take, maybe a little longer, the rate of sea level rise has doubled over the long-term trend. It is still small, but that is significant and indicates the water that we know is coming, welcome or not, is coming. And we need to keep doing our work, as we are, and we need to keep pushing our collaborators and partners on moving ever faster because the sea ain't waiting for us.

c. **Ex Parte Communications.** With that, this is the moment to put on the record any ex parte communications you may have had that you have not put in writing through our website. You do need to do that in any event. These are on adjudicatory or hearing matters, not on policy matters. Anybody have any ex parte communication to report? I see none.

That brings us to the report of the Executive Director. Our Executive Director Goldzband is on vacation and General Counsel Greg Scharff is Acting Executive Director, and as that will now present the report.

6. Report of the Executive Director. Acting Executive Director Scharff reported: Thank you, Chair Wasserman.

Good afternoon, Commissioners. I am Greg Scharff and it has been a pleasure to serve as your Acting Executive Director for the last few weeks while Larry has been out.

I wanted to first of all note that today is Pearl Harbor Day, and I can only imagine how Larry would have weaved that into today's ED Report. Unfortunately, you have me, not Larry, so you will just have to imagine.

Now, first of all, I want to thank everyone who indicated they will be present for the December 21 Commission meeting; and stress that it is critical that you do so as we will all be taking the vote at the meeting on today's Item 10, which is the Proposed Phased Consistency Determination for the Oakland Turning Basin Widening Project and we will definitely need a quorum for that.

I also wanted to note that as part of BCDC's Sediment for Wetland Adaptation Project, BCDC and its partners, USEPA, Coastal Conservancy, Regional Water Board, SFEI, and San Francisco Bay Joint Venture, are hosting a two-day in-person workshop on January 23 and February 13, 2024, to review and discuss potential changes to sediment management and an implementation roadmap of actions to increase beneficial reuse of soil and sediment in the Bay Area.

At the workshop we will work with a variety of stakeholders who are actively involved in and impacted by sediment management in the Bay Area. You will be hearing more about the project and upcoming workshop during a briefing scheduled for the January 18 Commission Meeting.

I also wanted to note that we will be holding our second Bay Adapt Implementation Coordinating Group meeting on December 8, and Elected Officials Task Force Meeting on December 19.

And finally, on November 27, the NOAA Office for Coastal Management issued two decision letters approving changes to the Commission's Coastal Management Program under the Coastal Zone Management Act. NOAA has approved two sets of amendments to the Commission's regulations that the Commission adopted in 2022: The regulations concerning enforcement procedures, including the new Administrative Civil Penalty Policy, and the regulations for implementation of the California Environmental Quality Act.

With NOAA's prior approval of the amendments to the Commission's regulations concerning administrative/procedural, permitting, and planning matters, all three sets of amendments to the regulations adopted by the Commission in 2022 have now been approved by NOAA as part of the Commission's coastal management program.

Thank you.

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

8. Commission Consideration of a Contract with the Port of San Francisco to Fund Planning Activities. Item 8 was postponed.

9. Public Hearing and Possible Vote to Approve Stipulated Orders CCD2023.002.00 and CCD2023.003.00. Chair Wasserman stated: That brings us to Item 9, the Public Hearing and Possible Vote to Approve Stipulated Orders CCD2023.002.00 and CCD2023.003.00 regarding the Seaplane Investments LLC of Corte Madera and their development in Marin County.

After BCDC has given its opening remarks, I will ask the Respondent to affirm its agreement with the terms and conditions of the stipulated Orders. Then I will allow public comment on the item and afterwards we will hold our discussion and vote on the Enforcement Committee's recommendation.

At this time, will the representatives or representatives for the Respondent please identify themselves for the record, present or on Zoom.

Mr. Lou Vasquez chimed in: Hi, this is Lou Vasquez, I am present and representing Seaplane Investments.

Chair Wasserman continued: Thank you. Before staff gives its presentation, I invite Commissioner Gilmore, the Chair of the Enforcement Committee, to give a brief summary of the Committee's hearing on this matter that took place on November 9 of this year. Chair Gilmore.

Commissioner Gilmore presented the following: Thank you, Chair Wasserman. Before I start, I want to give a real vote of thanks to both the Respondents, staff, and our General Counsel Greg Scharff.

The Enforcement Committee heard this case several times and it is a complicated case. It is complicated by the number of violations, the fact that the property changed hands, and also, the length of time involved in this. And so, kudos to everybody involved, bringing this together and getting an Order that fixes the violations and allows everybody to move forward. So, thank you once again to the Respondents, to staff, and to our General Counsel. Chair Wasserman.

Chair Wasserman announced: We will now have staff's presentation by Principal Enforcement Analyst Adrienne Klein.

Principal Enforcement Analyst Klein addressed the Commission: Thank you, Commissioner Gilmore, Chair Wasserman. Good afternoon, everybody.

In July 2022, staff issued a Violation Report and Complaint to resolve six unresolved violations. And in October of the same year, we issued a second complaint for administrative civil penalties to resolve the penalty portion of three resolved violations.

During a public hearing on May 30, 2023, the Enforcement Committee directed staff to enter into settlement negotiations which resulted in two proposed stipulated orders to resolve all nine violations.

During a public hearing on November 3 of this year, the Enforcement Committee, as just mentioned by Commissioner Gilmore, adopted both proposed Stipulated Orders, which are before you today.

The presentation will cover the site location, the nine violations and the two staff recommendations.

The red pin on this vicinity map shows the location where the violations occurred and are occurring, known as 240-242 Redwood Highway Frontage Road in an unincorporated area of Marin County. Just to be clear, apologies, Commissioner Wasserman, it is not in Corte Madera.

The image on the left shows the site looking to the northeast. This site contains a number of businesses and operations. While some of the ground level uses and the associated fill appear to have been ongoing in 1965, changes to the ongoing uses and associated fill within BCDC's jurisdiction, including maintenance, that occurred after enactment of the McAteer-Petris Act, require a BCDC permit or permit amendment.

Permits run with the land and new owners are responsible for resolving inherited violations and violations they undertake. As new owners, Respondent should have but did not contact BCDC as part of a due diligence review to inquire about site status in relation to the law and the existing permits that govern the site.

The image on the right has an overlay of the approximate locations of the two privately owned parcels numbered 164 on the right and 167 on the left, with the three street rights of way, which you can see in the left slide, Parepa Street, Bolinas Street and Yolo Street, that surround or straddle them. And the docking facility pictured in the water is located on Marin County property.

So, I will now describe the six violations, the six unresolved violations.

The first being that Respondent is violating Special Condition II.C, public access of its 1973 permit by failing to provide the public shore signage and public access connection from the site to the Marin County public access west of the site.

Violation 2 is of Special Condition II.C.2, maintenance of the permit, by failing to maintain the existing required public shore pathways and landscaping. The bulkhead at Parepa Street is severely eroded and the adjacent public shoreline pathway is frequently inundated by tides. The northeastern tip is eroded to the point of being gone and the remainder is collapsing into the Bay.

Violation 3 is of the McAteer-Petris Act Section 66632(a), by placing unauthorized fill in the Bay and shoreline band in Yolo Street. The unauthorized fill includes vehicle parking and/or equipment storage, seaplane storage, seaplane storage repair and maintenance, a seaplane fueling tank, an elevated asphalt pathway across Yolo Street to allow for pedestrian access during high tides.

Some of this unauthorized fill also violates permit Special Condition II.D, use of solid fill by using filled areas designated to be used only for landscaping, landscaped public access, and pedestrian and bicycle pathways for private use.

Violation 4 is of the McAteer-Petris Act and involves placing unauthorized fill in BCDC's jurisdiction consisting of an unauthorized helicopter landing pad and four paved walkways on Block 164.

Violation 5 is also a McAteer-Petris Act violation, and it involves placing unauthorized fill in the Bay on Marin County property by expanding an existing U-shaped floating dock during three separate episodes with new floating fill, two pilings and relocating an on-water filling station.

And the sixth unresolved violation is also a McAteer-Petris Act violation and involves excavation and fill to construct a new concrete and rebar water access ramp in the Yolo Street right-of-way, this most recently in March 2022.

This completes the summary of the six unresolved violations. I will describe the three resolved violations.

Two are the same, which are Respondent's failure to take assignment of both the 1973 and the second 1985 permits that govern the site.

And the third is Respondent's failure to complete a project prior to the permit expiration date and continuing work with an expired permit.

So, those issues have been resolved, but there were administrative civil penalties.

I will now read the Enforcement Committee's recommended enforcement decision to resolve the six unresolved violations. The Respondent has agreed to stipulate to the following terms:

To cease and desist from violating the McAteer-Petris Act and both permits.

By June 30, 2024, to comply with the existing permits by:

Maintaining the permit-required public access along the existing shoreline pathway within Respondent's current property ownership.

On Yolo Street from the termination of the shoreline pathway located within the dedicated public access area, to stripe and maintain a connection for an 8-foot-wide access path of travel. And that is outlined in one of the Order exhibits.

Respondent agrees to install eight public shore signs as outlined on the slide and in the Order.

To relocate accessible parking, also as shown in an Order exhibit.

On Yolo Street to remove the unauthorized elevated asphalt path that was constructed to allow for access in high tides.

And to confirm with staff which helicopter landing pads and walkways are authorized or not.

Within 12 months of the date of the Order, Respondent agrees to file a permit application for the unauthorized fill and uses as follows:

They will submit a revised landscaping plan for areas adjacent to the permit-required public access. That will be reviewed by staff, and it will include installation and maintenance of some picnic tables that will be ADA accessible. And if there is any new access required under a following section, that will be included in these plans.

Respondent agrees to request after-the-fact authorization for any helicopter landing pads, fuel tanks and walkways that are not permitted by the 1985 permit.

The three fingers that are part of the docking system that are not currently authorized, and the launching ramp constructed in March 2022.

Respondent agrees to provide some additional public access, either that currently required by the permit, which is a connection between the site and the adjacent County public walkway and bicycle path; or alternative onsite access if local approval cannot be attained.

And finally, to prepare a sea level rise risk assessment to address sea level rise in the permit-required public access areas. And to implement the sea rise plan in the timeline outlined in it.

And it will include the maintenance of the public access on Parepa Street that is flooded and eroded, frequently flooded and quite eroded.

Also, adaptive measures to maintain public access for the life of the project or until 2050.

So, that completes the requirements for the unresolved violations.

For the three resolved violations, Respondent agreed to a \$5,000 administrative civil penalty due within 12 and 24 months of the Order in two equal installments.

And the penalty associated with the six unresolved violations is \$43,800, due in three different increments. The first \$10,000 within 60 days of Order issuance, and then two payments of \$16,900 due within 12 and 24 months of Order issuance.

So, together the two recommendations would result in a total penalty of \$48,800.

That concludes the staff presentation.

Chair Wasserman acknowledged: Thank you very much.

I would ask Respondent's representative whether they concur with the staff recommendations and the stipulated Order.

Ms. Blanchard chimed in: Yes, good afternoon, Commissioners. Apologies for joining a little late. My name is Jillian Blanchard, I am with Rudder Law Group, and I represent Seaplane Investments LLC. Good to see you all. I, on behalf of Respondents, can concur that we do support the staff's recommendation and the stipulated Order. Thank you.

Chair Wasserman continued: Thank you very much. Are there any questions from Commissioners before we open for public comment?

Vice Chair Eisen was recognized: I just wanted to point out that this matter is sort of a really good example of the workings of the Enforcement Committee. The staff and the Respondents are working very hard to resolve these matters but sometimes they just can't quite sort of pull it across the finish line. And the Enforcement Committee serves as what I would call the courthouse steps.

As Chair Gilmore and Adrienne Klein mentioned, this was a very complicated matter. When it came to us, we saw the effort that had been made already and it just seemed to us that with a little more effort and a little sort of push from our Committee they could resolve

this matter, and they did. And so, it is really a testament to how well that Committee works as an arm of this Commission, so I just wanted to make that point.

Chair Wasserman agreed and added his kudos: Thank you. I would add my thanks to staff and to Chair Gilmore.

Any other Commissioners?

Do we have any public comment?

Ms. Ruiz noted: No public comment.

Chair Wasserman continued: I assume there are no final comments from Commissioners, and I now invite Chair Gilmore of the Enforcement Committee to present the Committee's enforcement recommendations.

Commissioner Gilmore read the following into the record: Thank you, Chair Wasserman. Before I put forth the Enforcement Committee's recommendations, I am going to briefly review the Commission's options to proceed.

Pursuant to BCDC's regulations, Section 11332 entitled, *Commission Action on Recommended Enforcement Decision*, when the Commission acts on a recommended enforcement decision, the Commission's action shall be one of the following:

One, the Commission may adopt the recommended enforcement decision without any changes to the proposed stipulated orders. And this is your Enforcement Committee's Recommendation.

Two, the Commission may dismiss the entirety or either part of the matter by voting not to issue one or both of the proposed orders.

Three, the Commission may remand the entire matter back to the Enforcement Committee or staff for further action as the Commission directs; or

Four, the Commission may reject the recommended enforcement decision and decide to consider the entire matter de novo. In this event, the Commission shall continue the public hearing to the next available Commission meeting, when it shall proceed in accordance with the same procedural requirements as the Commission must follow under regulation Section 11327.

I will now present the Enforcement Committee's Recommendation. The Enforcement Committee recommends that the Commission vote in favor of the adoption of the proposed enforcement decision and cease-and-desist and civil penalty orders CCD 2023.002 and CCD 2023.003, to resolve BCDC Enforcement Case Number ER2019.063.00.

MOTION: Commissioner Gilmore moved for the Commission to adopt the recommended enforcement decision without any changes, seconded by Commissioner Moulton-Peters.

VOTE: The motion carried with a vote of 20-0-1 with Commissioners Addiego, Ahn, Ambuehl, Burt, Eckerle, Eklund, Gilmore, Gioia, Gorin, Gunther, Hasz, Kishimoto, Moulton-Peters, Nelson, Pemberton, Peskin, Pine, Zepeda, Vice Chair Eisen and Chair Wasserman voting, "YES", no "NO" votes, and Commissioner Williams voting "ABSTAIN".

Chair Wasserman announced: The motion passes. Thank you for all of your work. Continue and let this not come back to us.

10. Public Hearing on the US Army Corps of Engineers, San Francisco District's Proposed Phased Consistency Determination for the Oakland Turning Basins Widening Project. Chair Wasserman stated: That brings us to Item 10, a public hearing on the US Army Corps of Engineers Proposed Phased Consistency Determination for the Oakland Turning Basins Widening Project. The presentation will be made by our Sediment Program Manager Brenda Goeden, or at least she will introduce and kick it off.

Sediment Program Manager Goeden addressed the Commission: Thank you, Chair Wasserman and Commissioners. Good afternoon. We appreciate you all being here today for the Army Corps' Oakland Turning Basin Widening Project. We have a bit of a presentation for you today, please hang on. We recognize that this project is both complex in its construction and timing, but also we note that the Commission does not often hear phased consistency determinations, so we thought we would take the opportunity to use our legal eagle, Michael Ng to walk you through the federal law and policies around this type of project, prior to getting the overview of the project from the Commission staff, which will be myself, and then following me, Phoenix Armenta will be presenting on the Environmental Justice policies because there are some complex Environmental Justice issues here. Following Phoenix, I will step back in for a minute and then we will be turning the project over to the Army Corps of Engineers to give you a detailed project description. So, with that I appreciate your attention today. Michael will go ahead and take the mic.

Senior Staff Attorney Ng presented the following: Hello, Commissioners. Michael Ng, Senior Staff Attorney at BCDC. As Brenda mentioned, I am going to be covering two topics today, Coastal Zone Management Act, CZMA, and Federal Consistency, that's one topic. And then the second topic is the Commission's authority and jurisdiction in this situation. I am going to try and keep this brisk, though I have a lot of information to cover, because the present situation is a bit complex in terms of the legal landscape, and the Commission's current consideration is a little bit out of its usual consideration of projects. Throughout my presentation you may see asterisks on certain slides and wonder what that is all about. Those have no particular significance other than to serve as cues to myself to provide more information for my speaker notes, which I could not fit onto my slides.

First, we will talk about the purpose of the CZMA. It is a federal law, again, the Coastal Zone Management Act. Its basic purpose is to "Preserve, protect, develop and where possible, to restore or enhance the resources of the Nation's coastal zone." The CZMA accomplishes this by encouraging states to develop what is called Coastal Zone Management Programs or CZMPs. This goal is further incentivized by the federal government providing federal matching grants to administer CZMPs for coastal states that have certified CZMPs that they administer. Per the CZMA statute, a CZMP should include "objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone." Once approved by NOAA, a state's CZMP is the standard for federal agency activity in that coastal zone.

Next, we will talk about BCDC's authority and responsibilities under the CZMA. Taking a step back, there are actually two coastal zone segments in California for CZMA purposes. BCDC administers the San Francisco Bay Area coastal zone segment, and the Coastal Commission

administers the rest of the coastal zone. It is worth pointing out that both the McAteer-Petris Act, our founding law, and the Bay Plan, both predate the CZMA. The McAteer-Petris Act was enacted by the legislature in 1965 and the Bay Plan was approved in 1968. The CZMA was enacted by Congress in 1972. In 1977, when NOAA approved BCDC's CZMP, it virtually wholly incorporated the McAteer-Petris Act and the Bay Plan into our CZMP. Updates to our CZMP must be accomplished through CZMA program changes and that most commonly occurs when the Commission adopts a Bay Plan amendment. It is worth pointing out that BCDC's CZMP has been updated 121 times since 1982 to reflect amendments and updates to BCDC's laws and policies.

Now we get into the nitty gritty of what is before us today, a submitted consistency determination. The consistency determination process, or CD, involves both federal and state agencies. First, I will talk about the federal agency role. A federal agency must submit a CD to BCDC prior to undertaking any activity "that affects any land or water use or natural resources of the coastal zone." The activity must "be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of the approved State management programs." So, two notes, first, I will address the legal character of phased CDs later in this presentation. Second, NOAA's regulations define "consistent to the maximum extent practicable" to mean fully consistent with the enforceable policies of management programs, unless full consistency is prohibited by existing law applicable to the federal agency, and NOAA regulations further define "enforceable policy" as state policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances or judicial or administrative decisions by which a state exerts control over private and public land and water uses and natural resources in the coastal zone. The federal agency shall not proceed with an activity over BCDC's objection unless the federal agency has concluded one of the following: either that consistency with BCDC's enforceable policies is prohibited by law; or that the proposed action is consistent with BCDC's enforceable policies.

The next part of the CD process is the state agency role. BCDC responds to a CD submitted by the federal agency by one of the following, either concurring, conditionally concurring, or objecting to the CD. A conditional concurrence means that the federal agency must meet specified conditions to be deemed consistent with BCDC's policies. And BCDC must identify specific enforceable policies of its CZMP and explain why conditions are necessary to ensure consistency with those specific enforceable policies. Again, BCDC's CZMP includes enforceable policies of both the McAteer-Petris Act and the Bay Plan. If the federal agency rejects any conditions in the state's conditional concurrence, the concurrence is effectively deemed an objection.

Now that we know the federal agency and state agency roles in the CD process, what happens when there is a conflict between the two sides? It is first worth noting that an objection to a CD is not a denial in the way that we may be able to deny a permit application under our state law authority. If the federal agency decides to proceed with an activity that is objected to by BCDC, the federal agency must notify BCDC of its decision to proceed before commencement. If there is a serious disagreement between the federal agency and BCDC, either party may request mediation by NOAA's Office of Coastal Management, OCM, or the Secretary of Commerce. If mediation is unsuccessful or not utilized, either party may seek judicial review.

That was a lot of information, but to summarize:

1. BCDC's CZMP includes enforceable policies of the McAteer-Petris Act and the Bay Plan.
2. Federal agencies must undertake activities consistent to the maximum extent practicable with the enforceable policies of our CZMP.
3. A federal agency submits a consistency determination for its proposed activities, to which BCDC can concur, conditionally concur, or object.
4. For serious disagreements between a federal agency and BCDC, BCDC may request mediation from NOAA's Office of Coastal Management or the Secretary of Commerce, and/or seek judicial review in a court of law.

Now we will get to the second part of my twofer, talking about the Commission's authority and jurisdiction. Before I address the specific topic of the Commission's jurisdiction and authority over this project, it will be helpful to take a step back and understand how various legal regimes should inform and guide the Commission's decision-making process here. I have set forth two broad categories for discussing four relevant legal regimes. The first category, Decisional Framework, discusses legal regimes which should guide the process and provide the substantive policy standards by which the Commission should make its decision on the project at the next meeting on December 21. The second category, Environmental Documentation, identifies two laws, one federal and one state, which requires preparation of environmental documentation, which should also inform the Commission's policy determinations within its decisional framework. You may hear commenters make reference to the environmental documentation required for the proposed project under these laws. However, it is worth pointing out that the environmental documentation laws themselves do not directly control the Commission's decision-making framework here.

First, we will talk about the CZMA, which we just talked about. As previously explained, under the CZMA a federal agency undertaking its own activity within or outside of the San Francisco Bay segment of the coastal zone, which may affect coastal resources within our segment of the coastal zone, must submit a consistency determination to BCDC justifying that the federal agency's proposed actions are consistent to the maximum extent practicable with the enforceable policies of BCDC's CZMP. Here, the Army Corps of Engineers submitted a first phase CD that its proposed actions will be consistent to the maximum extent practicable with the enforceable policies of our CZMP. Again, BCDC's CZMP includes enforceable policies of the McAteer-Petris Act and the Bay Plan. BCDC can concur, conditionally concur, or object, which is not a denial.

Now we will talk about what the significance of a phased CD is. These are allowed when a federal decision on an activity will be made in phases based on developing information not available at the time of the original CD, with each phase subject to federal agency discretion to implement alternative decisions based upon the information available then at that time. For example, planning, siting and designing designed phases. A CD is required for each major decision.

Next, we will talk about the McAteer-Petris Act as part of the decisional framework. The project would occur within and outside of BCDC's Bay and shoreline band jurisdictions, but the

project may affect resources within both of these jurisdictions of BCDC's coastal zone segment. Enforceable policies of our CZMP as identified in the application summary are listed below. I am not going to go over all of those, but you can see what staff identified as the relevant policies for the Commission to consider in relation to this project. Next, we will talk about the Bay Plan as part of the decisional framework. On this slide, again, I am not going to read all of these categories, but these are enforceable policies in the CZMP that were identified in the application summary that derive from our Bay Plan. As mentioned in the staff summary, the following Bay Plan policy categories are relevant, enforceable policies for the Commission to consider in determining whether it concurs, conditionally concurs, or objects to the Army Corps' submitted CD that its proposed actions are consistent to the maximum extent practicable with the enforceable policies of our CZMP.

Note that while the Seaport Plan is also part of our CZMP, the Commission's recent update to the Seaport Plan, vis-à-vis its adoption of BPA 1-19, is not yet part of BCDC's approved and certified CZMP. The Commission's adoption of BPA 1-19 does not render those changes automatically effective as part of the CZMP since they have not been submitted and approved by NOAA as a program change under our CZMA authority. So, for purposes of the Commission's consideration of the submitted CD, the Commission should rely on the policies in the Seaport Plan prior to adoption of BPA 1-19, to the extent that they informed the Commission's determination whether it concurs, conditionally concurs, or objects to the Army Corps' submitted CD.

Next, I will talk about environmental documentation as part of the relevant legal regime here. NEPA stands for the National Environmental Policy Act, which was enacted by Congress in 1969. It requires that all federal agencies are to prepare detailed statements assessing the environmental impact of and alternatives to major federal actions significantly affecting the environment. Here for this project the Army Corps prepared an Integrated Feasibility Report (IFR) and Environmental Assessment (EA) as the NEPA lead agency. As part of its EA, it made a draft Finding of No Significant Impact or FONSI. Under the CZMA, state agencies cannot require submittal of NEPA documentation as part of a CD, but here the Army Corps did provide the EA for staff's consideration in evaluating the submitted CD. It is worth pointing out that a federal agency's CD obligations under the CZMA are independent of those required under NEPA and are not necessarily fulfilled by submission of a NEPA document. Again, here staff had the benefit of the Army Corps' draft EA in evaluating the Army Corps' submitted CD. But the takeaway is that the EA is not necessarily determinative of the Commission's review of the Army Corps' submitted CD, though the analysis in the EA may assist the Commission in determining whether it concurs, conditionally concurs, or objects to the submitted CD.

Next, I will talk about CEQA, which is the California Environmental Quality Act, which is a state law. Similar to NEPA, CEQA requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those environmental impacts to the extent feasible. The Port of Oakland prepared a draft Environmental Impact Report, or an DEIR, for this project. But the DEIR is not directly before us today because CEQA is not a requirement under the CZMA. As I mentioned, the Port prepared a draft EIR as the CEQA lead agency; and in that document they have identified four significant and unavoidable impacts, three relating to air quality and one relating to noise, and they also identified certain mitigation measures to mitigate the

significance of those impacts, although they still concluded that they were significant and unavoidable. BCDC staff is currently reviewing and commenting on the draft EIR as a responsible agency and will consider it when the Port applies for a BCDC permit. This is typically how BCDC handles its CEQA compliance because permit applicants must first obtain all local discretionary approvals before seeking a BCDC permit; and typically, the local government providing any local discretionary approval serves as a CEQA lead agency. BCDC then relies upon the CEQA documentation prepared by the lead agency when acting on a permit application for the project as a CEQA responsible agency. If a project requires approvals from a California public agency but will also be carried out financed or approved in part by a federal agency, the CEQA guidelines generally require preparation of a joint NEPA/CEQA document, though the CEQA guidelines do acknowledge that a federal agency may not cooperate in the preparation of a joint document and may require separate NEPA documentation. Here the Army Corps and the Port of Oakland did not prepare a joint NEPA/CEQA document. Instead, the Army Corps prepared the draft EA under its NEPA requirements, whereas the Port prepared a draft EIR under its CEQA requirements. Finally, it is worth noting that there is no particular requirement that the environmental review of a project under NEPA come to the same conclusions as the environmental review of the same project under CEQA, because CEQA and NEPA are different statutes with different requirements. Again, that was a lot of information, so just to summarize.

1. Here the Army Corps submitted a phased consistency determination as required and allowed by the CZMA.
2. BCDC must concur, conditionally concur, or object to the submitted CD that the Army Corps' proposed actions are consistent to the maximum extent practicable with the enforceable policies of BCDC's CZMP. Again, BCDC's CZMP includes enforceable policies of both the McAteer-Petris Act and the Bay Plan.
3. Objection is not a denial, though BCDC may seek mediation or judicial review.
4. The Army Corps prepared an EA under its NEPA authority, though this is not a CZMA requirement.
5. The Port prepared an EIR under its CEQA authority, which is also not a CZMA requirement, but will be considered by BCDC when the Port needs a BCDC permit.

And that's the end of my presentation. Ms. Goeden acknowledged: Thank you, Michael. Commissioners, I hope you appreciate that mini-concise training on CZMA, CEQA and NEPA. It very much informs this project and how the Commission's staff has been approaching the Oakland Turning Basins Widening Project. I am going to give a very brief overview of the project because the Army Corps is going to give a longer and more thorough review of the project.

It is important to note that this is a joint project of the Port of Oakland and the US Army Corps of Engineers. And as Michael mentioned or alluded to, the Port of Oakland will be requesting a BCDC permit, likely in 2025 - 2026. We will look forward to seeing this project again under the McAteer-Petris Act statutes and the Bay Plan policies. Just a quick note, again, this is a first phase consistency determination. The Army Corps will describe it further. In the first phase, at this level, we are looking at the feasibility study and the environmental assessment for the project. That means that many of the details that we normally would receive in a permit application have not yet been provided, although we do have several details

in hand. The project is not yet authorized or funded so we anticipate a second phase consistency determination in 2025 or 2026. That will be at the pre-construction, engineering and design phase, where more details will be provided by the Army Corps. One of the reasons we are here today is because in order for the Army Corps of Engineers to have their headquarters sign what is known as their Chief's Report, the Coastal Zone Management Act Consistency Determination Letter of Agreement needs to be appended to that report. And then lastly, this action helps the Army Corps of Engineers request authorization for this project in the Water Resources and Development Act 2024, or later, should that need to happen at a later time, and future appropriations of the project by Congress.

This is the Port of Oakland, I am hoping many of you are familiar with it. This is a graphic from the Port's files, but it shows the Outer Harbor to the top of my screen, with the Outer Harbor Turning Basin in the crux of the Outer Harbor, and the Inner Harbor traveling between the Port of Oakland and the island of Alameda with the Inner Harbor Turning Basin down in the lower righthand corner of the screen. These two turning basins are the main subject of this consistency determination because at this time large vessels that enter the Port face restrictions, not all of them but some of them face restrictions, when they are traveling in and out of the Port's facilities to berth and offload their cargo.

This is a shortened version of the Port of Oakland's project description for the project. Basically, they are looking to improve efficiencies for longer vessels for both the current vessels that are entering and leaving the harbors today, and for the deep-draft vessels that may call at the Port in the future and those that are anticipated. They are also looking to maintain the competitiveness of the Port for international cargo ship shipments. They want to make sure that the vessels have flexibility for connecting to shore power while they are at berth. Apparently, some ships only have the ability to connect to shore power on one side so they need to be able to turn to make sure they can turn to connect to shore power. This supports a move towards a Port zero emissions future. It will also improve vessel maneuvering and safety and reduce environmental risks such as oil spills and other catastrophes that currently exist in the turning basins when they are undersized for the vessels that are transiting them. And it is also a measure to help modernize the essential waterway that is the Port of Oakland for the nation with a mixed fleet of vessels coming and going. The graphic on the right shows some of the differences that the Port is facing both now and into the future as the vessels get longer and wider with the ability of vessels to check to carry more cargo.

Quickly looking at the two areas of action for this project. The Outer Harbor Turning Basin, this is a closeup of an early design phase. The turning basin as it exists today is in the light gray, the proposed turning basin is in the darker or charcoal gray to black. Basically, this represents an expansion of the existing turning basin by 21 acres. It would be accomplished by dredging approximately 1.34 million cubic yards of shallow subtidal habitat that is currently at 4 to 5 feet mean low low water. That area will be taken down to -50 feet to match the existing turning basin's depth. The Port and the Corps have committed to beneficially reusing all of the dredged sediment that is clean and suitable for use from this project. Particularly the Outer Harbor because it is anticipated to have fewer contaminants than the Inner Harbor just due to the nature of the undisturbed site. As part of this, they will be upgrading an existing electrical infrastructure near Berth 26, which is adjacent to the site.

The Inner Harbor Turning Basin is far more complex than the Outer Harbor Turning Basin expansion. Similarly, the graphic you see here, the existing Inner Harbor Turning Basin is in light gray. The proposed widening expansion of the turning basin is in black with the dashed lines being the areas that are within the existing 50-foot federal navigation channel, and the areas that are yellow and solid black are areas that need to be excavated and/or dredged as part of this project. In order to expand the turning basin as the Corps did in the 50-foot deepening project, this has been done at least once before, portions of Howard Terminal which were put in place in the 1980s would need to be removed, approximately 3.9 acres.

The Alameda Landing site on the opposite side of the channel in the city of Alameda would have approximately 6.5 acres removed. There are two warehouses on that site. You can see them there in white on the lower part of the screen. One of them says Alameda Fisk property. Those warehouses would be partially demolished to accommodate the wider turning basin. Below these wharfs on both sides there is a combination of a rock dike, soil, sheet piles, pilings, et cetera, that are under those areas that need to be removed as part of this project. And then two new bulkheads would be installed, one on the Howard Terminal side, one on the Alameda side, to hold the new shoreline. In addition, there is a small yellow area in front of Schnitzer Steel on the left upper part of the slide where the Corps would place an in-water retaining wall to hold back the slope of the shoreline so that when the area is deepened to -50 feet the slope would not slump and cause slip failure. Once the new bulkheads are in place, the project would dredge approximately 825,000 cubic yards of sediment, also targeted for beneficial reuse whenever suitable. It will be deepened to -50 feet to match the channel and the existing turning basin. Construction debris would be disposed of or recycled, depending on its type. They would need to install some additional electrical infrastructure at Howard Terminal to support the project.

One of the big questions for this project is, is it placing fill, is it taking away fill? Well, it is doing both. Overall, it results in a net reduction of Bay fill and an increase of surface area and volume of the Bay. On this chart we just briefly summarized the information that is provided in the staff summary for you. You can see the top four lines are looking at fill removal, so approximately 10.4 acres of the area would be removed overall. And then 418,400 cubic yards of solid fill would be removed. The fill placed are the next set of numbers totaling 2.81 acres of fill placed and 23,000 cubic yards of fill placed, which is primarily riprap and the sheet pile walls. That results in a total net fill reduction of 7.6 acres and a net solid fill reduction of 395,400 cubic yards. So, that represents an increase in surface area and volume of the Bay, which is helpful.

I am going to briefly just touch on the issues that the Commission will need to consider when it is voting to help frame any public comments that may arise and for you to think about this project as you are hearing the Army Corps' presentation. The primary issues are whether, of course, the project is consistent with our laws and policies, which Michael so handily presented in a much cleaner slide. In addition, whether the proposed project is generally consistent with the Seaport Plan; whether the Army Corps has conducted equitable and culturally relevant outreach to the public, particularly the environmental justice community that may be disproportionately impacted by this project; and whether it is consistent with our environmental and social justice policies; and there's mitigation for those impacts where we have authority. Lastly, whether the proposed delay on addressing public access and scenic views to Bay to the next phase consistency determination is appropriate.

Michael touched on this, so I am not going to belabor the point, but just a quick reminder that we are using the 1996 Seaport Plan for this project, as amended in 2012. He mentioned that the current one requires Coastal Zone Management review before we can use it. Just a quick note that the Seaport Plan as it currently exists supports redevelopment of the Port to improve waterborne commerce and support the economy of the Bay Area. It also includes dredging to deepen and maintain navigation channels.

And then just a minute on public access. There's been concerns and comments made about public access and whether or not the project should provide public access. At this point in time in the feasibility stage the Corps and the Port have not yet provided or proposed any public access. But it is important to note different policies that support the Commission staff's view that public access is and should be required by this project. McAteer-Petris Act Section 66602 speaks to requiring the maximum feasible public access consistent with a project, and it specifically calls out ports as one area where public access should be required where feasible and safe to do so. When the staff looks at projects for public access, they look at the potential to affect both current and future public access in the area. In-lieu public access for Port properties is likely an outcome due to the safety concerns. That's part of the public access policies, Public Access Policy 1 and 2. It seeks, if you can't provide it in Port properties, that nearby projects, public access projects could be provided. And if you can't do it nearby, then public access should be provided for vulnerable adults or disadvantaged communities. I also want to note that the staff met with the city of Alameda who raised specific concerns about the staff summary and, frankly, the terminology used. We called it Alameda Terminal; the true name is Alameda Landing. The Master Plan for Alameda Landing for the city of Alameda anticipates and encourages public access and recreational opportunities as part of that site, and in fact, mentioned that it is part of the Bay Trail in the future. And then lastly, the Port policies and the Seaport Plan say that ports should be designed, whenever feasible, to permit public access and viewing opportunities for port activities through viewpoints and openings between buildings and other site designs that permit view of maritime activities. So, just wanted to call those to your attention as we think about this project with the proposed public access. And with that, I am going to turn it over to Phoenix Armenta to talk a little bit about the environmental justice policies.

Senior Manager for Climate Equity and Community Engagement Phoenix Armenta addressed the Commission: First, we are going to talk a little bit about the neighborhood around the turning basin. West Oakland is an environmental justice community as demonstrated by CalEnviroScreen, the US EPA's EJ screening tool, and BCDC's community vulnerability map. CalEnviroScreen shows that the neighborhoods closest to the Oakland Harbor Turning Basin are within the 70th, 80th and 90th percentile in terms of environmental burden in the state of California. BCDC's social vulnerability map shows the communities around the turning basin range from moderate to high social vulnerability. West Oakland has a long history of industrial uses, Port expansion, and is surrounded by two free freeways, leading it to have some of the highest exposures to diesel particulate matter in the nation.

BCDC's Environmental Justice and Social Equity Policies adopted in 2019 outline requirements for working in socially vulnerable communities. The first policy directs the Commission to include principles of environmental justice and social equity into all its actions and activities. The second policy directs the Commission to provide leadership and

collaborating with other agencies on issues related to environmental justice and social equity that may affect the Commission's authority or just jurisdiction. The third policy requires meaningful community engagement by local governments and project applicants working in socially vulnerable communities. And the fourth policy requires that local governments and the Commission should make measures through environmental review and permitting processing within the scope of their respective authorities, to require mitigation for disproportionate average project impacts on the identified vulnerable communities in which the project is proposed. It is important to note that Policy 4 is applied only within the scope of the Commission's respective authority when considering its application to the Oakland Harbor Turning Basin.

With regards to meaningful community engagement, the Port and the US Army Corps of Engineers held a total of nine meetings as part of their NEPA and CEQA processes. They met with local groups such as the West Oakland Environmental Indicators Project, the Jack London Improvement District, and the ACORN and Prescott Neighborhood Councils to discuss the project. They also worked closely with me to help develop their outreach strategies. A few environmental justice concerns still remain around the project. They include the concerns around the significant and unavoidable effects to air quality from construction and dredging equipment; concerns that widening the turning basin could induce growth over time, contributing to worsening air quality, traffic, and safety issues from additional trucks; and concerns over where and how contaminated soil from the dredging will be disposed of. Specifically, residents do not want the contaminated soil to be passed on to other EJ communities like Kettleman City. It is important to note that these concerns, although important to address, do not fall under the scope of BCDC's authority.

BCDC has been coordinating with other agencies who do have some authority on these environmental justice concerns to help address them. Our staff has been in regular coordination with the Bay Area Air Quality Management District, the California Air Resources Board, the California Department of Fish and Wildlife, the California Water Boards, California Department of Toxic Substances Control, and the US EPA, to work on finding solutions to the environmental justice concerns on this project. I will send it back to Brenda to talk a little bit more about that.

Ms. Goeden continued: The Commission, unfortunately, does not have the ability to address air quality issues associated with this project, it is outside of our scope and authority. However, because we realize the Commission may be concerned about the air quality impacts of this proposed project, we thought we would briefly list out some of the agencies that have the ability to regulate these issues in California. We are not saying that we are experts in this, nor am I going to explain all of this to you. We are simply trying to lay out areas where this issue can be addressed. The Bay Area Air Quality Management District regulates stationary equipment and comments on environmental documents. The California Air Resources Board regulates mobile equipment, vehicles, and ships in state waters. For example, they have regulations relating to trucking.

This is the CARB regulation. All of these listed below are primarily related to CARB because they are enacting new laws and policies and regulations to improve air quality throughout the state of California. You can see that they are working to reduce sulfur oxides,

nitric oxides, reducing emissions from trucks through increasing improvements for their engines for less emissions over time. Some of those are already in place, some are coming online now. Vessel regulations that they have enacted are looking at renewable diesel fuel. And again, implementing phased-in better engines with less emissions. Similarly, for cargo equipment they are developing cargo handling regulations to transition to zero emissions for those types of equipment. And then finally, with rail they are looking at improving locomotion so that it has less emissions and then zero emissions over time. Some of that is by phasing out older equipment. Lastly, because California's law and authority only goes to the extent of the State of California's jurisdiction, I also looked into what kind of regulations apply to oceangoing vessels that may come to the Port of Oakland when they are calling on the Port.

There are emission controls within the 200 miles of the coast through the International Maritime Organization. They are, again, looking to reduce sulfur oxides and greenhouse gases. The US EPA for marine vessels. The Jones Act, while not specifically looking at emissions, governs domestic shipping in the United States and there is the Federal Maritime Commission which covers other aspects of shipping but not necessarily emissions. And then lastly, California Air Board - within 24 nautical miles from baseline of the state they have "oceangoing vessel fuel reduction" regulations and "oceangoing vessels at-berth" regulations. I just wanted to bring these to your attention so that the Commission has an awareness of the different laws and organizations that are working to reduce air quality impacts at ports and for the communities that are around them.

I am just going to briefly talk about Next Steps, so you know where we are going. Next up, the Army Corps is going to give a presentation on the project in more detail than I have provided here today. Then we will have the opportunity to hear from the public on this project. December 15 is the date we anticipate sending out the staff recommendation - it will be released both to the public and the Commission. December 21 is the day that we are planning to vote on this project. This is a very important day because it is the last opportunity for the Commission to vote in 2023. Lastly, should the Commission choose to concur with this project, we would issue the Letter of Agreement no later than December 31, 2023. This is a plea from our friends, the harbor seals. Commissioners, please come to the meeting on December 21 because we need the quorum to have the vote, or the project will be delayed and potentially not make it into the Chief's Report.

That's a cute little face saying, please come. We would like to see you again in a couple of weeks. That's it from me. Next up is the Army Corps. I would like to introduce Erika Powell as our speaker from the Army Corps of Engineers. She also has members of the Port of Oakland and the Army Corps staff with her today to assist in the presentation or questions should they arise.

Ms. Powell presented the following: Thank you, Brenda. Hello, everyone. My name is Erika Powell. Thank you, Commissioners and BCDC staff for all your support and opportunity to present today on the Oakland Harbor Turning Basins Widening Feasibility Report and Environmental Assessment. This study was authorized and funded by Congress, which allowed the Corps of Engineers to enter in an agreement with the Port of Oakland in July of 2020 to determine if there was a technically feasible, economically justified, and environmentally acceptable project that would decrease vessel transit inefficiencies in Oakland Harbor. So, that

was the purpose of the study. And I am joined here by the Corps of Engineers team members. We have a very large team, but we do have folks here in person. We have Barney Wair who is our Technical Lead, also our geotechnical expert, Eric Joliffe, our Environmental Lead. Virtually, we have Liz Dionne, who is our Lead Plan Formulator, and Ellie Covington, who is our Environmental Co-Lead and Environmental Justice Specialist. I am also joined here by the project delivery team on the Port side, Justin Taschek. I believe that the Port would like to make a few comments if that's okay? Chair Wasserman replied: Yes.

Mr. Taschek spoke: Great, thank you, Erika, appreciate that. Good afternoon, honorable members of the BCDC Commission, BCDC staff and the public. My name is Justin Taschek, and I am the Port of Oakland's Project Administrator for the proposed project to widen the Oakland Harbor turning basins. With me today are a few of my esteemed colleagues, Lead Engineer Edwin Draper, Lead Environmental Scientist Khamly Chuop, and Support Engineer Tom. On behalf of the Port, I would first like to say thank you to the BCDC staff for their commitment and support in bringing this agenda item before the Commission today. And secondly, I would like to take the opportunity to thank the US Army Corps of Engineers for their relentless determination and leadership in ensuring the Port continues to deliver economic prosperity to the region. The Port in collaboration with community members, environmental organizations, industry, and local agencies, including BCDC, is committed to a decarbonized future and proudly aligns itself with the mutual goal of delivering sustainable transportation initiatives. Widening the turning basins is one such project that helps deliver on this commitment. With widened turning basins, the Port can accommodate safe, efficient access for a transitioning global fleet that includes newer, longer and more environmentally-friendly ships, which are shore-power ready. That is, the ships can plug in and turn their engine engines off while at berth. Thank you for BCDC's ongoing support. Our shared pursuit of regional prosperity and Bay resilience underscores the importance of this agenda item and why we are here today. The Port looks forward to our collective endeavors as we navigate a course towards a thriving, sustainable and decarbonized future. As a reminder, the Port as lead agency under the California Environmental Quality Act, as mentioned prior, released a draft Environmental Impact Report for the proposed project on October 3. Comments are due December 18. Respectfully, we are in the open public comment period for the CEQA document, and all questions directed at the Port here today will be included and responded to in the final Environmental Impact Report. And I would like to note for the public record, last Friday, December 1, the Port submitted a comment letter for staff's consideration as well as the Commission's consideration, further expanding upon information related to this proposed project. With that I will hand it back over to Erika, thank you.

Ms. Powell continued: All right, thank you to the Port for being here today. I did want to say before I get started, a lot of what I am going to present is going to be repetitive, but I am really excited about just giving credit to BCDC staff. That was a fantastic presentation. Thank you so much, you are going to make my job so much easier. Just to walk through this slide a little bit. On the far left, for those of you that are not entirely familiar with the makeup of the seaport area, on the far left is an arrow that points to the entrance to the navigation channel. On the upper part of the slide is an arrow that points to the Outer Basin and on the far bottom right is an arrow that points to the Inner Basin. The blue dashed line shows the federal channel limits of the Oakland Harbor, which includes deep navigation channels and two turning basins.

A turning basin is very similar to a cul-de-sac on a street. The whole point of a turning basin is to allow vessels entering and departing or exiting the Port to turn around. That is to give you a bird's eye view of the Port. Brenda had a slide that was very similar to this one. And just to speak to the problem, the existing turning basins were designed for a container vessel of approximately 1,139 feet. Vessels larger than that have restrictions or they experience restrictions today when using the existing turning basins. These restrictions include scheduling transits around specific tide, current and wind conditions, limiting transits to daylight hours at times. Use of an additional pilot and required number of vessel-assist tugs are needed as well. That's how they mitigate the restrictions. These restrictions can delay vessels from arriving or departing a berth. In addition, vessels longer than 1,200 feet in length are unable to use the Inner Harbor Turning Basin and they are restricted to docking Port-side only with their bow pointed east. This can impact the ability for a vessel to use shore power and, if needed, it prevents the ability to depart in an emergency. One thing that is important here too, that I like to point out, is that in the future, existing fleets of smaller vessels will be replaced by the larger vessels. And we do have a slide that shows that trend, so we have the data that shows that trend. This is just another illustration of the vessel classes that are visiting or calling on the Port today. Any vessel above 1,045 feet [but less than 1,200 feet], as you can see in the top blue table, does not experience the restrictions that we mentioned earlier. However, if you look at the bottom table, there are all sorts of restrictions for any vessel that is over 1,200 feet. As you heard me say, there's tide, current and wind conditions that impede the proper navigation of these vessels. They need an additional [bar] pilot. They may need additional tugboats to help them navigate safely in and out of the Port. And I should mention too that all of those vessels are coming into the Port today.

So, just a brief description of the project, and I thought Brenda did a fantastic job of describing, it in a lot more detail actually. Following the US Army Corps of Engineers' plan formulation process it was determined that the Inner Harbor Turning Basin should be widened by an additional 334 feet and to a depth of 50 feet, which is consistent with the current depth of the turning basin and the Inner Harbor channel. The purple hatched areas are where the land excavation and dredging would occur in both the Oakland side and the Alameda side. The two warehouses on the bottom where it says Alameda, the demolition when we say, partial demolition - I do not know if you are familiar with these warehouses, but they are built with multiple bays in a row - At that location, you would have two bays would be impacted in the front and three bays in the back. The dark orange dashed lines represent the new bulkhead and you can see both on the outer edge of the green circle on the Howard side and then on the Alameda side. The new bulkhead basically serves as separation from land and water. There is a retaining wall, as you can see, right on what used to be called Schnitzer Steel but now is named Radius Recycling. That is an in-water structure. The point of that little wall is to prevent slope from slipping there, the toe of the slope. It is proposed that electrical infrastructure would be installed at the southeast corner of Howard Terminal to facilitate electric dredging to reduce construction emissions for the proposed project.

The only last thing I would like to share with you as a takeaway for this is that a total of 2.4 million cubic yards of dredged material and dirt is expected to be taken from the Inner and Outer Basin, so the total is 2.4 million. A little more than 2 million would actually be taken by barge to a nearby wetlands restoration site for beneficial use. And approximately 400,000

cubic yards, which are right now estimated not suitable for beneficial use, is proposed to be taken to a landfill and/or recycled.

The Outer Harbor Turning Basin would be widened for approximately 315 feet and to the same depth as the existing channel, which is -50. This would be accomplished by dredging shown in the purple hatch and does not require removal of any land. In addition, based on public feedback specifically from the Bar Pilots, the basin would be shifted away from the berth area to allow them to have access. Berth 26 is where we would propose electrical infrastructure for electric dredging and Berth 10 would be used for construction staging and rehandling of nonhazardous dredge material that requires landfill disposal.

Actually, before I talk about this slide, I did want to say a special thanks to BCDC, EPA Region 9 and the Port of Oakland for their collaboration with our district to ensure meaningful public engagement and effective public engagement. We started meeting on a weekly basis. Actually, it has been a year since we started meeting on a weekly basis, well in advance of the release of the second draft IFR/EA, Integrated Feasibility Report and Environmental Assessment. Then just to highlight the fact that I believe it was around the end of 2022 that we had policy guidance for environmental justice. So, that allowed us to step up our public engagement. So, we the Corps, are trying to do more than the bare minimum now, as much as we possibly can.

With this new guidance we were able to consider comprehensive benefits. That is an interesting term, but basically what it says is that we were able to look at electric dredging during construction and beneficial use of dredge material. Even though, for example for dredge material, we were not required to do it as mitigation. But this is something that we actually had to go to the Assistant Secretary of the Army and ask for permission to be able to cost share that with the local sponsor. They approved that so that is a recommendation that is being made by this report. In addition, the Port of Oakland is actually going to be fully paying, paying entirely for the electric dredges. So, that is something that the Port is doing as well.

Just to point out that we had as many meetings as possible. We had some neighborhood council meetings, which is not something that we typically do, but we asked to be invited to their monthly meetings. That is one way that we were trying to reach out. We also met with the West Oakland Environmental Indicators Project twice, once in 2022 and once in 2023.

One of the comments that we received multiple times, and we are trying to address that, was related to induced growth. One of the things that we would like to clarify is that the Recommended Plan does not change how many vessels can be docked at any time. So, increasing the diameter of the turning basins does not add berthing space. The Recommended Plan also does not change the container handling facilities. The Port's landside container handling capacity remains constant, it remains the same. Thirdly, the Recommended Plan does not affect consumer economic activity in the Bay Area or the Central and Northern California market. Economic factors such as recessions, trade agreements, microeconomic demands, and economies of scale affect global shipping, supply, and demand. What the Recommended Plan does is allow ships to turn more safely and for smaller ships to be phased out for bigger, more efficient fleets. The Recommended Plan also allows for efficiency in departing and arriving at the Port with fewer idling ships, fewer restrictions on ships already in the harbor.

As I indicated earlier, I was going to provide you with a slide that illustrates the trends of shorter and longer vessel calls to the Port of Oakland. In this graph, if you look on the far left, you have the number of calls; on the bottom you have the year starting in 2014 to today; and on the far right you have the TEUs or the throughput per year. The vessels are grouped into two categories here. If you look at the solid, navy-blue line, that is the longer vessels. The dashed line is the shorter vessels. There is a vertical line that shows that prior to the pandemic the total number of shorter, unrestricted vessels continued its downward trend. Through September of this year, the Port has seen 406 long vessels call the Port, compared to 319 short vessels. The big takeaway here is that the gray shaded area depicts total cargo handle for the last 10 years during which time cargo volume has remained relatively constant, though the number of vessels has continued to decrease. Thank you for allowing me to present those slides. I am now going to hand it off to our Environmental Lead Eric Joliffe.

Mr. Joliffe continued: Thanks, Erika. Thanks for the opportunity to talk to you. A lot of what I am going to be talking about here has already been discussed in Brenda's presentation but let's go over it. So where are we at in our NEPA compliance? A long time ago, in September 2020, we sent out our requests for cooperating agencies. The only agency that accepted was EPA, so they are contributing as a cooperating agency in this study. Between December 17, 2021, and February 14, 2022, was our comment period for our initial document that we released.

Based on comments that we received from that document we changed the design a little bit. That required us to rerelease [the Environmental Assessment] in April 26, 2023. From April to June 16, 2023, we had the comment period on our second document that we sent out to the public that addressed the shift in alignment that we showed you and it addressed some new requirements that we had to do. Guidance during the first document did not require us to analyze greenhouse gas impacts and the document now contains an analysis of that.

That brings us to where we are now. We are in the final processes of addressing comments, public comments, and agency comments, and finalizing the document. In January, hopefully on the 17th, we will transmit that to our South Pacific Division, which is the next level above us, as a final report. And then the process that they talked about, getting WRDA authorization, hopefully in 2024. After that time, we will be coming back for a Phase II Consistency Determination once we have additional information. We will have more detailed sediment characterization, we will have more detailed engineering information, and we will have done some further coordination with some of the agencies. The comments we received throughout both of these comment periods, some of them were fairly consistent and from numerous groups, especially with relation to the notion of doing an EA instead of an EIS, and in concert with that the decision not to combine the documents in an EA/EIR. We decided that we were on the right path with the document. We did not have any significant impacts that were not mitigatable, so we decided an EA was still appropriate based on our Office of Counsel's suggestions.

There were concerns about impacts to air quality, especially with relation to truck traffic, and the perception that this project is going to induce growth and increase the trucks going through their neighborhoods. That was still one we are working through with the West Oakland neighborhood's groups, especially the Indicators Project. They were concerned about

impacts to water quality. Timing, we got some comments because the Port is slowly electrifying things, as fast as they can. And they are asking us to delay the project into the future once everything is electric. There were complaints that we were not engaging with the public sufficiently. Some people asked us to only do the Outer Harbor Turning Basin. There was support for the project from a number of groups and people were very happy that we were committing to beneficial reuse of everything that we could. And the support for the use of electric dredging, which reduces the air quality impacts of the construction of the project. Our responses will be included in the documents that we are finalizing now, and we will have additional coordination that I will talk about in a little bit that will be conducted in the future.

These are not really mitigation measures but are avoidance and minimization measures that we will be using. If you look in the report, in the appendices there's a long list but this is kind of a briefer version of that. Related to pile driving, placing the bulkheads is going to require some sheet pile driving. We are committed to using vibratory methods for that, which produces less noise, [reduces noise] as much as possible. It will not be possible for everything, but we will try to minimize the impact driving. We will be using noise attenuation measures for in-water noise. So, the biological and acoustical monitoring and the notion of using some noise dampening techniques. We will be coordinating with NOAA, probably around the same time as we will be coordinating for the Phase II CD for marine mammal impacts. We need to know more about how many piles we are driving and the locations and we will get into it with NOAA and we will develop some requirements for the project to protect marine mammal populations. We will be doing eelgrass surveys in the Outer Harbor. There is some eelgrass that is fairly close to where we will be dredging so we will be doing pre- and post-survey and some light monitoring like we normally do for our O&M (Operations and Maintenance) dredging in that area. We committed to using clamshell buckets, we will not be doing hydraulic dredging. The tug movement, that nighttime one is not correct. We were considering that, but it turned out it is not necessary. That had to do with noise in Alameda during the nighttime, but it turned out that one is not supposed to be in there. And then various BMPs for reducing particulate emissions and fugitive dust. Keeping a low-speed limit, limiting idling time for trucks as they are waiting for stuff to load and unload, and requiring that all the contractors use equipment that meets CARB's certification standards. Things like Tier 4 engines and things like that.

I should say here that there are some mitigation measures that are reducing impacts to less than significant and those are the ones that people are probably most interested in. That would be the use of silt curtains, which oddly is not on this slide, but to prevent exposure to marine fauna to suspended sediments and potential contaminants that may be contained in there. In the areas where we expect contaminated materials to be we will be doing the dredging behind a silt curtain. The other one that would be significant without mitigation would be the pile driving, the noise impacts from that. But we will be developing bubble curtains and appropriate distances when we coordinate with NMFS. And the other one is agreeing to comply with the LTMS windows that are established for at least in-water dredging for protection of aquatic species. We have committed to conforming with that as well.

This is a recap of what we already talked about. We are looking to get our congressional approval in January of 2024. Pre-construction, we are going into our pre-construction engineering and design where we finalize the technical information and develop a full design. We will come back to BCDC for our Phase II consistency determination once we have enough

information, about 35 percent. We assume that will be in 2026, it could be as early as 2025. We hope to go to construction in July of 2027 and that would run into October of 2029. That is it. Ms. Goeden acknowledged: Thank you, Eric and Erika. Ms. Powell added: Brenda, I just wanted to say one thing for the record. Just on that slide where we say Mitigation Measures, they are actually, for the record, it is minimization. We will make that correction on the PowerPoint before we submit it if that is okay. Ms. Goeden agreed: Absolutely, thank you. Thank you for your presentation.

I also just wanted to mention one thing that I accidentally omitted at the opening of my statements. The Port and the City of Alameda - staff met with the City of Alameda, the Port of Oakland, and the Army Corps regarding some concerns after the Staff Summary was sent out. As a result, both entities provided some improved language for us. The Port of Oakland included some very extensive language which we summarized in an Addendum and errata information, which was sent out to the Commission at 10a.m. this morning so it is in your Commission packet. The City of Alameda's information is included specifically regarding the Alameda Landing area. I just wanted to point out to the Commission, that we do appreciate all three entities coming together to help us clarify and improve the Staff Summary where we had some clarity needs and misunderstandings of parts of the project. I just wanted to thank them for that. With that, Chair Wasserman, I will give the meeting back to you.

Chair Wasserman acknowledged and continued: Thank you for the presentation. I will now open the public hearing. Any members of the public who would like to make a public comment please line up at the podium or raise your hand in Zoom. We will start with those in the room. Reylina, do we have any in the room? Ms. Ruiz stated: No public comment in the room. Chair Wasserman asked: How about on Zoom?

Allen Tai gave public comment: Good afternoon, Chair Wasserman and Members of the Commission. My name is Allen Tai; I am the Planning, Building and Transportation Director with the City of Alameda, where a portion of this project is located. The city of Alameda wants the Commission to be aware that the project is subject to our local discretionary approvals. The property that is affected by the project falls within the City of Alameda's Alameda Landing Master Plan Area. The proposed project would remove 6 acres, or a third of the 18 acres that the City has planned for employment and lands as part of the Master Plan, and so we believe the project is inconsistent with our local Master Plan and will require a Master Plan amendment, and that action is subject to approval by our Alameda City Council. The City also has many concerns about this project on matters not within the BCDC jurisdiction. The project's lack of flood and sea level rise protections and waterfront public access, which are within the Commission's regulatory and policy scope and authority. The City respectfully asks the Commission and BCDC staff to take the City's concerns into consideration for your upcoming actions on this project. These comments are reflected in a letter addressed to you by our mayor, Marilyn Ezzy Ashcraft, which is included in your meeting materials. Thank you for the opportunity to speak on this item.

Mike Jacob addressed the Commission: Hi, good afternoon, Mike Jacob with Pacific Merchant Shipping Association. We represent ocean carriers, marine terminal operators, doing business at the Port of Oakland. Obviously, we support the consistency determination request from the Army Corps and submitted comments in writing. Just for the purpose of this and to

expand on some of the comments you heard from the Port and the Army Corps with respect to issues regarding growth and air quality. I think it is worth mentioning that the issues for us are not that the Port will or will not grow with respect to the project. The question is whether or not the Port will grow safely, and whether or not will grow consistent with the terms of other ports that are on our same vessel strings and do so in a way which reduces costs and increases efficiency. Maybe the analogy best to use is when you think of vessel strings for container lines, we are like a bus service. We set up a route and then we service that route for our customers. Customers then will make decisions about imports and exports based on those services. The size of the bus that serves that route, whether it is a small bus, a large bus, or a double-decker bus, doesn't matter, but you have to get from place A to place B. And it is similar for us. You book cargo because you have a business imperative to import or export cargo. It doesn't matter to the importer or the exporter the size of the vessel that comes and does that work. But it does matter to us as the ocean carrier. When you have larger vessels, you have higher efficiency, less fuel. And because you are burning less fuel per box, you are actually decreasing emissions per unit and overall. We want to bring in the larger vessels, we want to bring in the most efficient vessels, and the newest vessels and have them in those strings. And that is at the core of why this is important for us from a commercial point of view, in addition to the rest of the issues with respect to safety. We look forward to participating in additional conversations on this project. But it is imperative that this move forward and we appreciate your consideration.

Katrina Tomas addressed the Commission: Hello, my name is Katrina Tomas, I am an attorney with Earth Justice. Earth Justice alongside West Oakland Environmental Indicators Project (WOEIP) has been engaging on this project for the past year and a half. I am commenting today to urge BCDC to reject the Corps' request for a consistency determination because the Corps has not conducted equitable outreach and public engagement with impacted community members, nor has the Corps addressed community concerns or clearly identified mitigation for the project's impacts. While we acknowledge the Corps has held public meetings on this project, none of these meetings have consisted of a dialogue, and the Corps has not engaged community stakeholders in conversations about the project during the drafting of its analysis to identify mitigation measures or consider project alternatives. This does not live up to the commitments in the West Oakland Community Action Plan or the Biden Administration's recently adopted executive orders requiring agencies that invest in infrastructure development to also implement strategies that will yield equitable outcomes for underserved communities. Earth Justice, and WOEIP have attended all of the Corps public meetings and we repeatedly asked them how they plan to comply with these policies. But the Corps has not provided a response because they refuse to engage in the dialogue that equitable public engagement requires, instead taking a listen and ignore approach. The Corps failure to coordinate environmental review with the Port has also left community members in the dark and with incomplete information. The Army Corps' NEPA analysis did not find any significant impacts. But the Port of Oakland in its CEQA review concluded the project would have significant and unavoidable impacts to nearby communities, even after proposed mitigation. So, which is it? Will the Army Corps' conclusion override the Port's determination? If the agencies go with the Army Corps conclusion, then what mitigation measures, if any, will be implemented to mitigate the harm community members and the Port have identified? The failure to coordinate has left these questions entirely unanswered. I also want to note that the Corps' environmental analysis

of all impact areas, including water quality and biological resource impacts, is flawed because the Corps entirely ignores operational impacts of the project. We do not know what the project's impacts will be once the basins are operable and more of these mega ships begin to visit. Also, because the Corps constrains the scope of its analysis to only a one-mile radius from the project site, it downplays both construction and operation impacts to water quality and wildlife in the Bay. To conclude, BCDC should reject the request for consistency determination. BCDC is not beholden to industry interests, and we encourage the Commission to listen to community concerns and use your authority on this project to prevent a host of foreseeable environmental impacts. Thank you.

Robert Rogers was recognized: Chair Wasserman and Members of the Commission, thank you for the opportunity to comment. My name is Robert Rogers, and I am here on behalf of the Bay Planning Coalition. Aligning with our organization's mission of promoting the environmental sustainability and economic development of the region, BPC would like to express our support for the Oakland Turning Basin Widening Project. By increasing efficiency and enhancing capabilities at the Port of Oakland, this project would support the region's sustained growth without significant effects on the environment or adverse impacts to surrounding communities. The Port of Oakland generates 98,345 local jobs and is the second largest job generator in the city of Oakland and the fifth largest in the region. It remains a critical source of economic opportunity and jobs in Northern California. Moreover, as a recent report on economic value highlights, from business revenue, consumer spending and the total value of goods and services, the Port adds over \$174 billion in economic value. The proposed project would improve navigational access for larger vessels, which already berth at the Port, as a widened turning basin will allow for smoother operations to accommodate consumer demands, ensuring our region continues to support the nation's economy and serve as a gateway to global markets. By optimizing operations, the project will support a greener future for our communities by reducing terminal congestion and minimizing emissions from stagnant vessels. In closing, the Port of Oakland is a vital economic hub for the region and the nation. Allowing for the widening of the turning basin ensures that prospering economic conditions continue to thrive. I would like to again thank you for the opportunity to comment on behalf of the Bay Planning Coalition.

Sean Svendsen commented: My concern is very brief. We heard from the City of Alameda today, I believe his name is Allen Tai. And I am wondering, he referenced a letter that was written by the City of Alameda to BCDC for consideration as part of this approval process. I was wondering if you would be so kind as to include that letter in the BCDC's portal of other documents related to this approval process so that those in the public that would like to read the letter can access it. That's all, thank you.

Evey Hwang spoke: Hello, my name is Evey Hwang, I am a member of the Customs Brokers and Forwarders Association of Northern California. I wanted to speak up today and offer support for the Turning Basin Project. The turning basin is a necessary and responsible project to ensure the Port of Oakland continues as an essential West Coast gateway to US commerce. The Port of Oakland is necessary as a regional port. And with the larger commercial ships, this will ensure the Port's future as a necessary regional port. Decisions made today will ensure current contracts to endure and succeed into the future. This turning basin will take about 10 years. It is necessary that the decisions made go forward with this project.

The fact that the existing channels and turning basins were last updated 25 years ago; I think it is time to redesign the Port for the next 25 years. And then lastly, infrastructure. Except for CARB concerns, the turning basin accommodates for shore power infrastructure improvements and other infrastructure needed that any environmental concerns and electrification can be accommodated. Those are good things and that is the air quality measures now required by the state. This will be sustainable and compatible growth for the Port and city of Oakland. Thank you so much for allowing me to speak today.

Sung Lee addressed the Commission: Hello. This is Sung Lee. I am the Vice Chair of the Northern California District Export Council, a private industry advisory group appointed by Secretary Raimondo of the US Department of Commerce. I am also representing the Northern California Customs Brokers and Freight Forwarders Association of which I am the President, and we clear customs at our ports. We are supporting the turning basin at the Port of Oakland. The project is designed to improve vessel transit efficiencies and navigational safety and we fully support that. Also, environmental benefits of including reducing emissions at the rate of growth of emissions per container and decreasing GHG emissions by avoiding cargo diversion is one of our goals. I work in the container shipping industry. The shipping companies that are calling Port of Oakland are purchasing, placing orders on newer and cleaner vessels. That is going to take advantage of the larger turning basin. They will be completed about the same time as when the turning basin is completed. So, we look forward to having cleaner ships call Oakland. Thank you very much.

Susan Ransom commented: Hi, everybody. This is Susan Ransom with SSA Terminal in Oakland. First, I would like to thank all the parties for continuing to work towards a positive outcome on the turning basin, the discussions are good. It is an essential component to the future of Oakland's economic engine that supports everyone near and far. I have been on almost all the calls regarding the turning basin and I would like to address some environmental concerns over this project that have been raised. That the turning basin is creating new pollution and adding truck traffic. This is not a realistic concern. The draft EIR clearly states that all dredging equipment needed to widen the turning basin will be electric and most of the dredged soil will be repurposed or disposed of via water, not by truck. As far as additional container traffic, that would be dictated by the marketplace. The Turning Basin Project only changes the number of ships and types of ships that will be facilitating that commerce. As far as the bigger ships are concerned, this won't bring massive amounts of additional containers. In fact, it will consolidate cargo with the older, smaller ships being deployed elsewhere and the newer, larger ships will be more environmentally clean coming to the Port. All of the marine terminals in the Port itself are committed to doing business on zero emissions and near-zero emission basis at the Port, and the Turning Basin Project is important to help us achieve those goals. Keep in mind, the wider the turning basin the faster and safer the ships turn. It is a win-win for the environment and the economy. In addition, with all the mandates and regulations that California is putting on trucking companies to be at zero emissions and run all-electric trucks, it is likely the industry will lose about 25 percent of the truck capacity, as many won't be able to afford the new trucks. So, in fact, there will be less traffic overall and less pollution, not more. SSA has already invested millions of dollars towards getting to the goal of zero emissions and the vessels are already plugging into shore power, eliminating the need for diesel generators at the ports. And we have an environmental team within our company that is

working endlessly with the Port and all others to meet the challenge of new California regulations. We are not done by far, but we are continuing to advance the goal. We are critical partners in cleaning up the Port of Oakland and ask that it be acknowledged that by the time this project breaks ground we will be one of the cleanest ports in the world. Thank you so much.

Chair Wasserman acknowledged: Thank you all for that. I would now entertain a motion to close the public hearing and a second please.

MOTION: Vice Chair Eisen moved to close the public hearing, seconded by Commissioner Gunther. The motion carried by a show of hands with no abstentions or objections.

Chair Wasserman continued: We will now entertain Commission questions and comments. Vice Chair Eisen was recognized:

I have a lot of questions. I don't know exactly who to direct them to and I don't know if they are premature. But there was a discussion about public access and, of course, Middle Harbor sits between these two turning basins, and Middle Harbor is the biggest area of public access that Oakland has. I was there a week ago; it is a massive birding destination. I don't know if this is related in any way, shape, or form, but all of the vegetation had been removed from Middle Harbor and I don't know how that is going to be impacted by this, what sounds like a very large project. Whether it is going to be expanded in terms of public access. We have talked about it before on the Commission, that it is a sad and unhappy place and that there were commitments by the Port of Oakland and others that they would improve it. So, I really would like to understand what happens to Middle Harbor in the midst of this entire project, that's number one. Sort of related, I heard from one of the presenters that one of the mitigation measures is to avoid doing construction during bird breeding season. I am wondering who is going to help determine when that is and what kind of an impact that has on the project? Because just not constructing at all during bird breeding season is going to be costly and difficult to schedule, so I really want to understand that. Brenda mentioned that we need to decide at the next meeting whether the Commission concurs so that that can be attached to the Chief's Statement, I think was the expression. I am wondering if the Chief's Statement is what needs to be submitted to Congress because the timeline says that we are going to be asking, or the Army Corps is going to be asking Congress for a yes vote on this in January, which is just two weeks away and only 10 days away from our next meeting. I am wondering what the answer is to the question about why we need to expand both turning basins. Why isn't it sufficient to just expand the one that is in the Outer Harbor and not the one that is in the Inner Harbor? And maybe all of this is going to be answered in our next meeting? Or maybe it is not necessary for us to have answers to these prior to our decision on whether to concur? There's a lot of comment about how this is going to be beneficial for safety reasons and for environmental reasons, but it is not necessarily going to change the economics. But I really don't understand some basic things. I mean, how much growth in these larger ships are we seeing? Is it expected to continue and for how long? That sort of data on whether this is really a necessary project, I don't feel like I have that. Maybe it is in some documents people can point me to. I think I have exhausted my time asking questions.

Chair Wasserman responded: We will work on answers.

Ms. Powell explained: I will take the easy one. So, there was a question about when we would be going to Congress. Right now, the report is being finalized and it is going to Headquarters in January. Then the Chief's Report is completed and submitted in May, end of May of 2024, to Congress, yes, the Chief's Report that goes to Congress. Vice Chair Eisen noted: I am pretty sure that I saw that it was January on the slide. Maybe that was just an error. Ms. Powell replied: I think it was incorrect as well, yes. Once we submit it to Headquarters, it starts that process of getting the Chief's Report prepared and submitted to Congress for congressional approval. We will make that correction on the PowerPoint. That was the easy one. On the environmental one, regarding the bird nesting season, I will let Eric; and then on the economics, we will bring Justin up to answer that question for you. And all of this is in the report.

Mr. Joliffe commented: The restriction on timing for birds was related to piledriving only. It was in the pile driving measures. We are not committing to staying within that window, but we are going to try as much as we can. If we don't, the only birds we would be coming into contact with from a nesting standpoint at Howard Terminal would be potentially peregrine falcons that would be in the cranes. But it is a highly industrialized area with boxes, containers being moved around by trucks all over the place and being stored and it is constantly under motion, and it is completely paved. There could be potential issues with interrupting foraging of some birds. Least terns, we coordinated on least terns with the Fish and Wildlife Service, and we agreed that Inner Harbor and Outer Harbor Basins are not preferred foraging habitat for the terns. When we did studies, when we did the 50-foot project, they showed that the overwhelming large amount of the foraging happens south of Alameda. Because there is a big colony on Alameda at the airfield, if you don't know, it is the largest colony in Northern California. They largely forage within three miles south of the island out towards Bay Farm and that is where the overwhelming amount of it happens. It is now starting to happen in Middle Harbor, once we created that habitat during the 50-foot project.

So on to Middle Harbor. I worked on that project as well. I think you are maybe talking about the Shoreline Park, which rings Middle Harbor. But we are still working on Middle Harbor, we are still completing it. We are doing eelgrass surveys, we did some planting last year, and we are analyzing the potential for additional Phase II planting of eel grass. We need to complete the marsh that is in that corner that looks like mud flat now, which I personally really like, I like the way it is now. But we committed to making tidal marsh for interpreter purposes. So, West Oakland, the community, can come and see what a marsh is supposed to look like. And that beach which kind of crosses both projects, Middle Harbor, Shoreline Park and the Enhancement Area, we are going to we have some design options to fix that beach. And I cannot answer the question about the plants that are in the upland areas, somebody at the Port might know the answer to that one.

Mr. Taschek spoke: Hi, yes, good afternoon, Justin Taschek, Port of Oakland. I will address the question related to Outer Harbor Turning Basin only. There are two turning basins and it might be helpful to pull up the presentation material that does have the seaport overview. I just want to mention here, each turning basin provides its own utility for the terminals that are related to the Outer Harbor for the Outer Harbor Turning Basin, and the properties, the terminals that are in the Inner Harbor and are served by the Inner Harbor Turning Basin. These properties are leased out. There are lessees that operate the facilities

and these lessees do compete for the business. All the vessels that we talked about that visit the Port of Oakland, all size vessels go to both the Outer and the Inner Harbor. It is integral and important to remain competitive throughout the entire Port complex to allow all vessel sizes to visit all properties within the Port complex, and those are those marine terminal properties I am mentioning. I would mention Susan Ransom who provided public comment, they do operate the largest facility in the Port of Oakland, known as the Oakland International Container Terminal. It is right now moving greater than half of the total volumes, sometimes in the 60 percent category of the volumes, and that is served exclusively by the Inner Harbor Turning Basin. That is our newest, most modern facility, handling the largest amount of containers, and it is very important that we do provide that competitive landscape and widen both turning basins. Thank you.

Commissioner Eklund was recognized: Thank you very much. First of all, for full disclosure, I want to make sure that everyone knows that I did work for the US Army Corps of Engineers for eight years and I am very familiar with the dredging issues. I also worked for the US Environmental Protection Agency for 35 years where at one point, I was in charge of the NPDES permitting program, which is Section 404, which dealt a lot with dredging and a lot of other water-related issues. I have a lot of questions, but I would like to start out with a couple of them and then ask whether we can also submit written questions afterwards and maybe get some answers before the next meeting; but we could talk about that later. First of all, I agree with the speaker requesting a copy of that letter from the City of Alameda. I would like to have a better understanding about what the city of Alameda's concerns are. Does BCDC need to make any type of a decision where this action is also going to be in compliance with local and nearby jurisdiction or a jurisdiction that is going to be affected by the activity? Is it required that we have a better understanding of what the impact is going to be to the city of Alameda and what remedies are possibly available?

Ms. Goeden responded: I can take that item as a starter and others can join in. To begin with, the letter from the City of Alameda I believe is currently posted on our website under supplemental information for this item. If you go to the agenda, the supplemental information, it should be there. We received three public comments written before the Commission meeting so that was one of them. Also, the Addendum, where I try to explain a little bit better some of the information that we did not get quite right in the Staff Summary, is also there at this point. Regarding the local discretionary approval and the City of Alameda. Right now, as we have talked about, we are at the feasibility stage. The Corps has finished a study of whether or not it is feasible for the federal government to have a piece in this, and they have said yes, hence the first phase consistency. We will ask whether the Commission feels this project is generally consistent with its laws and policies.

CZMA does require that the laws and policies of the Commission are met and is part of the fill requirements of the McAteer-Petris Act. There is a requirement for fill on property, that there is a property interest obtained. We cannot require the Corps to get local discretionary approvals. However, as part of the cooperation between the Port and the Corps, the local project sponsor, the Port, is required to get the lands easements and rights-of-way before the Corps can construct the project. So that means the Port of Oakland has to get those properties and they would get them, I believe, through working with the City of Alameda. In order for us to issue a permit to the Port of Oakland for this project, as part of their upcoming application in

a couple of years, they would have to provide the local discretionary approval and the property interests because it would be that project is fully reviewed under the McAteer-Petris Act and the Bay Plan, through our state authority versus our federal authority under CZMA. That was a lot. Does it make sense?

Commissioner Eklund replied: Yes, it does. If we took action at the next meeting, that would still allow us, the next time this comes back, to add some additional conditions if we wanted to, to help mitigate some of the impacts. Ms. Goeden agreed: Yes. We will not be recommending that the Commission authorize any work at this time because we do not have those details. Commissioner Eklund acknowledged: Yes, that helps me a lot.

The other issue that is probably a little bit larger and I am assuming that BCDC has an interest in it. When I worked for the US EPA, I pushed really hard that we try to set up programs to reuse the dredge material, because as you know, there is not enough dredge material available to do all the wetland restoration that is needed around the San Francisco Bay and Estuary area. I saw in the report that they are talking about only looking to reuse the material, but I did not see specific areas or whether it was marshlands. I saw fill, landfill, but I did not see any wetland restoration. Can you help me to understand where that material might be or whether it has been determined? Because I know they would have to do a lot of testing first.

Ms. Goeden explained: Yes, so I think you are right on track with the issue. We did call out beneficial reuse. I think we did mention here, and wetland restoration. But because we do not have the test results for the surface layer materials, we have not been able to make the finding that it could go to beneficial reuse. The deeper material, the Old Bay Mud, Young Bay Mud and Merit Sands have not been, to anybody's ability to know, been impacted by human industrial activity. Those would be anticipated and have received a suitability determination in the 1990s that that material is clean enough to go to beneficial reuse at wetlands. I believe the Corps and the Port have been talking to Montezuma Wetlands because they can take both foundation and cover quality material. However, that is not determined yet because we are not at the level of design where we know exactly where the material is suitable for. It is also possible that if Bel Marin Keys came online, in the meantime, some of the material could go there. If Cullinan is still operational some of the material could go there. There are potential other sites that are not currently identified. But the anticipation and the commitment from the Corps and the Port through their beneficial program, I am not remembering the name of it, but they did get approval to take material to beneficial reuse and we do anticipate that to be wetlands.

Commissioner Eklund continued her inquiry: Is it going to be 100 percent? I don't know what percentage they are proposing to reuse it for fill versus wetland restoration, or levees or whatever. Ms. Goeden answered: Sorry if that was not clear. The fill proposed is actually sheet piles, riprap. It is not the dredge material placement. Commissioner Eklund acknowledged: Okay. But is there any of the dredge material that is being proposed for dumping in the Bay or in the ocean? Ms. Goeden replied: Not at this time.

Commissioner Eklund asked: Do we have a requirement that they have to reuse all of the dredge material? Ms. Goeden explained: Well, that would come in the design phase when we have better information about the quality of the material, so that would be the second

phase consistency determination. But I believe they are committed. They are in the room, they can vouch for this or not, to use all the material that is suitable for beneficial reuse. That is my understanding at this time. Mr. Joliffe chimed in: Brenda, this is Eric. We do have permission from Headquarters to beneficially reuse all suitable material. The bulk of it is wetland non-cover at this point based on our assumptions that we have made, which technically means Montezuma at this point, because they are the only one that can take that. It is about 1.71 million yards going there. Then we had another 450,000 yards of cover that could go to any wetland restoration site. Commissioner Eklund continued: Okay, great, thank you.

Can you help me to understand at what point throughout this whole process before final approval. Is it going to be coming back to the Commission so that if needed we can add some additional conditions? Because if this is the only time where we can add specific conditions, then I am probably going to look at this with a fine-toothed comb. But I was hoping that we would get another bite at the apple. Which is typically what we have done in the past, but I don't know if the process has been changed since I left the federal government. Ms. Goeden replied: Yes, thank you. This is a phased consistency. The first phase is a more general authorization. As written so far, it is in review, the staff recommendation does include some general conditions, but not the final set. It also lists out some potential additional items that are not being required at this time but would likely be required. At the second phase, when we are in the pre-construction, engineering and design phase, the Corps will be coming back to us, anticipated in 2025, probably 2026. We will have a more definitive and complete picture of the project and we will likely make more requirements at that time. Commissioner Eklund stated: I did not see in the conditions and I may have missed it that they will reuse all of the dredge material. Ms. Goeden replied: You don't have it yet. That's why you missed it. It is coming out on the 15th. That is a document that is drafted, waiting for management to review, and then it with the Corps, and then the Commission will receive it for consideration.

Commissioner Eklund acknowledged: Great. Because I know over time, who is going to be here in 2026, it is going to be hard to know at that point. But anyway, okay, that's great, thank you very much. Is it possible to send additional questions in writing before the next meeting or is that something that you would prefer not to do? Ms. Goeden replied: I am certainly happy to receive written comments if that makes it easier. Commissioner Eklund asked: Comments or questions? Ms. Goeden answered: Comments or questions, either one, we will do our best to get answers for you before the next meeting. I am fine with that, but I would defer to the Chair and our Executive and Deputy Director. Commissioner Eklund acknowledged: Okay, great. If I could get feedback from them at some point that would be helpful. Thank you very much, appreciate it.

Chair Wasserman chimed in: Two quick comments before I recognize the next Commissioner. One, yes, certainly questions and comments can come in, this is an ongoing process. Depending on our vote, it may not affect this vote. But this is not the last time this project will come before us. And the second point, unless I am wrong, in addition to coming back for further concurrence on conformance, it has got to come to us for a permit. So, we will have more than one additional bite at this apple.

Commissioner Gunther was recognized: Thank you, Mr. Chairman. Thank you for the really detailed, rich presentations, I really appreciate it. I just have two quick questions. First of

all, the electrical work that is going to be done as part of building the turning basin. The electrification of operating diesel motors at the Port is a very, very important part of improving the health of local communities and reducing emissions. Does that work which was described as facilitating the use of electric dredges, does that also contribute from the Port as a whole for electrification of other processes at the Port, or for charging some of the battery-operated machinery they have now? I hope that this will not only reduce emissions during dredging but also contribute to reducing emissions in the future. And then secondly, I did not see much discussion of sea level rise. I have a feeling that is because of the nature, maybe that is in Phase II, Brenda? But I just wanted to make sure that if this project goes forward and so much of the shoreline in that region is altered, that it is altered in a way that is consistent with building resiliency to sea level rise. Which I assume is integrated into our permit decision if I understand it right. Ms. Goeden responded: I will start to address that; the Corps and the Port can back me up. But then I would also like the Port to address the electrification issue because I am unfamiliar with their plans. Regarding sea level rise, which is a concern of the city of Alameda and others, the Port and the Corps view this as a navigation improvement project. They are not proposing shoreline protection, they are building a bulkhead. As I understand the plans and the Army Corps' analysis of sea level rise. Under their guidance, which is not the same as the state of California guidance, it is similar but a little different. The project is resilient to flooding through all phases of their project I believe to 2090. I am talking about that off the top of my head right now so don't quote me, and there is only one area that is not resilient. The way they have proposed to construct it, it is at or above the existing elevation, they do not anticipate flooding in that region. The other answer, which came up during the Engineering Criteria Review Board meeting,, and I believe Barney is in the room so he may want to speak to this from the Army Corps, the question was, Could you incorporate sea level rise resilience in this project? And his answer was, under this feasibility study, because of the nature of the feasibility study, it does not include shoreline protection. That would be a different authority and a different feasibility study for the City of Alameda. They could request that of the Corps, but the Corps would have to find a national economic interest, and have that as a separate project. So that is the way we are looking at it currently, it is bulkhead not shoreline protection. Yes, there is flooding on Alameda. From our look at it, it comes from a number of other sources, not specifically this area, except for in a very limited high sea level elevation issue later in the century. That is written up in the Staff Recommendation. But if the Port or the Corps want to speak more to that issue, they are welcome, but that is the way the Commission staff has addressed it at this point. Commissioner Gunther clarified: So, you are saying, Brenda, that as imagined currently, obviously, there's going to be much more work done on the specifics of the project. When the project is completed the shoreline in that area will be resilient to a sea level rise at a certain amount. I guess I am just trying to make sure we are not proposing to spend \$500 million in an area and not have that produce a resilient shoreline. Ms. Goeden replied: Yes, no, I understand what you are saying and I appreciate it. Basically, a bulkhead is creating a new shoreline, but it is not increasing the height of the shoreline, it is simply creating that new shoreline. There is no proposed part of the project that raises the elevation or protects the shoreline from sea level rise at this time. From what I understand from the Corps, that would be a different project than what is authorized through their program. Maybe the Corps or the Port want to step in at this point and help me out. Mr. Goldbeck chimed in: I would like to add that your policies on rising sea level require larger projects to be resilient to

midcentury and have an adaptive management plan to end of century. But that is for the project and the project is a turning basin. Your policies would require that the project itself, that being the turning basin, be resilient, not necessarily that they provide protection for all the surrounding areas. Ms. Goeden acknowledged: Thank you, Steve. Also, we can direct you to Policy 7, which says, when we are in a situation where we do not have a regional sea level rise adaptation plan, projects that are important and have important regional benefits, including transportation, and this is a marine transportation issue, they should be allowed to go forward. That is very summarized. But I would direct the Commission also to Policy 7 of the Climate Change Policies. Mr. Goldbeck added: That is no opinion from staff on whether it would be good to have greater protection of the shoreline but simply what your policies call for. Ms. Goeden acknowledged: Yes. Thank you, Steve. No opinion.

Commissioner Showalter chimed in: Yes. I always like to come after Andy because he gets my questions answered for the most part. I had one more though. I just would like another brief understanding of the Chief's Report. From a high level, my understanding of the Chief's Report is, basically, it gives enough specificity that the Headquarters of the Corps of Engineers feels confident to ask Congress for authorization and/or funding to go forward with this project. Is that correct? Ms. Powell fielded this question: I think I can answer that. What we submit in January is going to be a final report with our recommendation and that goes to Headquarters. Then we produce a Chief's Report that would be done by the end of May of 2024 and that is a recommendation to Congress. Congress can decide whether, at their discretion, whether they are going to authorize it so it can get into WRDA 2024. And at their discretion, whether they want to appropriate funds as well. Those are two separate decisions that they need to make. They can decide to say no to both, or they can say yes to both, or they can authorize and then at a later time appropriate. Commissioner Showalter acknowledged: Thank you, Erika. That is what I thought I remembered but I wanted to make sure.

I guess what my feeling is that, because this is the phase we are at, it is appropriate I feel like, for us to support this going forward at this phase. Granted, when we get more details, we will have a lot more questions and there will be things we want to make sure are taken care of. But at this point, to make sure that this process goes forward in a timely manner, I am very supportive of it. Particularly the reuse of the dredge sediment. That is a wonderful feature and something that is very, very important for our other sea level rise protection efforts, particularly marsh restoration throughout the Bay. I am really glad to see this, and I look forward to working on it for quite a while. Thank you.

Commissioner Nelson was recognized: Two issues for staff. First is about Howard Terminal. If I am remembering correctly, when we deleted the Seaport Plan Designation for Howard Terminal, it came with a condition that if the A's did not construct a ballpark at Howard Terminal, that the site would revert back to Seaport Plan jurisdiction. Do I have that correct? Ms. Goeden replied: Almost. It reverts back to Port Priority Use. Commissioner Nelson acknowledged: Port Priority Use. Sorry, thank you. Ms. Goeden replied: Yes. Commissioner Nelson discussed a hypothetical: If that had happened last month, if the A's had moved to Las Vegas and they are not building a ballpark, then the Port Priority Use designation would be on this site. I assume the staff analysis would include an analysis of what this means for Howard Terminal. Some of this would be excavated, the Howard Terminal would be shorter, it could only accommodate shorter ships and so forth. That decision has not been made by the City and

the A's. It seems likely. Should we be thinking about that issue? How should we be thinking of that issue? Ms. Goeden chimed in: What I would say, and I am looking to my esteemed colleagues, Deputy Director, Executive Director, is that we currently are beholden to the laws and policies that we have. Because that action has not, the reverting action has not taken place and it will likely not take place before December 21st, we need to use the policies and the Priority Use Areas that we have in front of us at that time. If the Priority Use Area reverts to Port Priority Use before the next phase consistency determination, we would consider it differently and look for different information. But at this time the staff recommendation explains that there is no Port Priority Use at Howard Terminal at this time. Commissioner Nelson had additional questions: That leads to a question about phasing and segmentation. What happens if we look at it now and say it is totally consistent with our plan; and then we look at it in a year or whenever it comes back to us for the next phase and the A's have made their decision, Port Priority Use Designation is back on the site. At that point we do an analysis about impacts on the Port Priority Use. What happens if we reach a different conclusion on the second phase because of the Port Priority Use issue given that we have found consistency on the first phase with a different designation for the site?

Mr. Ng chimed in: I can maybe add a little bit to the conversation here. We looked at whether the continued placement or removal of the Port Priority Use Area Designation at Howard Terminal had any particular significance or consequence with respect to realization of the Oakland Turning Basin's project if that were to proceed. We analyzed that at the time of BPA 2-19 when that PUA designation was removed. I believe our view at that time, which I think is still our view, is that whether it is there or not is not a hindrance to the realization of the Turning Basins Project. I think what you are referring to is AB 1191, which was the special legislation regarding the Howard Terminal Ballpark Project that does have this sort of automatic reversionary clause that if there is no development agreement between the City [of Oakland] and the A's by 2025 that the PUA Designation will be reinstated as if it had never been removed. But again, whether it is there or not, given the purpose of what the PUA Designation is for, which is to minimize or mitigate the pressure for increased fill for Port purposes, I don't think that this project implicates that policy issue.

Commissioner Nelson continued his inquiry: Okay. Second question. Both Alameda and the speaker from Earth Justice on behalf of West Oakland Indicators, raised a number of concerns about the project, land use operations, consistency with federal policies, and a number of other things. Some of those concerns sound to me as though they are outside of our jurisdiction. We have our own equity policies that may overlap with but are not the same as some of the federal policies. I don't know, Brenda, if you are ready to discuss this now or whether this is something the staff wants to think about preparing for the staff recommendation. But I would like to understand where those concerns raised by Alameda and Earth Justice in particular, overlap with the Commission's policies and are they issues that we should be discussing in considering and making this decision, and where they are just outside of our authority, and they are not going to be a part of our consideration of the project. Ms. Goeden replied: Well, I guess I could mention them in brief. As Michael spoke to, we are acting under the Coastal Zone Management Act, and under that Act we are directed to look at the effects to the coastal zone, which in this case is San Francisco Bay. We investigated, actually very thoroughly over the last two years, whether or not air quality impacts were something that

the Commission could address under CZMA. I think we determined, and Michael and Steve, correct me if I am wrong, that we do not have a nexus to air quality, and that the Army Corps has to be responsible to the federal Clean Air Act. As I understand it, they included that information as part of their environmental review in consideration of this project. So, we do not have that nexus. Where we have a bit of nexus on air quality, in my humble opinion and I am waiting to figure out if I am right, is that particulate matter from emissions from trucks and ships do actually impact water quality. We do have a brief requirement looking at truck engines for reduction of particulate matter because of the connection to water quality. In the staff recommendation we will see if you agree with that consideration. The Corps is responsible to the federal laws, we are responsible to CZMA. We do not regulate vessel traffic. We do not regulate vessel emissions. We do not regulate truck traffic. We do not regulate construction equipment. But we can make requirements around impacts to water quality, fish and wildlife, contaminant issues. So, where there is a nexus to those items per the policies that we laid out for you today, we can make requirements. But where we don't have policies or authority, we cannot make those requirements.

Regarding environmental justice, as Phoenix laid out, the way our policies are written, (and I think I am frozen in some screens), we have to ensure that public engagement is appropriate and culturally relevant. We can work with the federal and local project sponsor to continue public engagement and try to work harder to ensure that they do culturally relevant public engagement and that they work with the community to identify mitigation measures where we have authority. But again, our authority is limited in that regard.

And then regarding Alameda Landing, I think I mentioned earlier that the Port is responsible for getting property rights, and if they can't get property rights, they cannot get a permit from BDCD. Regarding their concerns about public access, certainly the Alameda Landing area is an area that BDCD staff has identified and already talked to the Port and the Corps about a potential public access amenity at that site because they will be changing the configuration of the site via removing some of the waterfront wharf and demolishing portions of the two warehouses, which should open up some views and could provide some opportunities for public access. We have also talked to them about the potential for in-lieu public access nearby and potentially providing public access to an Environmental Justice or disproportionately impacted community because that is also part of our public access policies. So, I am hoping that is helpful. Commissioner Nelson acknowledged: It is, thank you. All of those will be addressed in the Staff Recommendation when it comes back to us.

Commissioner Gilmore chimed in: I want to thank Barry and Brenda because you guys basically answered most of the questions that I was about to ask because I was really disturbed by the opposing environmental documents; they seemed to come out at either ends of the spectrum. But thanks to your explanation, Brenda, I feel a lot better about it. But my final question is, I am assuming that everything that you just discussed does not have to be determined by the 21st. We are going to get additional bites at public meetings, environmental justice, and all of those things that that you just listed off and explained, right? Ms. Goeden agreed: Yes, that is the plan. Right now, I think we have eight or nine requirements which are general in the Staff Recommendation which address these issues that are outstanding. Particularly I think the public access engagement, I think is one that you will be heartened to see, and some additional information about the contaminants associated with both the

construction site and the dredging. I am not remembering the rest of them off the top of my head but the silt curtains and the protections for the fish and wildlife and water quality. Commissioner Gilmore continued: Okay. Assuming this project moves forward, and we find out more about exactly what is being proposed, we can add additional conditions or tighten up certain conditions. So, we are looking at this whole project at about the 3,000-foot level, right. And as time goes by, we are going to be getting closer and closer to ground level, is kind of the way I look at it. Ms. Goeden agreed: Yes. Commissioner Gilmore acknowledged: Okay, thank you very much.

Chair Wasserman asked: Any other comments or questions by Commissioners? I would have expected you to have a lot. I just have a couple of quick ones. I have a little familiarity with dredging in the Oakland Estuary. I have been working on it since around 1978. I, in particular, remember a helicopter ride with Mayor Lionel Wilson and Congressman Ron Dellums when we were fighting for funds to dredge to I think it was 38 feet. There were many, many, many people who did not believe that was necessary. That these big ships that everybody was talking about were simply not coming. They were pie in the sky, or I guess in the water. Clearly, they came. Clearly, they are increasing in size. I do think that some additional attention, not by the 21st, I will address that in a moment. But as this comes back to us in future iterations, that needs some more facts and attention, as Vice Chair Eisen indicated. I also think as we move forward, we need as a Commission to be very careful and thoughtful. Michael took us through a long tutorial earlier this afternoon, but it was appropriate. One, because we have not done this in a while and there are new Commissioners, but also, we have got fairly limited jurisdiction in a lot of these things. It is not that we should not voice our concerns. But when it comes to directing staff and comes to voting we need to recognize that. Here, what we do in terms of recommending or not conformance, is quite different from what we can do and should do when it comes before us for a permit, and I think understanding those differences. But I also want to be very clear that it is an ongoing process. That means that the public outreach, and in particular the outreach to Environmental Justice communities that is part of our policy, is an ongoing process. I am not saying anybody has suggested that. But the dialog is not over, and it will continue as this project gets fleshed out and more details emerge.

Commissioner Eklund chimed in: I am sorry for a second bite at the apple, but you triggered me to ask a question. Is there a possibility we could get a roadmap of where BCDC is going to have input on this issue for the next five, six years or whatever? Just so we have a better understanding of where we might be able to bring different issues. That would be helpful. Chair Wasserman replied: I agree, I think that is a very good suggestion. Ms. Goeden added: Yes, we can work on that for the next meeting. Chair Wasserman acknowledged: Thank you, Brenda.

If there are no other questions or comments that concludes this matter. We do not have a vote. It will come back to us on the 21st for a vote on the conformance issue for the first phase. I'm sorry, you want a last word? Sure. Ms. Powell chimed in: Yes, I did. Thank you so much. Through the Chair, we actually did want to just add a couple of things for the record. One is going to be related to electric dredging. Since the report is paying for that 100 percent, I am going to ask Justin to come up here in a minute. We will provide responses to all the questions we heard today, to Brenda for her staff report, make it easier for her staff report. We will point to all the places where, all these questions that we heard today, it was not anything

new. It is all in the report and we will point to where they can be found. Specifically for Commissioner Eisen, the Economic Appendix has really good information. There is an economic model that we call the Harbor Sim Model that is used to determine, look at projections, consequences of a future without the project. That is a really good document. We will also provide slides that will have corrections in there to clarify. I think that is all I have. We will provide clarification directly to Brenda as soon as possible.

One last thing, electric dredging and beneficial use that was not required as mitigation. This is the first time a Corps of Engineers project has submitted to Headquarters a request, or to the Assistant Secretary of the Army, a request to be able to cost share that without being required to do it. It is called comprehensive benefits, it is a new policy, and we were the first to do that, from what I understand. Thank you for your time, we really appreciate it.

Mr. Taschek stated: Just did not want to leave that question hanging. Electric dredging, the infrastructure proposed to be installed pursuant to the proposed project is discreet and specialized for the electric dredgers. But rest assured, the electrical power that would be made available for those units during construction would certainly be valuable, as we all strive to move forward to decarbonize the Port. The demand for electricity will only increase in time, and rest assured that power that will be made available for this project will be utilized for other things in the future. Thank you.

Chair Wasserman stated: And that triggered in me two quick things. One, thank you for emphasizing the importance and pioneering effort of the beneficial reuse in this project. It is something this Commission has certainly been striving for for some time and we are very, very happy to have the Corps fully on board for this. Second, while it may or may not be directly related to this project, certainly related to some of the concerns - the Port of Oakland is undertaking a very major project to reduce emissions, both in the moderately short-term and in the longer term, really with a zero-emission emphasis, to which point they have redesigned their Port logo to emphasize that. The words that have been heard here before are being listened to. I thank you very much.

11. Briefing on Updates to the California Sea Level Rise Guidance. Item 11 was postponed.

12. Adjournment. Upon motion by Commissioner Moulton-Peters, seconded by Commissioner Addiego, the Commission meeting was adjourned at 4:01 p.m.