

# San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600  
State of California | Gavin Newsom – Governor | [info@bcdc.ca.gov](mailto:info@bcdc.ca.gov) | [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

January 12, 2024

**TO:** All Commissioners and Alternates

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

**SUBJECT: Draft Minutes of December 21, 2023 Hybrid Commission Meeting**

1. **Call to Order.** The hybrid meeting was called to order by Chair Wasserman at 1:05 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 stated: 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 let me address a couple of agenda items. Item 11, the update of the state's sea level rise guidance has once more been postponed to our next meeting. While we have delayed this several times, we really do expect to see the report released tomorrow and to discuss it at our first meeting in January.

In addition, we will take up Item 9, the contract with the Port of San Francisco, before returning to the Oakland Turning Basin agenda item, which is listed as Item 8.

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, Benson, Blake, Burt, Eckerle, Eklund, Gioia, Gorin, Gunther, Mashburn (represented by Alternate Vasquez), Moulton-Peters, Peskin, Ramos, Ranchod, Showalter, Tam and Zepeda.

Chair Wasserman announced that a quorum was present.

Not present were Commissioners: BT&H (El-Tawansy), Santa Clara County (Lee), State Lands Commission (Lucchesi), San Mateo County (Pine), Governor (Hasz, Randolph)

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

No members of the public addressed the Commission.

Chair Wasserman moved to Approval of the Minutes.

4. **Approval of Minutes of the December 7, 2023, Meeting.** Chair Wasserman asked for a motion and a second to adopt the minutes of December 7, 2023.

**MOTION:** Commissioner Addiego moved approval of the Minutes, seconded by Vice Chair Eisen.

The motion carried by a voice vote with Commissioners Benson, Blake and Tam voting "ABSTAIN."

Chair Wasserman: I would note just for the record, under Robert's Rules of Order, which do govern our meetings, and my first name is Robert so I know them well, you are not required to abstain if you have not been at the prior meeting because it is an action today, but you certainly may.

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

I am going to start by giving Commissioners who have not actually participated here before a welcome and time to address the Commission if you would like to as an introduction, you do not have to. I am going by the screen, that would include Commissioner Benson.

Commissioner Benson spoke: Thank you for the welcome. I have nothing particular to say. I have been with the Department of Finance for about 18 years. Looking forward to an opportunity to represent the Department on the Commission and to work with all of you. Thank you.

Chair Wasserman acknowledged: Thank you. And I believe Supervisor Tam, Commissioner Tam, this is also your first meeting, if you would like to say anything to us.

Commissioner Tam commented: Thank you for the welcome as well. I was elected and took office in January. I was elected last year. But Commissioner Marie Gilmore has been my Alternate and very capable and ably representing our interests here. I am coming here today because she needs a day off.

Chair Wasserman continued: We thank you for rewarding her with that. She is indeed a very productive member of this Commission in many ways, but particularly as Chair of the Enforcement Committee.

I do not have a lot to say in my remarks today. We are in this time of celebration of a number of holidays. Most of them in one way or another celebrate peace. Unfortunately, as we all know, this is really not a time of peace in our world or, in fact, even in our country, demonstrated by one more mass shooting in another country today. So, I offer to you and on behalf of all of us hopes and prayers that indeed we can move closer to peace throughout the world, throughout our nation, and for all people.

a. **Hybrid Meetings.** The current exemption that has allowed us to hold hybrid meetings as we did in the early days of the COVID emergency will expire at the end of the month. Therefore, starting with our meeting next month in January, the state's Bagley-Keene open meeting law applies.

So, Commissioners attending remotely will again need to disclose their position where they are participating from in advance, will need to provide notice at that location, and will need to allow the public to join you.

Certainly, the most efficient way to do that is the way a number of people have, led significantly by Commissioner Gioia, of opening offices or central places for people to gather. But you can still participate from your home or other remote locations, recognizing you need to meet those requirements. Please do contact staff if you have any questions about that.

b. **Local Electeds Task Force:** Next, also quite important, BCDC held a meeting of our Local Elected Officials Task Force this past Tuesday to discuss programs on creating the Regional Shoreline Adaptation Plan, implementation of SB 272, and perhaps most important, to educate our local allies about state funding that is available for planning and implementing projects, as well as hearing about what is going on in their local jurisdictions. Commissioner Gioia chairs the group, and I would ask him to present a short summary of that meeting.

Commissioner Gioia spoke: Yes, I thought it was a very good discussion. In fact, I pulled up the slide presentation. We gave a chance to also hear from the elected officials about what they thought would be most valuable out of this process.

We had a presentation on the Regional Shoreline Adaptation Plan and what can local government do, what's the involvement local government can play. And then we did have a presentation also on SB 1 local funding opportunities from the Ocean Protection Council from the state, which is great because local government always wants to understand where it can get funding to do its work. And of course, had a presentation on how we can implement SB 272 and the Regional Shoreline Adaptation Plan.

We established generally how often we would meet in 2024. But I thought all in all a very good meeting of elected officials.

Chair Wasserman continued: Thank you, John. I did listen in to that meeting and one of the encouraging things for me was to hear the report of almost all of the members from local jurisdictions of what they are, in fact, doing to address sea level rise in each of their jurisdictions.

Commissioner Gioia added: Yes. We do have BCDC Commissioner Cesar Zepeda on who was us also on that, so he has two roles, being a Commissioner and being on that. So, good to see Council Member Zepeda here.

Chair Wasserman continued.

c. **Next Meeting.** We will not hold a meeting on January 4, so our next meeting will be on January 18. At that meeting we may take up the following matters:

- (1) Commission consideration of two enforcement matters;
- (2) A briefing from the Ocean Protection Council on rising sea level guidance update;
- (3) A briefing on our sediment grant workshops;
- (4) A briefing on our 2023 enforcement work; and
- (5) A briefing on our Strategic Plan process.

d. **Ex Parte Communications:** Now ex parte communications. These are communications involving hearings or permit approvals or other adjudicatory matters where you have had conversations outside of Commission meetings. You do need to report these in writing as well through our website. I know we have at least one. Commissioner Beach.

Commissioner Beach spoke: Thank you, Chair Wasserman. As the project proponent for the Oakland Harbor Turning Basins widening effort, I have had ex parte communications on Item Number 8 with my staff at the Army Corps of Engineers, BCDC staff, and the Port of Oakland. I will also file an ex parte form.

Chair Wasserman acknowledged: Thank you. You also point out something that we may tend to forget, that ex parte communications are not simply with proponents or opponents, but also with staff. Again, the purpose is so that the public has a sense of all of the information that we as Commissioners have received on these types of matters.

That brings us to the report of the Executive Director.

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

A neat confluence of events occurred on December 21. In 1913, the New York World newspaper published the first crossword puzzle in a newspaper. It had 32 clues, and there is no record as to whether any reader completed the puzzle successfully.

Twenty-four years later, in 1937, Snow White and the Seven Dwarfs, the first full length animated feature film, Walt Disney's first of many, premiered in Los Angeles. Now for the question.

If a crossword puzzle asked you to name even five of the seven dwarfs, could you do so? And if you could name all seven, please text me your answer and we will announce you as a winner by the end of the meeting. No talking during the test and no looking on Google.

Unfortunately, I do not have as nice a report with regard to budget. It will not be news to you that the Newsom Administration announced earlier this month that the state of California is facing a deficit of \$68 billion, a little less than half of which is due to unanticipated revenue shortfalls during this fiscal year.

The Administration has already declared a spending freeze for all of its organizations. I cannot tell you how specifically that will affect BCDC's operations during 2024 now, but I shall attempt to do so at our January 18 Commission meeting.

On the other hand, I am very pleased to let you know that during my absence we have selected two new Environmental Justice Advisors to fill two of the Advisors' vacancies, Naama Raz Yaseef and Niria Alicia Garcia. Acting Executive Director Greg Scharff, whom I want to thank for taking over in my absence, scheduled a meet and greet with each and confirmed staff's selections.

Naama serves as the Senior Manager of the Climate Ready Communities Program at the Watershed Project, a Richmond-based organization, where she fosters collaborations among communities, governmental agencies and designers and engineers to create nature-based solutions that address climate change impacts. Naama earned her master's degree in geomorphology from the Hebrew University of Jerusalem, and her PhD in environmental science from Israel's Weitzman Institute of Science. She previously worked at the Lawrence Berkeley National Lab at Cal. Naama is a Richmond resident and has co-led various local environmental justice programs.

Niria Alicia is a Xicana Indígena community organizer, educator, story keeper and human rights advocate devoted to protecting the sacredness of Mother Earth and the dignity of historically oppressed peoples. She describes herself as the proud daughter of an immigrant farm worker and forestry workers. Niria is a Duck alum, having graduated from the University of Oregon with degrees in environmental studies, Latin American studies and nonprofit administration. In 2019, Niria's climate justice work earned her the national Emerging Leader Award from Green Latinos. More recently, the United Nations gave her its highest honor given to young people under 30 for her work with Run4Salmon by naming her the Young Champion of the Earth for North America.

We welcome Naama and Niria to the fold and we look forward to working with them in their new roles.

As Commissioner Gioia just explained, our staff briefed our Local Elected Officials Task Force on Tuesday regarding our progress as we create the Bay Area's Regional Shoreline Adaptation Plan.

The briefing included a description of the grantmaking program just initiated by the Ocean Protection Council. Local elected officials on this call, please pay attention. The SB 1 Sea Level Rise Adaptation Planning Grant Program is now open for business; and I see Commissioner Eckerle smiling about that. Please start writing your proposals.

The goal of the grant program is to provide funding for local, regional and tribal governments to develop sea level rise adaptation plans and projects to build resilience to sea level rise along the entire coast of California and San Francisco Bay. Funding either is available now or soon will be for all aspects of the projects, including pre-planning. I will include in my meeting summary a link to the program so that you can distribute it to your communities.

A couple of weeks ago, our Regulatory Division along with Compliance and Enforcement held its first staff retreat in several years. It was held at the Eco Center at Heron's Head Park and provided staff with great opportunities to bond with their colleagues, learn about each other's expertise and identify the teams' strengths.

And it was a very successful way for our new Regulatory Director Harriet Ross to learn about BCDC. The team left feeling more connected and motivated for the upcoming year of work.

Now for a not-so-subtle reminder, which is meant to buttress Chair Wasserman's notice. Starting next month our staff will be contacting you well in advance of Commission meetings so that we can place on the Meeting Notice and Agenda the location from which you will be attending the meeting. In essence, we are going back to the future and reestablishing the process that Grace Gomez used during the first year or so, after the Commission began to meet in person post-pandemic.

But, and this does require everyone's immediate attention, it will not be Grace who will be sending you the email. Our Grace Gomez will be retiring at the end of this month after 40, yes, 40 consecutive years at BCDC. Indeed, her entire professional career has been spent at BCDC. She started just after high school and has stayed the course.

It would go without saying that we shall miss her and her always upbeat and positive outlook. But I shall say that. Grace always welcomes us with a smile, she works diligently to organize what needs to be done. Now, ordinarily we would have her say a few words to the Commission now. However, we have decided instead to toast Grace at a staff luncheon in January or February based on her schedule, because we all know that retirement takes a lot of planning, to be followed by a presentation at a Commission meeting. So be on the lookout.

Finally, Chair Wasserman, while you each have been sent through email, from Grace, a schedule of meetings for 2024, we shall resend that before the end of the year just to make sure that you have it.

That completes my report, Chair Wasserman. I am happy to answer any questions.

Chair Wasserman asked: Any questions for the Executive Director?

Commissioner Eckerle chimed in: Thank you, Chair. I just want to take a moment to thank Grace for all of her work. She was actually there it sounds like maybe for 20 years when I started working for BCDC in 1999; and she was amazing then and has continued to be amazing over the years. So, we are going to miss her terribly and I am wishing her the best in her retirement.

Chair Wasserman stated: And I second that motion.

**7. Consideration of Administrative Matters.** Chair Wasserman stated Regulatory Director Harriet Ross was available to answer questions on administrative matters.

No questions were posed to Ms. Ross.

**9. Commission Consideration of a Contract with the Port of San Francisco to Fund Planning Activities.** Chair Wasserman stated: That brings us to Item 9, Commission consideration of a contract with the Port of San Francisco to fund planning activities. Our Long-Range Planning Manager Erik Buehmann will present the item.

Long-Range Planning Manager Buehmann addressed the Commission: Thank you, Chair Wasserman and Commissioners. I am Erik Buehmann, the Long-Range Planning Manager for BCDC. Today we are proud to bring to the Commission a number of action items which we hope will set a pathway for an even stronger collaborative relationship with the Port of San Francisco.

Today we are asking the Commission to authorize the Executive Director to enter into a Memorandum of Understanding, an MOU, with the Port of San Francisco, and amend BCDC's contract with the Port of San Francisco to fund an update to the San Francisco Waterfront Special Area Plan, along with some other planning activities I will describe.

Under the McAteer-Petris Act, BCDC may amend the San Francisco Bay Plan over time to address regional needs. Special Area Plans are more specific applications of the Bay Plan; they are part of the Bay Plan. These Special Area Plans, including the San Francisco Waterfront Special Area Plan, have more specific rules for discrete geographical areas.

The San Francisco Waterfront Special Area Plan, the SAP, was originally developed in 1971 to help facilitate redevelopment at the Port of San Francisco. The Plan was last comprehensively updated in 2000.

The 2000 San Francisco Waterfront Special Area Plan used a comprehensive plan approach in the Port's northern waterfront. You can think of the 2000 Amendment as a Grand Deal or Exchange. BCDC removed several important regulatory requirements that allowed the Port to attract investment in its existing piers, and in exchange the Port agreed to provide public benefits throughout the waterfront.

This planning effort required working with environmental stakeholders that supported removing piers, and historic preservation stakeholders who were interested in pier rehabilitation.

In 2017, the Port of San Francisco submitted a Bay Plan Amendment application for what was intended to be a comprehensive overhaul to the San Francisco Waterfront Special Area Plan. The Commission voted to initiate BPA 3-17, as we will call it, in 2019.

When it was originally initiated, however, it was not entirely clear the direction that a new comprehensive update to the Special Area Plan should take. The Port was still working on its own Waterfront Plan update, and the amendment required a collaborative review of the entire plan to decide what should be updated.

As a result, as required by the regulations that govern the Bay Plan Amendment process, the Port and BCDC entered into a contract to scope this potential update to the SAP. The understanding at the time was that after that scoping work was complete a new contract would be entered into between the agencies to do the actual amendment process.

Unfortunately, the process to scope the amendment was delayed because of staff turnover and the pandemic. But over the past two years, BCDC and the Port have reengaged to work on scoping that SAP update. In that time, though, it has become clear that the planning landscape has significantly shifted since the Bay Plan Amendment was originally initiated.

For example, in April 2023 the Port adopted a new Waterfront Plan.

But the Port has already proceeded with a number of planning studies through their Waterfront Resilience Program. It has also partnered with the US Army Corps of Engineers to conduct a Flood Study for the entire waterfront and are planning to release a draft plan for waterfront adaptation in the new year.

As for BCDC, SB 272 was passed by the legislature this fall, which requires local governments to develop resilience and adaptation plans for sea level rise. BCDC has been working through the Bay Adapt initiative to develop Regional Shoreline Adaptation Plan guidelines and subsequently sub-regional adaptation plans that will align with the requirements of SB 272. So, a lot has changed.

There have been proposals to conduct a study on how sea level rise might impact the public trust, but that study is not yet funded.

These planning activities can provide a valuable foundation for a new Special Area plan that better incorporates resilience and adaptation to sea level rise, but many of them are still in process.

In the spring of 2023, Chair Wasserman and BCDC staff met with Port staff for discussions regarding the proposed development project at Piers 30-32 and Seawall Lot 330 and the SB 273 legislation related to that project. These discussions evolved further to identify ways to improve collaboration and mutual support between the agencies.

So, we acknowledge that while this changing planning landscape is a challenge, it is also an opportunity for the Port and BCDC to work better together.

As a result of these discussions, as well as the scoping work conducted for BPA 3-17, the Port and BCDC staff have developed a Memorandum of Understanding (MOA) that will describe a process for reviewing and revising the San Francisco Waterfront Special Area Plan and will provide a framework for coordination between Port staff and BCDC's planning and regulatory staff on several Port priorities, including the Port's Waterfront Resilience Program.

BCDC and the Port have determined that an SAP update should take place in two phases. The first phase would be a more limited scoped amendment to be completed around the fall of 2024 to address several near-term redevelopment plans that the Port has that require Special Area Plan updates.

The second phase, a more comprehensive update to the Plan, will occur in a few years, following the Port and BCDC planning processes I just described and incorporating that work. Incorporating the Waterfront Resilience Program and incorporating Bay Adapt.

BCDC and the Port propose that the contract for BPA 3-17 be amended. The Port would provide \$450,000 over a three-year period for a number of tasks. The first to partially fund a position at BCDC to manage a number of tasks, including a limited scope amendment to the Special Area Plan.

But the contract would go further than a typical Bay Plan Amendment contract. The position would also support planning and regulatory coordination with the Port of San Francisco, particularly on the Port's critical climate change resilience and adaptation planning that I just talked about. The Port's detailed and complex resilience planning work requires dedicated attention, and BCDC's current staffing capacity is limited.

To address this, the BCDC staff funded by this contract would act as a primary liaison for BCDC on the Army Corps of Engineers' San Francisco Waterfront Flood Study and the Port of San Francisco's Waterfront Resilience Program.

BCDC staff hired through the contract would act as the staff expert on Port issues to support preapplication consultation between the Port and BCDC's regulatory team. This will increase coordination between the agencies, reduce inconsistency in permitting, resolve conflicts, provide better training to BCDC staff, and rebuild some of our institutional knowledge at BCDC on Port issues.

Under the proposed MOU, BCDC and Port staff would meet quarterly to review the work funded under the contract and described in the MOU. This would allow the work between the agencies to remain flexible, addressing issues as they arise. It will also ensure that our staffs remain connected and in close communication.



I have not gone into a lot of detail regarding the more limited scoped Special Area Plan Amendment we will work on in 2024. We would like to come back to the Commission in a few months to give you the full context and details regarding the proposed changes.

If the contract is executed, we would start the hiring process immediately. While we hire a staff person to lead the process, long-range planning staff would finalize a workplan for the amendment in collaboration with the Port in January and the Port will provide a revised amendment proposal. Then we would bring this issue back to the Commission for a full briefing and discussion, including more details, in early 2024, in the first few months of 2024.

The process for the Bay Plan Amendment is governed by our regulations, so this image here is a high-level overview of the amendment process. This project is a little unusual because we had a long scoping period after initiation of the amendment. But basically, we are in the vicinity of the red star, about to enter a policy development phase with outreach to follow.

That is my presentation, I also have a Staff Recommendation.

Chair Wasserman acknowledged: Thank you, Erik.

The presentation is complete, but for the Staff Recommendation. Do we have any public comment?

(No members of the public addressed the Commission.)

Chair Wasserman continued: No public comment.

Commissioners' questions and comments?

Commissioner Peskin chimed in: Thank you, Chair. Is there a draft of the MOU that one could put one's eyes on?

Executive Director Goldzband fielded this question: It just got finalized in the last couple of days. We are more than happy to share that. We are more than happy to share it with you. It is pretty darn basic and it follows very much what Erik said. It was done, I think, in a really nicely, communal way.

Chair Wasserman asked: Any other questions or comments?

Commissioner Showalter commented: I just wanted to mention that while I worked at the Santa Clara Valley Water District, I worked with several staffers from agencies that the Water District supported financially and it was just a great arrangement for Valley Water and hopefully for Cal Fish and Game and the Regional Board.

We found it was really money well spent from the Water District's point of view. That said, as a BCDC Commissioner, make sure we are asking for enough money. That is my only comment, thank you, but great idea.

Chair Wasserman asked: Any other comments or questions?

All right, roll the Staff Recommendation, Erik.

Mr. Buehmann read the following into the record: The staff recommends that the Commission authorize the Executive Director to:

- a. Enter into a Memorandum of Understanding with the Port of San Francisco.

b. Amend the contract with the Port of San Francisco for BPA 3-17 to receive \$450,000 to fund BCDC staff work on a narrowly focused update to the San Francisco Waterfront Special Area Plan and various other planning and regulatory activities from January 2024 to December 2026.

c. And authorize the Executive Director to make amendments to modify tasks covered by the contract over time as mutually agreed upon between the Port of San Francisco staff and BCDC staff and to revise the amount or duration of the agreement.

We recommend allowing the Executive Director to make these broad amendments because the MOU and contract incorporated the idea that the work plan for the staff funded by the contract could shift depending on BCDC and Port priorities.

Commissioner Peskin chimed in: I am not going to make a big deal out of it but generally when I vote to approve staff to enter into MOUs I generally see them in an agenda item. I get to put my eyes on them. I realize this is kind of run of the mill, but I usually like to know what I am authorizing my staff to enter into and amend. But I take Larry at his word, which I trust implicitly.

Executive Director Goldzband replied: Supervisor Peskin, I totally appreciate that, and we will get it to you ASAP. I should say that much of the progress on this has been due in no small measure to your insistence that it happen, so we appreciate that.

**MOTION:** Commissioner Peskin moved approval of the Staff Recommendation, seconded by Commissioner Eklund.

**VOTE:** The motion carried with a vote of 20-0-1 with Commissioners Addiego, Ahn, Benson, Blake, Burt, Eckerle, Eklund, Gioia, Gorin, Gunther, Moulton-Peters, Peskin, Ramos, Ranchod, Showalter, Tam, Vasquez, Zepeda, Vice Chair Eisen and Chair Wasserman voting, "YES", no "NO" votes, and Commissioner Beach voting "ABSTAIN".

Chair Wasserman stated: Thank you. May the carrying out of the contract go smoothly.

**8. Vote 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 8, the vote on the US Army Corps of Engineers proposed phased consistency determination for the Oakland Turning Base Widening Project.

Before the staff presentation on this matter, I want to make a few comments to set the context for our consideration today. This item is asking us for a preliminary, really a conceptual approval of the consistency of this proposal with the Coastal Zone Management Program. We will have a second and much more detailed opportunity to review the proposal when the Corps completes more of the planning for the project and provides more details about it in cooperation with the Port, which is expected in 2025-26.

We will also have an additional opportunity to review the project itself and potentially impose conditions when it comes before us for permit approval.

So, our scope today is in fact relatively limited. It is not approving the project itself or even a permit for the project. It is only approving the first phase of the concept as consistent with our Coastal Zone Management Program.

This is the second time we have considered a phased process for this consistency determination approval. The basic reason for the phased approach is to speed up the overall process for such approvals based on a new and welcome Army Corps funding strategy.

While this project is not aimed at adapting to rising sea levels. It is part of a process that in the future will affect such projects. And as we all know, time is of the essence in approving adaptation projects in the future.

Brenda Goeden, our Sediment Program Manager, will present the item.

Sediment Program Manager Goeden addressed the Commission: Thank you, Chair Wasserman and Commissioners. Good afternoon. I am Brenda Goeden, the Sediment Program Manager, and I will be presenting to you today the Staff Recommendation on the Port of Oakland Harbor Turning Basin Widening Project. It is a project of the US Army Corps of Engineers, with the local project sponsor, the Port of Oakland. The Army Corps staff have requested an opportunity to address the Commission today, as has the Port staff, so I will turn it over to Erika Powell first to address the Commission, from the US Army Corps of Engineers.

Ms. Powell spoke: Good afternoon, Chair Wasserman and honorable Commissioners, thank you so much for your time this afternoon. We really do appreciate the effort that BCDC staff and the Commissioners have in the attention paid to this study so thank you so much for your time. I am here with several of my project delivery team members online. There are several of us here representing the team. Just wanted to say from the Corps of Engineers, thank you so much again for allowing us to be here today.

Mr. Taschek commented: Yes, good afternoon to the Commission, BCDC staff and the public. My name is Justin Taschek, and I am the Port's project manager for the proposed Turning Basins Project. On behalf of the Port, I would first like to thank BCDC staff for their positive recommendation regarding the phased consistency determination and for their continued dialogue with both the Port and the US Army Corps of Engineers. And secondly, acknowledging this is a very busy time with competing interests, I would like to thank the entire Commission body for their attendance today. Widening the turning basins modernizes an essential federal waterway, ensures that the Port can remain competitive in a globally connected supply chain, and complements the efforts the Port and its customers are working towards for a zero emissions future. The Port is also pleased to be able to partner with the US Army Corps of Engineers San Francisco District on the first comprehensive benefits approach for a navigation project of this type. Notable project commitments stemming from this planning effort include beneficial reuse of all suitable material and use of electric dredges. Thank you for the ongoing support and we look forward to continued collaboration as this project progresses through additional planning and design stages. Thank you.

Ms. Goeden continued: Thank you, Justin, thank you, Erika, and thank you to both the Port of Oakland and the Army Corps' project team. They have been very instrumental and helpful as we work through this process. As the Commission recalls, on December 7, we had a public hearing for this project. Today I am going to have a very brief presentation, some of it will be familiar. I will refresh everybody's memory on where we are in the process because a number of the Commissioners were interested in when they would have another opportunity

for learning about, working with, and voting on the project. One quick little housekeeping item. On page 5, Item 2.e., we have one typo, the number 635,000 should actually be 825,000 cubic yards. With the Staff Recommendation we will include that change.

For context, as Chair Wasserman mentioned, this is the first phase consistency determination. A second phase consistency determination for the same project is anticipated in 2026, two years from now, after the Army Corps and the Port have worked through the Pre-Construction, Engineering and Design Phase of the project. This action today supports the US Army Corps of Engineers' Staff Report to Headquarters, which then will support the Chiefs Report to Congress in May. It allows for the Congress to potentially authorize this project in WRDA 2024 and make appropriations after that.

Two quick graphics to help Commissioners see where we are in the process. This is the environmental review timeline. In December of 2021 through February of 2022 the Corps released the initial Integrated Feasibility and NEPA review document for public comment. That document was commented on by the public, the Commission staff commented at that time. There were some changes to the project based on comments from the initial public comment period and the US Army Corps of Engineers rereleased a revised Integrated Feasibility and NEPA review in April of this year and concluded the public comment period in June of 2023. As we worked through the year, the Port of Oakland released its CEQA document for public review and comment in October; and just on Monday this week, the public comment period closed. Staff commented at each opportunity on this project and provided input on the project to both the Port and the Corps. The Corps has yet to finalize its NEPA document, but it plans to do so in January of 2024. The final CEQA certification is also due in 2024. It is important to note that as part of the federal consistency determination process, neither a completed NEPA or CEQA document is required as a matter of law. This is where we are today on the first phase consistency determination vote.

This next graphic represents a couple of the processes that the Commission was interested in last meeting. The first line is to describe to the Commission how the process goes forward at the Army Corps, Division and Headquarters. You will see in the first little arrow the final Headquarters report is due in January of 2024, that is why we are here today. In May of 2024 the final report will become a Chief's Report; and if signed, a request will be made for congressional authorization and appropriations. We do not know how long that process will take, because as we all know, Congress takes time to get its work done. Then between July 2025 and 2027 the Army Corps will be in its Pre-Construction, Engineering, and Design phase.

The next line describes where the Commission will have opportunities for input. Currently, today the public vote is happening. We have a second phase consistency determination concurrence request anticipated in 2026. The Commission will have an opportunity to vote in 2026 on that second phase consistency determination, which will be the authorizing consistency determination for the construction. The project will go into construction potentially in July of 2027.

On the last line, we see the Port's permitting process. We anticipate an application for a BCDC permit under the McAteer-Petris Act in 2026. We will work with the Port to move through that process and the Commission will have an opportunity for a public hearing and vote that same year. Leading to, if the approvals are all in place, project construction in 2027.

You have seen this slide before. Basically, the Army Corps of Engineers and the Port is looking to reduce inefficiencies at the Port regarding longer vessels that are currently using the Port today and those in the future. They are looking to improve the ability for these large ships to connect to shoreline electrical power and reduce emissions while at the berths. They are also looking to improve maneuverability and safety, reducing navigation hazards in the Port harbor by this project. Here is our vicinity map with the Outer Harbor Turning Basin being the circle in the upper part of Oakland Harbor and the Lower Inner Harbor Turning Basin in the lower right. A quick view of the Outer Harbor Turning Basin Project description. It is expanding the turning basin by 21 acres, dredging approximately 1.34 million cubic yards [of sediment] down to 50 mean low low water. All of the sediment that is clean and suitable for reuse will be reused from this project, likely at a wetland restoration project. And it also includes electrical upgrades at Berth 26. The Inner Harbor Turning Basin, as we have talked about before, is a bit more complicated. It expands the turning basin by 20 acres. It demolishes portions of Howard Terminal and Alameda Landing, as well as partial demolition of two warehouses at the Alameda Landing site. They are looking to remove portions of wharfs, rock dikes that were put in place in the 1980s, historic fill from the 1930s and 1940s, and sheet piles and pilings underneath the wharfs. They will then install new bulkheads and a subtidal retaining wall to make sure the slopes in the Bay are stable. And then dredge 825,000 cubic yards of sediment from the site, bringing the expanded area also down to 50 feet [MLLW], matching the existing Inner Harbor Turning Basin and Channel. Similarly, they will beneficially reuse all suitable material at a wetland restoration site. Material that is not suitable would likely be disposed at a landfill after drying. The construction debris will either be recycled, reused, or disposed of at an appropriate landfill. Lastly, they will install additional electrical infrastructure to support the electric dredge. As we have mentioned with this project before, this is a project that reduces fill in the Bay by 7.6 acres, which thereby expands the surface area and volume of San Francisco Bay. Lastly, it removes approximately 400,000 cubic yards of solid fill.

Our decision-making framework: The McAteer-Petris Act and the Bay Plan include policies that the Commission looks at to reduce impacts to the coastal zone under the Coastal Zone Management Act. This is the list of policies that you are familiar with and are included in the Staff Recommendation as a reminder of the different issues that we are addressing today. The issues are listed in the Staff Recommendation.

First is to determine whether or not the project is consistent with the Commission's laws and policies regarding fill. Safety of fills, water quality, the natural resources including fish and wildlife, water quality, mitigation, whether the dredging policies and port policies are being met as well as sea level rise and navigation policies. That is question number one; not complicated at all.

Question number two is whether the proposed project is generally consistent with the 1996 Seaport Plan. I call that one out specifically because the Commission did just recently approve a new Seaport Plan, a revised and improved Seaport Plan. But as it has not been approved by the Office of Coastal Management and NOAA yet, we are still working with the 1996 version of the Seaport Plan.

The third issue, which is a very important one, is whether or not the Corps and the Port have conducted equitable and culturally relevant public engagement per our environmental justice policies; and whether or not there have been disproportionate impacts that have been identified and mitigated for in collaboration with the disadvantaged communities, consistent with our environmental justice and social justice policies. Lastly, whether the proposed delay on providing public access to the site and design and scenic views until the next phase consistency determination is appropriate at this time.

It is important to also note what the environmental justice concerns that have been raised are; they have been raised both in the CEQA document reviews and the NEPA document reviews, as well as to the Commission itself. The community is concerned about significant and unavoidable impacts to air quality, that is noted in CEQA; and also noise from both the dredging equipment and the construction equipment during the three-year construction period. They are also very concerned that widening the two turning basins will induce growth over time, and that would contribute to worsening air quality, traffic and construction safety issues from additional trucks taking material offsite. The third that we have heard, is that they are specifically concerned about how the contaminated soils or sediment would be disposed of, and they do not want to see contaminated soils sent off to other environmental justice communities such as those around Kettleman City. Unfortunately, most of these issues are not issues that the Commission has authority over because they are air quality issues, and they are outside of our jurisdiction and authority under the McAteer-Petris Act and our policies. So, our focus here for environmental justice is on public engagement and also mitigation for impacts with the contaminated soils.

So, with all of that as reminder and background refreshment, currently the Staff Recommendation includes a number of special conditions to address the different issues. Remembering that this is a first phase consistency determination, there is a clear statement in the Staff Recommendation that this is not an authorization or concurrence for construction, it is only for the general planning phase of the project. Secondly, it requires the Corps to come back to the Commission at the Pre-Construction, Design and Engineering Phase, which they intend to do. It requires the Corps and the Port to work together to provide public access or public amenities if the Commission and the staff working together with the two find that it is necessary under our law and policy.

It includes special conditions to evaluate the sediment, soil and groundwater contaminants where there is information that is lacking at this time, and to provide that information to the Commission to help understand the final disposal and beneficial reuse options of the project. It includes minimization measures to reduce impacts to species. It again includes the beneficial reuse of all suitable sediment, which the Corps and the Port intend to do. And inclusion of property interest documents, once the Port has provided them to the Army Corps of Engineers through the lands easements and right of ways clause of their project, including those associated the city of Alameda's Alameda Landing. And lastly, there is more in there but lastly, the summarized one includes public engagement and requires the Corps and the Port to work together to continue to work with the surrounding communities regarding the environmental justice issues, particularly to look at areas where mitigation and minimization measures can be further increased within the Commission's authority. With that, I will pause and stop for Commission discussion or questions.

Chair Wasserman continued: Thank you. With the presentation complete I invite anyone from the public who would like to make a comment to raise your hand in Zoom or line up by the podium to speak if you are here in the room. I do not see anybody in the room. Do we have anybody on Zoom? Ms. Margaret Gordon: My name is Ms. Margaret Gordon. Okay. I am a resident and one of the founders of the West Oakland Environmental Indicators Project. Thank you all for letting me have the ability to speak on my experience of the turning basin regarding community engagement. You all called it public engagement; I am calling it community engagement. There has been a lack of communication, community engagement, and I am referring to the issue of collaboration and coordination. The Port nor the US Corps of Engineers has only had one communication meeting with us through the last year of what you would call anything in relationship to talk about environmental justice, community engagement, and how do we collaborate to deal with some of these mitigations. They have refused to talk about a traffic study; just refused to talk about a traffic study during the construction phase of this process. And that we should have a traffic study for the number of ships, number of containers that's going to be on the ships. We also need to be relating to the environmental justice impacts of West Oakland through AB 617, which they will not address, and which the Port is a member of the steering committee. We have tried to have this conversation and it has been moot. They do not want to address, they do not want to even have conversation about Biden's April 23, 2023 issue about environmental justice out of the White House. They won't even, haven't considered, any other things that references environmental justice, nor what is an emission reduction plan or any sort of things like that. I feel as though we have been very unfairly treated and not recognized as stakeholders or partners in this project with Corps engineers or the Port of Oakland. They have done everything to be dismissive of us. I have attended all the public meetings. There has been more staff than community, the impacted community that attend these meetings. So, there is a lot more work that has to be building on. How do we come to some real resolutions for mitigation for this project. As of right now, the Port only has about 19 electric trucks. They didn't tell that. And we know at any given time, any ships that come in will back-up traffic, and the trucks traffic back into West Oakland and there is no regular traffic patrol staffing of enforcement. Chair Wasserman continued: Thank you.

Questions and comments from Commissioners?

Commissioner Tam commented: Thank you, Chair Wasserman. Both the Port of Oakland and the city of Alameda are in my Alameda County Supervisorial District and I note that the City of Alameda did submit a letter with public comments that was discussed in the staff presentation as well as in the Staff Report. The clarification that I am seeking is, there is a statement in the Staff Report on public access that at the Alameda Landing site, the City of Alameda's Planning Master Plan requires the expansion of the adjacent Bohol Circle Immigrant Park, which is essentially the first Filipino and the oldest Filipino population, and a park was built to honor that heritage. It is a waterfront park. Should the sections of the warehouses that are being demolished that is part of this project, it is covered, I think, under BCDC Permit Number 2018.004.00, and it requires that there is public access as an amenity, but it does not necessarily enable the Commission to require the expansion of the Park once they take out potentially 40 percent of the private property near Alameda Landing, the 6 acres out of the 18 acres. Is that your understanding as well that the Commission does not have that authority?

Ms. Goeden replied: I do not think the Staff Recommendation intended to say that the Commission does not have that authority. What the Staff Recommendation intended to say, and I am trying to find it quickly to see if I was incorrect in the statement, is that the current permit does not require the expansion should the warehouses be demolished because that permit did not anticipate this project nor the demolition of those two warehouses. The Commission, I believe, does have the authority, should we require public access for this project, to require that expansion if that is the appropriate public access consistent with our law and policy, when we get to that phase of the consistency determination. Chair Wasserman added: Or the permit. Ms. Goeden agreed: Or the Port of Oakland permit, yes, thank you.

Commissioner Tam continued: So, what consideration does that have for the Alameda Landing Master Plan? Ms. Goeden answered: The Alameda Master Plan is part of the local discretionary approvals that are required as part of a BCDC application. When BCDC receives an application from the Port of Oakland for this project, and we are anticipating that in 2026, the Port would have to show that it has all local discretionary approvals for the land at which the action is being placed, including the City of Alameda. My understanding through conversations with the staff at the City of Alameda is that the City of Alameda would require a Master Plan amendment to change that requirement, if necessary, for this project to go forward or to address the public access issues. I do know the Port of Oakland and the City of Alameda have been in conversation. I would welcome Justin if he is interested in commenting further on that, or Matt Davis also from the Port of Oakland. Thank you, Matt.

Mr. Davis commented: Matt Davis at the Port of Oakland. No, I think you have characterized it very, very well. We obviously will be continuing to discuss this with the City of Alameda and are aware of their comments on our EIR.

Commissioner Tam continued: And I understand also from the Staff Report that the Corps of Engineers will condition, obviously, the acquisition of the private property, which is part of that master planning process, and that if that land is taken out, there will be some sort of mitigation that will be a part of that discussion between the Port and City of Alameda; is that correct?

Ms. Goeden responded: So, my understanding of the process is with the Army Corps of Engineers' Feasibility Study, and moving forward with the Pre-Engineering, Construction, and Design Phase, that the Port of Oakland is responsible for getting lands easements and right-of-ways for the Army Corps of Engineers, and provide that to them. The Port of Oakland would need to work with the City of Alameda. That is not our requirement at this phase, that is the Army Corps' requirement with their local project sponsor. And I welcome either of the two entities to speak to that if I have mischaracterized or if there is more to say. I have got confirmation from the Army Corps of Engineers that is a correct description.

Commissioner Tam continued: Okay. My last comment/question has more to do with should the land area that is considered for elimination going forward, a lot of this land area was fill that predated BCDC; and because of the usage in the past there has been some concern over the toxicity of the soils. Is this an issue that is going to come up in terms of mitigation with the acquisition of the private property that is on the Alameda side?



Ms. Goeden explained: At the Alameda Landing side there is, and I do not have it in front of me right now, but there is a Department of Toxic Substances Control, some oversight of that property. I believe it was an agreement between DTSC and potentially the City and Alameda when they looked at redeveloping the site. The report says that there is some potential for, some technical terms here, some marsh crust, which is the top crusty part of the marsh back in the early days from coal gasification; and so there is some potential. It is not necessarily known, that at that marsh level, which again, in the 1930s was when this fill started to occur, and that coal gasification could have left polycyclic aromatic hydrocarbons, PAHs on the site, your oils and greases. When the soils are being tested, the fill soils and the material that will be dredged beneath it. We will be looking to the Corps and the Port to test those materials to understand better the potential toxicity there. There may not be any but there is some potential. So, we will test it to see whether it is clean enough to beneficially reuse, whether there are any mitigation measures needed or minimization measures needed from that contamination, during the construction phase. But that is yet to be seen based on the testing that is required in the special conditions.

Commissioner Ahn was recognized: I have two questions for staff. I did listen very carefully to the discussion in our last meeting as well as public comment, particularly Earth Justice's comment on behalf of West Oakland Environmental Indicators Project. And then I also want to flag for this Commission's attention the EJ Advisors' letter that is before this Commission, it is attached to our agenda. This is particularly from EJ Advisors Feliciano, Garcia and Saena talking about the need for full environmental review prior to any approvals that this Commission may undertake. I was wondering if staff could respond to that. Then the second major question I have is, what are the specific mitigations that the Commission has somehow required or urged, perhaps, the Port and Army Corps of Engineers to undertake on this project? So those two questions.

Ms. Goeden responded: Thank you, Commissioner Ahn. I may also call on the Port and the Corps to help answer this question. But regarding whether or not full environmental review has occurred. As Michael reviewed last meeting, there are two laws, the federal National Environmental Policy Act and the California Environmental Quality Act. The Army Corps is responsible for the NEPA review and what they did is they did an integrated feasibility study with an environmental assessment. In an environmental assessment, it is required that the project finds no significant impacts to meet the environmental assessment level of review rather than an environmental impact statement. The Corps did an environmental assessment under NEPA and found that they had no significant impacts with the minimization and mitigation measures that they included in their review. That included a number of items for different parts of the of the project. So, for the wildlife issues it is silt curtains, noise reducing mechanisms for pile driving, bubble curtains, vibratory hammers instead of strike hammers, and different items. They also acknowledged that they needed to do additional testing and committed to doing that to address the contamination, potential contamination issues. They have looked at marine mammals and are committed to working further with both Services, the NOAA Fisheries and US Fish and Wildlife Service, on reducing impacts to the marine mammals. They did go to Headquarters, as has been reported out in the comprehensive benefits package, and asked for both 100 percent beneficial reuse of the material and also an electric dredge. Headquarters approved the ability for them to beneficially reuse the dredge material instead of

disposing of it in the ocean or in-Bay. That greatly increases the benefits of the project to the environment. On the electric dredge, the Army Corps [Headquarters] found that that was more a mitigation measure, particularly for air impacts that would fall under the state or local project sponsor responsibilities, and so the Port of Oakland stepped forward and committed to funding the use of an electric dredge to reduce air quality impacts. Additional air quality impacts that are included in the project are using the best available low emissions engines, which are generally considered Tier 4 engines for construction projects, and so those were the items that were included in the NEPA document.

Similarly, the CEQA document followed on, but CEQA is under the California Environmental Quality Act, and in that case, there was a more extensive review done because they completed a full EIR rather than just a mitigated negative declaration or other lesser environmental review. To the extent that CEQA was followed, I believe that they have done full environmental review. But where the question I think remains for the environmental justice community, is the Corps and the Port both focused 100 percent on the construction of the project, which is a three-year project, rather than the operations and maintenance that proceeds after the Port has the widened basins, and the potential induced growth associated with having wider turning basins, making it more efficient and safer for larger vessels to come in with greater amounts of cargo and a single shipment. I will stop there because that is outside of our purview as far as Commission authorities, but I would welcome the Port or the Corps if they want to say more about that environmental review process. No, you're good?

Okay. Sorry, Commissioner Ahn, would you mind repeating your second question? Commissioner Ahn stated: I heard in part some. It was about mitigations that the Commission was hopefully pushing along. I heard a bit about the electric dredge, which I will have more thoughts on later, and the beneficial reuse of materials. But with that I will just conclude for now. Ms. Goeden added: I will also just note, thank you, that there are additional items that are listed in the Findings section of the Staff Report, that because we are at the initial feasibility stage, it is not really appropriate for us to make those requirements now because we do not know the full scope of the project. But it both notes to the Commission where other potential mitigation and minimization measures would be helpful. It also lets the Corps and the Port know what else the Commission will be looking for as we move forward with the project.

Vice Chair Eisen: Thank you, Brenda, for your presentation. You said at the very beginning that the reason for this project, at least one of the core reasons for this project, is to promote efficiency and thereby to reduce emissions. It sounds like there has been some effort to control emissions in the construction phase, but is there going to be a time, or does it already exist, where we will know or have some idea of what positive impact on emissions this project will have in the future? How it will, in fact, reduce emissions; and whether that benefit of the project will offset whatever emissions are caused by the construction? Is that going to be something we will learn in another phase of this 2025 or 2026? Ms. Goeden explained: The CEQA document does address some of that issue, but I am going to call on the Port perhaps to come and address this because this is really their expertise and not mine. Either Matt or Justin or maybe Erika, either of you would be welcome to the podium. Thank you.

Mr. Davis addressed the Commission: Thank you. Yes, the EIR actually does cover extensively what a No Project Alternative would mean comparative to building the project and allowing ships to come in. So, it does actually detail quite specifically projecting into the future with the current ships that are larger that are currently calling at the Port and are subject to delays due to turning basin restrictions. So, it would actually allow them, all of our berths are electrified. That is one of the major goals is to allow these ships with the larger classes of vessels that are all shore-power capable, to actually come into port. And then with regard to, I do feel like I have to acknowledge the statements that were made about public engagement unless you have follow-up questions on that.

Vice Chair Eisen replied: I am just wondering if you could give us a general sense of that. I appreciate being referred back to the documents. We are going to be reducing emissions beyond what we are going to be creating to construct this, right? Mr. Davis replied: Absolutely, yes. It is not just within the construction period; it is within the operations period forecast into the future decades. There is an overall lowering of emissions comparative to if we do not have the project and the larger turning basins. Vice Chair Eisen continued: Is it quantified in terms of like 20 percent less than we would otherwise have? In what way can we assess the magnitude of that benefit? Mr. Davis replied: Right. I don't have the document exactly in front of me and I haven't committed it to memory, but we can certainly follow up with you to give you that detail. I wouldn't want to misspeak in this forum. Vice Chair Eisen acknowledged: Okay, I would appreciate that, thank you. Mr. Davis replied: Yes, absolutely. Vice Chair Eisen acknowledged: Go ahead.

Mr. Davis continued: Yes. And just regarding the public engagement I do want to say that we went over and above any statutory requirements. We extended the comment period for our EIR to 77 days, over and above the 45. We sent mailers out to over 80,000 households in all neighboring communities. We held four public information sessions, two of them virtual, to allow for the maximum in public participation. To the extent that we can't mandate that people come to meetings, I can only say that maybe that is an indication that it is not as controversial of a project as some might want to claim to be. We are obviously committed to continuing dialogue. We just finished, the comment period just closed. We are going to take in all the comments that were received. We will review each and every one of them carefully and see how we can strengthen the mitigations that we have already outlined, which Brenda did a great job of summarizing some of the high points of that. And furthermore, we meet every month with Ms. Gordon and colleagues from the environmental justice community. This has been an ongoing effort and dialogue that we continue to have with them. We are committed to taking in the best thoughts that they have. We are also equally committed to working with them on all of our zero emissions and electrification efforts, which are taking place at a rapid pace and we are just extremely enthused at the federal and state support that we are getting with grants that are helping to electrify the Port. It is with that same open commitment that I just want to make sure that while we are all going to have our disagreements, we are not always going to have the same thought processes, the goals are aligned. So, thank you very much.

Ms. Powell was recognized: Erika Powell, Project Manager for the US Army Corps of Engineers. I just wanted to second what Matt just said regarding public engagement. On this study we have had multiple meetings with the general public. We have had neighborhood council meetings, meetings with the resource agencies and with the local agencies. We have had two meetings specifically with the West Oakland EIP. I believe that we had an in-person meeting at the Senior Center in West Oakland in February. Yes, it is hard to get folks to attend in person because they are still afraid due to the pandemic. But we have done what we can to get folks to come to these meetings. So, I just want to reiterate, there is a slide in the PowerPoint presentation from our meeting on December 7 that has all the meetings that we hosted. The neighborhood council meetings too as well if I didn't mention it earlier. I just want to highlight that we have really tried. So, thank you.

Chair Wasserman continued: Other comments or questions from Commissioners?

Commissioner Ahn chimed in: I will just explain briefly what my vote will be today. Again, having listened to our own counsel's presentation very carefully last time, I do realize that many of the legal issues raised by the environmental coalition letter are outside BCDC's jurisdiction. But what I do think is within our jurisdiction is determining whether the Army Corps of Engineers has adequately addressed community concerns and whether there are disproportionate impacts that can be essentially identified and mitigated as part of our determination. Looking through the materials and hearing public comment I think my answer to that is still no, which is why I will be abstaining today in today's vote. I can see us getting to the second phase, consideration two, where I am just a flat no. I do not think an electric dredge is good enough. I also realize there may be some beneficial reuse of the dredge materials too. But the short of it is, I understand there have been community engagement meetings, but I am I am not impressed, maybe is the best way to put it. So that is my vote today, thanks.

Chair Wasserman asked: Any other Commissioners?

Commissioner Zepeda commented: Just hearing from the individual that made public comment, one of her comments was in regards to further studying the traffic impact. I do not know if that could be part of the motion if it was made, to make sure that all that is studied and making sure that the community was heard in their request. I do not know if we have the ability to put that into a motion as we vote or not. Mr. Scharff chimed in: It clearly would not be the time on a consistency determination right now. Maybe when this comes back for permits and all of that. But that would not be the appropriate time, on a consistency determination. Commissioner Zepeda acknowledged: Okay, thank you.

Chair Wasserman commented: Any other Commissioners? A couple of comments. I want to be very clear to the Corps and the Port and the community that this Commission's standards for community outreach in the environmental justice and social equity contexts are different than the CEQA requirements or the NEPA requirements. While we certainly hope over time, and as quickly as possible, that our standards will be included by applicants in their CEQA process because it is going to be much more efficient, they are different. Obviously, there are some differences of opinion on how many meetings there's had and how much opportunity there has been. I suspect the real core of that is what is almost always at the core of these issues and that is how much the comments have actually had an effect on the project, and that is going to depend on project by project. I think in the context of our decision today, as I said at

the very beginning: one, this is the first of at least three separate decisions, including this one, that this Commission will have. While we have, I believe, the ability to put conditions on our coastal zone management consistency determination, those are really advisory. Conditions we put on the permits are not advisory, they are real conditions. So, I hope that both the community hears, and the Port and the Corps hears, that in the course of the remainder of this process when many of the more details of this project will be fleshed out, that the public discussion needs to continue. I am not saying you have not heard that or that is not your intention. I just want to make it clear that from the perspective of this Commission, the public engagement needs to continue robustly and vigorously. With that I would ask for the Staff Recommendation.

Ms. Goeden read the following into the record: The staff recommends that the San Francisco Bay Conservation and Development Commission conditionally concurs with the US Army Corps of Engineers' first-phase Consistency Determination, BCDC Consistency Determination C2023.003.00, that the US Army Corps of Engineers' conceptual plan for the Oakland Turning Basins Widening Project is generally consistent with the Commission's Amended Management Program plan for San Francisco Bay.

The project would expand the Outer Harbor Turning Basin by 21 acres through dredging approximately 1.34 million cubic yards of sediment, and the Inner Harbor Turning Basin by 20 acres through removal of portions of two wharves and associated infrastructure at Howard Terminal and Alameda Landing and construction of two new bulkheads at the same, a subtidal retaining wall, and dredging. All suitable dredged material would be beneficially reused, and non-suitable material would be disposed of at a landfill, as would the construction debris that is not recycled or reused. I want to also note that we are changing on page 5, Item 2.e, the number 635,000 cubic yards to 825,000 cubic yards. And lastly, the construction of this project requires a second phase consistency determination and a McAteer-Petris Act permit.

Chair Wasserman acknowledged: Thank you. Now I would ask for a motion. Commissioner Showalter chimed in: I would be glad to move this. I think that it is very important for us to go forward with this first phase consistency determination so this project can move through the process. I am very pleased to see the inclusion of all the beneficial reuse in the project. That is really a landmark, and it is a landmark we need for our sea level rise protection programs going forward. I am also really pleased about the use of electric dredges that will reduce emissions dramatically while the construction takes place. That said, clearly there is a need for more engagement with the communities to make sure that the environmental justice issues are all understood by all parties and people are working in the same direction. I would like to make this motion and I hope my fellow Commissioners will support it.

Chair Wasserman asked: Is there a second? Vice Chair Eisen replied: Second.

Chair Wasserman noted: Vice Chair Eisen seconds the motion. Any further comments by Commissioners?

**MOTION:** Commissioner Showalter moved approval of the staff recommendation, seconded by Vice Chair Eisen.

**VOTE:** The motion carried with a vote of 16-0-3 with Commissioners Addiego, Benson, Burt, Eckerle, Eklund, Gioia, Gorin, Gunther, Moulton-Peters, Ramos, Ranchod, Showalter, Vasquez, Zepeda, Vice Chair Eisen and Chair Wasserman voting, “YES”, no “NO” votes, and Commissioners Ahn, Peskin and Tam voting “ABSTAIN”.

Chair Wasserman announced: The motion passes. I thank everybody for their work and their consideration. I believe and hope that everyone involved has listened to the comments as this project proceeds forward.

**10. Briefing on Planning Activities in the Suisun Marsh.** Chair Wasserman stated: That brings us to Item 10, which is a briefing on planning activities in the Suisun Marsh. The Executive Director would like to make a few comments before Erik Buehmann, our Long-Range Planning Manager, presents the item.

Executive Director Goldzband commented: Thank you, Chair Wasserman. Whenever staff presents on the Suisun Marsh, staff always likes to remind Commissioners that the policies, statutes, et cetera, that you are all very familiar with, with regard to what happens around the Bay, are different in the Suisun Marsh.

For a long time the Suisun Marsh in that respect was really treated as sort of the redheaded stepchild of BCDC. Many times it has been on the sidelines, sometimes it has been forgotten, no matter how many times Supervisor Vasquez or Supervisor Spering would certainly ensure that we talk about it.

But over the past few years across the agency, we have been working to rectify that. To reincorporate the Suisun Marsh and its authorities as a priority and Erik really has put that at the top of the agenda. That is why we are doing a presentation on the Marsh today and why it is really, really important.

For those of us who live in the East Bay and may have to go to Sacramento, we see the Marsh every time we do. It is over on the right-hand side of the highway. It is an absolutely remarkable thing to look at as you drive, although you want to keep your eyes on the road, because it changes so much.

We certainly hope that you as Commissioners have an interest in the Marsh so much that you will call Supervisor Vasquez and say, take me there, because we think it really merits that type of attention. So, with that, Erik, go ahead.

Mr. Buehmann presented the following: Thank you, Larry; thank you, Chair Wasserman and Commissioners. I am Erik Buehmann, I am the Long-Range Planning Manager for BCDC. I am going to give you a brief update on the planning work BCDC has done in the Marsh over the past few years. It will include a little primer on BCDC’s authority in the Marsh, give you an overview of where we might be headed at BCDC in incorporating the Marsh in our more regional planning efforts.

The Suisun Marsh is the largest contiguous brackish marsh in the United States. It constitutes 10% of the total remaining natural wetlands in California.

The Marsh plays an important role in providing wintering habitat for waterfowl for the Pacific Flyway; and because of its size and estuarine location, supports a diversity of plant communities.

The Marsh is also a very popular spot for recreational activities, in particular as we will talk about in a little bit, waterfowl hunting.

In 1974, the legislature passed the Suisun Marsh Preservation Act, which we call the Marsh Act, which laid the groundwork for BCDC's more specific authority in the Marsh. BCDC regulates in the Marsh by ensuring the development is consistent with the Suisun Marsh Protection Plan. We will call it the Marsh Plan or Protection Plan.

However, when the Marsh Act was written, it was recognized that local agencies and governments in the Marsh should have the primary responsibility in carrying out the goals of protecting the Marsh through the preparation of what's called the Local Protection Program (LPP). Seven local governments and agencies obtained Commission certification of components of the LPP, with each component containing elements for guiding the land use decisions of the local governmental agencies within the Marsh.

BCDC has authority to issue Marsh Development Permits for development within an area identified as the Primary Management Area of the Suisun Marsh. In this slide the Primary Management Area, the PMA, is outlined in blue and it is the area, the interior area of the Marsh. BCDC also exercises its McAteer-Petris Act permitting jurisdiction where it applies in the Suisun Marsh. So, BCDC actually has overlapping jurisdiction in the Marsh with the two different laws.

The area outside of the blue line is the Secondary Management Area, where local governments retain permitting jurisdiction. Permits issued by the local governments can be appealed to BCDC.

Managed wetlands play an important role in the Suisun Marsh and have a long history. Managed wetlands are areas diked off from the Bay and used for waterfowl hunting, game preserves, or agriculture. Most managed wetlands within the Marsh are currently maintained as private waterfowl hunting clubs and as refuges on publicly owned wildlife management areas.

Privately owned managed wetlands shown in white in this slide, you can see little parcels, use a variety of infrastructure including levees, pumps and water control structures to artificially flood and drain their properties on a seasonal cycle to grow plants that waterfowl use for food, thus attracting the animals for the hunting season. This use provides crucial habitat for a variety of species including nesting and foraging opportunities for birds on the Pacific Flyway.

In addition, over the past few years a number of these managed wetlands have been conveyed into public ownership or to restoration organizations and have been restored to tidal action.

Over the past five years, BCDC staff have worked to improve BCDC's planning in the Marsh and build relationships with our fellow agencies and stakeholders. I will touch on a few of those efforts briefly, not necessarily in chronological order.

Notably, in the past few years BCDC has certified several amendments to the Local Protection Program, which I referenced earlier. In 2019, BCDC certified clean up and clarification amendments for the Solano County element of the LPP.

Then in 2022, some of you were around for this, the Suisun Resource Conservation District updated elements of the Local Protection Plan and you certified those updates.

The Suisun Resource Conservation District (SRCD) is a Special District of California and represents private landowners in the Marsh and has the primary local responsibility to regulate and improve water management practices on privately-owned managed wetlands, or duck clubs really is what they are, within the Primary Management Area. SRCD updated the management plans for each duck club and presented those to the Commission last year.

These plans were originally put in place in the early 1980s and had never received a comprehensive update. We are indebted to the work of SRCD staff in working with all of the landowners to accomplish an update to 141 plans. Having updated plans for water management exempts those duck clubs from needing to get a BCDC marsh development permit for most of their maintenance activities.

Collaborating with SRCD, we have developed a streamlined process to update those plans administratively annually, to reflect changes in operations. Whereas before when they were started in the 1980s, they were not really updated very much. Now we have a process in place to update them routinely. BCDC Successfully approved updates to the plans administratively earlier this year, so the process is working.

To facilitate those annual updates, a few years ago BCDC and SRCD developed a GIS mapping platform called GEOMARSH to more easily track and update changes to management plans for each duck club.

The map includes layers representing management infrastructure and activities including water control structures, pumps, fish screens, things like that. It is password protected for use by SRCD and BCDC.

So that was a big success, so far. Now to shift to another example of collaboration.

With some additional funding from our NOAA 309 grant that we received, BCDC has engaged in conversations with stakeholders around the Marsh on various issues regarding BCDC's regulatory and planning work.

In February 2020, right before the pandemic hit, BCDC held a stakeholder workshop in the Marsh to review the Suisun Marsh Protection Plan to identify issues and evaluate ways that the Plan could be updated in the future. The workshop was attended by 35 individuals from 17 different groups. We also had subsequent follow up conversation with stakeholders on key topics.

In the next few slides, I am going to go over some of those priority issues with the Suisun Marsh Plan that were identified in that discussion and over the last few years. A lot of those touch on broader issues of BCDC's work in the Marsh and describe some of the work our Planning and Regulatory staff have subsequently done on those issues.

I am going to highlight the top 3 issues that emerged from that outreach.



First, stakeholders were concerned about the threat to managed wetlands and restored wetlands from sea level rise and climate change. While restoration was important, stakeholders also emphasized the unique benefits that managed wetlands, the existing managed wetland uses there, to the Bay-Delta ecosystem.

The State Department of Water Resources as well as some other public agencies have been restoring managed wetlands to tidal action over the years. Some of that restoration is driven by mitigation requirements for water distribution in the Delta.

Sea level rise raises challenging questions about whether to adapt managed wetlands as they are by raising levees to preserve the character of those managed wetlands to preserve that use or restore them to tidal habitat.

Other questions include how to adapt critical water, rail, and road infrastructure in the Marsh, as well as how to protect the communities that ring the Marsh, like Suisun City.

Second, some stakeholders were concerned about the potential impacts to habitat restoration projects from public access. This question of how BCDC should require public access for restoration projects and avoid impacts to critters from having people around is something that we have heard throughout the Bay Area and even through our Fill for Habitat Amendment a few years ago, so it is not limited to the Marsh.

BCDC's Bay Plan policies on Public Access already include provisions that address this careful balance, and it is something that we are currently looking into more deeply as part of a study we are conducting on public access, and I will discuss that in a minute.

It is particularly challenging to incorporate public access within restoration projects in the Marsh, because the projects often happen on parcels that are disconnected from major roads and other public access areas, some are on islands and only accessible by boat. Sometimes these sites must be accessed through neighboring private property where there is no current public connection.

However, in our outreach, stakeholders felt that wildlife-oriented public access should be encouraged in an appropriate way, better advertised and better maintained. Trails can be difficult to locate. There is a vibrant public access boating community in the Suisun area, including kayaking and boating, with some limited launch facilities. Obviously, hunting is a major recreational activity, which makes it different from most of the rest of the Bay Area.

A third identified priority of stakeholders was maintenance of existing facilities. Aside from restoration, there is not a lot of new redevelopment in the primary management area of the Suisun Marsh. Most of the activities there are maintenance activities for legacy uses like duck clubs. As a result, stakeholders wanted to ensure that protection of these uses remained a priority and that there were smooth processes and plans that allow for that maintenance.

It is the same with some of the other infrastructure uses in the Marsh like the Department of Water Resources' water infrastructure. SRCD and BCDC have made strides here specifically with the managed wetlands when the management plans for the duck clubs were updated last year as part of the LPP update.

Finally, an important element highlighted by stakeholders across all these conversations has been to better coordinate policies and processes between agencies. Larry just mentioned there is a perception that BCDC has sat on the sidelines in the Marsh and has historically not made it a priority. Over the past few years, as I mentioned, BCDC staff in Planning and Regulatory have made efforts to improve our relationships with these stakeholders, agencies and organizations in the Marsh.

As I discussed earlier, we have built a close, collaborative relationship with the Suisun Resource Conservation District, who have been critical partners for us in all our efforts in the Marsh, not only in the LPP update that I mentioned but basically everything I talked about so far.

Over 2020 and 2021, BCDC planning and regulatory staff engaged in a series of interagency discussions facilitated by our friends at the Delta Stewardship Council with the Department of Water Resources, California Department of Fish and Wildlife, US Fish and Wildlife Service and the Bureau of Reclamation about public access to learn more about the different agency mandates and better coordinate regarding restoration of habitat in the Marsh.

We have been meeting with the Delta Stewardship Council, which overlaps jurisdiction with BCDC's jurisdiction in the Marsh, quarterly over the past few years, to help connect and to coordinate our work.

We have also built new relationships through various outreach efforts, such as joining events held by Sustainable Solano, a nonprofit organization, to hear from folks in the community about their priorities. Recently, Sustainable Solano has received a BAYCAN grant to engage in community-driven sea level rise planning for nature-based solutions, and Jackie Mandoske of our ART team is on that project management team.

This fall we met with representatives from California Forever, which you may have heard of in the news, AKA the Flannery Associates, a group of developers planning a new, large-scale community in and adjacent to the Suisun Marsh. We advised them on BCDC's jurisdiction, laws and policies in the Marsh.

Based on all of this work, we have determined that BCDC should do a better job incorporating the Marsh into our regional planning efforts. The issues raised by stakeholders over the past few years are particularly acute in the Marsh, but they are of Bay-wide significance. In the past BCDC, like we said, both Larry and I, have treated the Marsh as separate from the Bay Plan and other planning efforts and it is clear that has to change.

The Suisun Marsh Protection Plan is certainly overdue for an update to address many of the issues identified through our efforts in the Marsh. As I mentioned, a central piece of that update will have to be sea level rise and climate change. That has to be a community-led planning process, though.

As a result, any planning process to update the Marsh should be connected to the subregional adaptation plans that are required by SB 272 and will be developed as part of Bay Adapt, using the Regional Shoreline Adaptation guidelines that BCDC plans to issue in 2024.

Meanwhile, we are looking at incorporating some of the feedback we heard through our conversations, some of those issues that have been prioritized and identified in the Marsh into our other planning work.

Beginning in October, we began a project partially funded by our NOAA 309 Grant to study how we have been implementing our public access policies in the Bay generally and in the Suisun Marsh.

The study is a direct consequence of our conversations with our partners in the Marsh, along with other stakeholders around the region. The study is focused on resilience and adaptation to sea level rise. How has public access required by BCDC permits been designed? What conditions have we imposed for public access to ensure it is resilient and adaptable? And where are other opportunities for our process or policy to improve? Where are these challenges? How do we navigate compatibility between public access and habitat, since we know restoration will be a critical part of adapting to sea level rise?

We will collect case studies for permitted projects, review the best available science, engage in internal and external interviews. We expect this study will result in recommendations for future work. These could include future guidance for permittees, particularly restoration practitioners. It could include updates to our existing Public Access Design Guidelines, which currently do not incorporate climate change at all, and development of mapping tools, potentially, for BCDC staff and the public.

As we develop future planning work, it will be critical we incorporate the Marsh in those efforts and not treat it anymore as some sort of separate part of the program.

We welcome Commissioner feedback on these issues and our approach so far. Thank you for your time.

Chair Wasserman acknowledged: Thank you, Erik.

Do we have any public comment?

(No members of the public addressed the Commission.)

Chair Wasserman asked: Any questions or comments from Commissioners?

Executive Director Goldzband chimed in: First of all I want to thank Erik for the presentation and I want to buttress what he said about two things in particular. We talked as staff last month at length with you all, and you all very, very seriously participated in the discussion about SB 272.

While it is not generally seen that the Suisun Marsh is part of the Bay, it most certainly is connected, it most certainly is a vital part of the Estuary, and the water has got to go somewhere. That is why I think it is really, really important just to keep in mind that it is not just the Bay that you may see on a daily basis, it is also the Suisun Marsh that is going to need to be part of the 272 conversation.

The second thing that I want to buttress is the whole issue of public access. There has been an awful lot of discussion, certainly since I have been here, about how public access is either or is not, or should be, or should not be integrated with habitat restoration. Clearly,

you want to protect habitat, but at the same time you want to maximize public access. We are conserving resources for all of us, as opposed to as opposed to us; and we have that “and” in our name.

I want to just make sure that you recognize that Erik and his crew are going to be looking at both of those issues really carefully and coming back to you over the next couple of years, I am sure, with real discussion points that we are going to require you to really sort of think through and help us through. Erik, does that help?

Mr. Buehmann replied: Yes, thanks. Yes, that's right. I think once we finish this public access study we will come and brief the Commission.

Executive Director Goldzband continued: With that, I will say that we had two winners in the Snow White and Seven Dwarfs competition. Both, I should say, from staff. We had a number of people who got five out of the seven right. But for some reason, Bashful and Sneezzy seemed to be behind the curve. But that's the way it goes so thank you very much.

Chair Wasserman asked: And the other five are?

Executive Director Goldzband answered: Doc, Happy, Bashful, Sleepy, Dopey, Sneezzy and Grumpy, which is my nickname around our house.

#### **11. Briefing on Updates to the California Sea Level Rise Guidance.**

Item 11 was postponed to a future meeting.

**12. Adjournment.** Upon motion by Commissioner Peskin, seconded by Commissioner Addiego, the Commission meeting was adjourned at 3:00 p.m.