

San Francisco Bay Conservation and Development Commission

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December 9, 2022

TO: All Commissioners and Alternates

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

SUBJECT: Approved Minutes of December 1, 2022 Hybrid Commission Meeting

1. **Call to Order.** The hybrid meeting was called to order by Chair Wasserman at 1:00 p.m. The meeting was held with a principal physical location of 375 Beale Street, San Francisco, California, and online via Zoom and teleconference. Instructions for public participation were given.

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

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Eisen, Commissioners Ahn, Blake, Brown (represented by Alternate Gilmore), Burt (represented by Alternate Klein), Butt (represented by Alternate Arreguin), Eklund, El-Tawansy (represented by Alternate Ambuehl), Gioia, Gorin, Gunther, Hasz, Lee, Lucchesi (represented by Alternate Pemberton), Moulton-Peters, Peskin, Pine, Ranchod (represented by Alternate Nelson), Randolph (represented by Alternate Mendonca), Showalter, Sperring (represented by Alternate Vasquez) and Wagenknecht.

Chair Wasserman announced that a quorum was present.

Not present were Commissioners: Association of Bay Area Governments (Addiego), Department of Finance (Almy), USACE (Beach), Department of Natural Resources (Eckerle)

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

Alyson Madden commented: I sent some public comments and they are included in the packet. And thank you very much again to staff for helping to get those posted.

I wanted to call and speak. I'm speaking a little bit about the same issue I've raised a couple of times. And the first time I raised it both Chair Wasserman and the Vice-Chair were absent. So there was a third in command leading the meeting so that's one of the reasons I'd like to call back in and speak again.

I realize not all the same Commissioners are present at all the same meetings. And it's the issue about this house boat rule for BCDC and the flattop house boat rule. And I would really like to ask the Commissioners to look at the public comment email and the photos that were sent.

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And at the end of my comments and that meeting the third in command, I'm not sure, could have been listening to something else. But I almost felt like I heard something like a snicker or a laugh. And I hope it's because the situation that we are in is kind of so ridiculous rather than kind of laughing at my comment.

When people have a working operating vessel, it has onboard or outboard motors. It works under its own propulsion. It has a navigation system. They are not allowed; almost any harbor master, marina owner or operator Baywide, will not allow it in if it has a flat top or can even be perceived as visually in their mind, being a house boat.

And so one of them is mine is a World War II Higgins Landing Craft. It's called an LCDP. And it has a navigation and propulsion system. But it has, it's a D-Day landing craft from World War II; original, in good shape. And it's worth a lot of money.

But it has this really cute designer cabin on top. And people will call it a house boat. And I will give the definition and the regulations and I'll say we've even run this by BCDC staff by emails just in general talking about the regulations. And they will call it a non-house boat, house boat and still say you can't move it.

And so, what I'm advocating for is more fluidity in the movement of people and vessels and property because it's like ground to a standstill.

My friend, Nina, there's a really cute sampan, it's called and a retired couple took it between all the marinas on the Bay and she bought it from them. She has had it as a live-aboard at Dock Town for years. But the outboard does work and the out drive. And so, she can turn it on from the inside and navigate it.

And she had it accepted at a marina. And when they saw a photo they yanked her permission. And so, we really want to clear up what I'm calling beauracratc creep. And we would really love your help in that regard. Thank you very much.

Matt Klein addressed the Commission: My name is Matt Klein. I am a live-aboard. I'm actually hold-out, live-aboard at Oyster Cove Marina across from Oyster Point Marina where the Commissioners worked very hard to get a lot of our people placed, a lot of the live-aboards that were here at Oyster Cove.

I'd like to just reiterate the fact that there are a lot of people here in the Bay who do need an increase in the allowable live-aboard percentage in the San Francisco Bay.

We are a benefit not a detriment to the health of the Bay. And I just wanted to make that statement and keep us on your mind.

We're looking for an increase in the acceptable live-aboard percentage. In my opinion, 25 percent rather than 10 percent is not anything that is unachievable for you to do.

It is, in fact, a housing issue. Yes, the McAteer-Petris Act would have to be amended. And I'm here to advocate for you to work on amending that plan.

Anytime we're removed from our households, our vessels by the actions of John Jay Kilroy and that development here at Oyster Cove many of our people have been, they've had no other alternative but to be offered subsidized housing.

Our housing is low income. It's also very low impact on the Bay. And our vessels are our homes.

So I wanted you to keep us in mind. And I'll be returning to this with our organized group later on. And I really encourage you to examine this and amend the McAteer-Petris Act and the Bay Plan. Thank you.

Lucia Lachmayr was recognized: My name is Lucia Lachmayr. I am a teacher. I have lived and my home is my boat at Oyster Cove Marina, the former Oyster Cove Marina. And I'm here on behalf of all my neighbors who have really taken quite a hit.

I know that you probably are tired of hearing from all of us but the reality, the sad reality is there are so many elders that have been displaced and hurt by the closing of that marina.

We've had four marinas closing in the last several years. And there are no viable options for these low-income folks where they can go.

There's some very limited housing on land but the live-aboard option was a low-cost, low-impact option for so many folks. And that has been taken away. And I implore you all to reconsider looking at the BCDC part in the reviewing the Bay Plan.

I know you are doing a lot of re-looking at it. And while you are doing the redoing the Bay Plan because that's what limits the number and percentage of live-aboards that you consider upping the live-aboard percentage to 25 percent.

That is a good thing for marinas. People that live on the water love and respect and take care of the water and the places around it.

And just looking around I can tell you of three people I know. One is an 80 year old woman who is couch surfing until she can get live-aboard status of that she is very lucky that she got a live-aboard place, but she is couch surfing in the meanwhile.

And there is an 82 year old man who basically has a couple of places that he can stay temporarily. And the rest of the time he lives in his car; an 82 year old man living in his car.

Another former neighbor is now at a homeless shelter. It is truly carnage. He is 72.

So we have a lot of veterans who can't afford so much of what is being offered there or they don't qualify. I'm just imploring you to please reconsider and hopefully take a long-term look at the impact of live-aboards on the Bay Area because we have a lot of people that are benefitting from that. And instead of sending them to shelters you could actually create something that is useful for the water and useful for people that aren't super wealthy. Thank you very much.

Chair Wasserman continued: I thank the public speakers. I think the Executive Director will briefly address this issue and we know that staff is looking at it.

Chair Wasserman moved to Approval of the Minutes.

4. **Approval of Minutes of the November 3, 2022 Meeting.** Chair Wasserman asked for a motion and a second to adopt the Minutes of November 3, 2022.

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

The motion carried by a voice vote with no opposition and Commissioner Klein voting “ABSTAIN”.

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

a. We had a Strategic Plan Working Group meeting this morning that went very well. This was sort of Version 2.0, 2.5. The consultants and the staff will take the comments of the Commissioners who were there and the staff members who participated and produce one for the Working Group to review probably without another meeting, we’ll see.

And we expect to present this to you on the second meeting in January which is on the 19th.

b. **Next BCDC Meeting.** Our next Commission meeting will be held on December 15th. At that meeting we expect that we will or may:

- (1) Consider a permit application at Oyster Point in South San Francisco;
- (2) Consider a permit application for 200 Dolphin Street in Redwood City;
- (3) Consider a contract for Bay Adapt technical work;
- (4) Hear a briefing on alternative energy permitting; and
- (5) Hear a briefing on the development of our Bay Adapt Local Government Task Force.

c. Commissioners, we expect to hold a Commission meeting on January 5th, so please keep that on your schedules.

d. **Ex Parte Communications.** This is the time to report ex parte communications if you have not previously done so keeping in mind that you need to do so in writing in any event. And these are items that are adjudicatory in nature. Are there any Commissioners who wish to make an ex parte report? (No reports were voiced).

That brings us to the Executive Director’s Report.

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

Today’s Agenda is something of an anomaly because we only have two items to work through – albeit likely lengthy ones.

Usually, with four or five Agenda items, you deliberate in a way that makes your jobs appear simple. But with only two difficult items today, perhaps it’s just a coincidence that December 1st is the 107th anniversary of the day that Henry Ford implemented his first automobile assembly line for the Model T. I’m sure that there are times when you feel like we’re feeding you Agenda items through an assembly line; today won’t be one of them.

I have two staffing announcements to make this afternoon. First, I want to let you know that we have promoted yet another staff member as part of our expanded Bay Adapt Program. We have selected Dana Brechwald as the new Assistant Planning Director for Climate Adaptation. So she will lead BCDC's Bay Adapt implementation and planning efforts.

For the past four years Dana has been the Adapting to Rising Tides Program Manager where she's worked with regional stakeholders to develop innovative climate adaptation and resilience solutions. Prior to that she worked a few floors above us as a Resilience Planner at MTC/ABAG, focusing on hazard mitigation, earthquakes, and long-term disaster recovery planning. Dana has also worked as a sustainability consultant and with the Salvation Army and the city and county of San Francisco to develop disaster recovery guidelines and best practices.

Dana holds a Bachelor of Architecture degree from UC Berkeley and a Master of Urban Planning from Harvard Graduate School of Design. So she is a Crimson and Golden Bear.

Second, we would like to welcome Kathryn Riley to the Commission staff as an office technician for the Planning Division and the Sediment Management Team.

Kathy majored in English at U.C. Berkeley, so she's a Golden Bear who certainly can read and write! Most recently, Kathryn worked as an administrative assistant at Inside Publications where she managed internal documents, contracts, databases, and mailing lists, independently created sales reports, and worked extensively with the public.

So, unless I hear any objections we'll start our two new staff members forthwith.

Between the influx of funding for our regional adaptation planning work and regular staff churn, we actually have several positions open at this time – a permitting position in Shoreline Development, an enforcement analyst position, an environmental justice position, two scientific positions in planning and regulatory will be coming soon, and we have an opening for a manager in our financial services unit. Please be sure that you keep us in mind when you hear of individuals interested in working on coastal zone issues.

As you've heard various reports about the Oyster Cove live-aboard situation, I want to give you some background and information. You will remember that staff created a strategy that allows the live-aboards to move over to Oyster Point Marina temporarily while they look for permanent housing options.

In late September your staff issued a Letter of Intent to the city of South San Francisco and the San Mateo County Harbor District that detailed our intent to forego for one year enforcement processes concerning the temporary increase in the live-aboard allowance.

And it included a list of requirements to make the program work. The letter clearly indicates that this temporary increase is not a long-term solution for the live-aboard boaters but is being implemented to allow the live-aboard boaters up to one year to find other, permanent housing options.

On October 31st, the City and Harbor District provided staff with a draft of the Action Plan for compliance which includes an initial April 1, 2023 expiration for the temporary berthing agreement with the possibility of extension until August 31, 2023 but not to exceed that time.

The Action Plan also includes a plan for the City and Harbor District to provide monthly updates to the Commission staff on the progress toward finding additional accommodations for the live-aboard boaters and the number of remaining live-aboard boaters in Oyster Point Marina.

The City and Harbor District know that the Commission has approved a year's grace period for those live-aboards, and we shall ensure that the Action Plan is clear and complies with the Letter of Intent's year-long grace period.

Staff will also continue to keep the Commission updated on the compliance and progress at Oyster Point Marina over the course of the next year.

Now for some good news before I finish. You may remember that in 2016 our coalition of the State Coastal Conservancy, Save the Bay, the Bay Institute, and the Bay Planning Coalition successfully inserted into the U.S. Army Corps of Engineers' authorizing legislation a pilot program in which ten projects from across the nation would be selected to demonstrate how beneficial reuse of dredged materials could be accomplished. Two years later, BCDC and the Conservancy submitted a successful proposal that requested 51 million dollars to beneficially reuse 54 million cubic yards of dredged sediment from four federal navigation projects at four wetland restoration projects over ten years, and a pilot project to place dredged sediment in the Bay to test whether and how the tides and current could transport the sediment into the marsh. You recently had a briefing from Julie Beagle on this topic and will see the project again this spring.

Although our project was selected, only the strategic placement portion of that project was funded for reasons that, candidly, did not fly.

So, for six years we all worked with the Corps' chain of command and our Bay Area Congressional Delegation to remedy this problem. After two meetings with the Assistant Secretary of the Army this year we now have full agreement and that the entire project is fully approved.

And the Assistant Secretary has included a 19 million dollar augmentation to the Corps' budget so that the project can be implemented next year.

We want to thank every organization and individual who has made this project a reality, especially the Coastal Conservancy and its awesome D.C. lobbyist.

That concludes my Report, Chair Wasserman, and I am happy to answer any questions.

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

7. Consideration of Administrative Matters. Chair Wasserman stated: For Item 7 we do not have any Administrative Matters so we will jump immediately to Item 8.

8. Briefing on Resilient State Route Projects. Chair Wasserman continued: Item 8 is a briefing on Resilient State Route 37. I think that is looking to the future.

The briefing will be conducted by representatives from both Caltrans and MTC to be followed by the Baylands Group. Our engineer Rafael Montes will introduce the speakers.

Senior Engineer Montes addressed the Commission: Good afternoon, Commissioners. My name is Rafael Montes and I am the staff engineer at BCDC.

Earlier in the year on April 7 the Commission was briefed on the broad scope of the State Route 37 projects including the interim and ultimate solutions to the corridor's critical challenges. Today you will be briefed for the second time on the status and developments of the projects.

Again, BCDC would like to point out the geographical limits of its jurisdiction along Highway 37. The jurisdiction around the project area includes the Bay, certain waterways along sloughs and creeks, and the shoreline band, not indicated in the map for clarity.

This slide describes the various BCDC staff involved in the coordination with Caltrans and MTC and the many activities that BCDC has participated in, in association with the SR 37 projects.

Therefore, I am here to present the representatives from MTC, Caltrans and the Baylands Group who will provide the full details of the project's goals.

The speakers will be in the following order: Andrew Fremier of MTC, Tammy Massengale and Ahmed Rahid with Caltrans, back to Andrew Fremier, and finally, Ariana Rickard representing the Baylands Group. Here I present Mr. Andrew Fremier from MTC.

Mr. Fremier spoke: Well, thank you for that. Andrew Fremier, Deputy Executive Director at the Metropolitan Transportation Commission. I am happy to be here today to present a series of project updates on Resilient 37. As Rafael mentioned, I have got some support from Tammy Massengale and Ahmed Rahid from Caltrans.

We are going to go over the whole Corridor sort of as a reminder of where it is at and what we are doing, similar to what Rafael just said.

We will talk considerably about the Planning and Environmental Linkage Study that is just about to be completed, some updates on the Flood Reduction Project from US 101 to Atherton, and then I will talk about what we call the Sears Point to Mare Island Improvement Project which is on the eastern end of the Corridor; and then we are all available to answer questions.

Just as a reminder, I think it is good to recognize how we have split the projects up, at least in terms of our evaluation corridors. And moving from Novato east we have got what we call Segment A is the US 101 to State Route 121 or Sears Point. We have got segment B that takes on from Sears Point to Mare Island and then segment C which goes from Mare Island to Vallejo.

I also want to mention the map in the upper right because I think it is important to recognize how limited the Corridor access is from west to east. We do have a very circuitous route that goes up around 116. But the primary routes are State Route 37, which is shown in green, and the Richmond Bridge Corridor, which is shown in blue.

And part of the urgency for us getting the project started and underway is to make sure that we do have good routes available for evacuations or emergencies as well as the commute concerns that are also foremost in our work ahead.

It is important to recognize too that the Richmond-San Rafael Bridge Corridor was retrofitted only to a No Collapse Strategy, which means that we believe we will get people off the Bridge in the event of a major earthquake but there is no guarantee that this Bridge could be reopened immediately or at all.

The same thing is sort of true with State Route 37 because it is on a fill and it could be subject to liquefaction. So we feel that it is important for fires or other emergency scenarios as well as earthquakes that we do our best to keep these corridors open and we do our best to keep these corridors as available as possible for multiple uses.

We have shown this slide a few times but I do think it works well for multiple purposes. At the bottom we are showing what our main concern is; and that is that sea level rise between now and 2050 will be significant and we do not anticipate that the Corridor can survive at its current elevation.

We, I think, all have very similar long-term goals which is shown in the middle, of getting a causeway built from Novato towards the Vallejo area as expeditiously as possible. But it is a significant project, costing billions of dollars, and it is also very complex in terms of how it could be constructed, and how it could be constructed in a way that is supportive of the environment.

We do anticipate that this project will take time but we do think at the end of the day it provides all kinds of solutions that are supported by really everybody that is involved in this project from whatever side of the story you are on.

We are talking more today, though, about the upper column, upper row, which is the interim projects. In particular the Sears Point to Mare Island Improvement. This has caught a lot of people's attention because we are proposing to add an extra lane on the corridor that is currently one lane in each direction from Sears Point to Mare Island.

We do think it is extremely important to address equity concerns about the workforce that is in the east that works directly in the west and is subject to significant delay in both directions.

We do think it is an opportunity as well to provide transit and carpool opportunities in the Corridor for the first time. As we all know, there is no advantage today to driving in the Corridor in a transit vehicle, or a high occupancy vehicle, and therefore we have very few of them, in fact, no transit at all.

But we do think that we are really open and really have committed to working on advancing a lot of the restoration goals and improving public access and resiliency in the Corridor; and we believe that the projects that we are going to talk about today really set the stage for how we can get working on something that will take multiple decades to complete.

So with that I would like to introduce Tammy Massengale. And as I learned today, this morning, this apparently is Tammy's last presentation on the Project and I wanted to thank her personally for the work that she does. I think as you probably have seen her before in the past, she does a fantastic job of explaining a very complicated process called the Planning and Environmental Linkages Study. So, Tammy, thank you for your work and the show is all yours.

Ms. Massengale presented the following: Great. Thank you, Andy, really appreciate it. Good afternoon, Commissioners. My name is Tammy Massengale and I am with Caltrans Headquarters and have been one of the co-leads for the State Route 37 Planning and Environmental Linkages Study.

The Planning and Environmental Linkages Study is a Federal Highway Administration initiative to bridge the gap that often occurs between planning and the environmental review process. Caltrans also incorporated CEQA agencies into the PEL process.

I wanted to let you know that Caltrans in coordination with MTC and the four North Bay County transportation authorities are completing the first PEL on the state highway system in California. The PEL Study considered the entire Corridor with connections at US 101 and interstate 80.

Moreover, we were asked by the Environmental Protection Agency to consider PEL for the entire Corridor.

As you all well know, State Route 37 is a 21-mile vital link in the region's economy, as Andy talked about. It connects four North Bay counties, Marin, Sonoma, Napa and Solano. It is heavily traveled and prone to congestion. It goes through highly sensitive marshland commonly referred to as the San Pablo Baylands. Given its location, it is vulnerable to flood-related closures and sea level rise.

Studies predict the Corridor could be permanently submerged as sea levels rise. This could result in additional traffic on distant roadways that are not equipped for it.

Caltrans has undertaken the PEL Study to address future transportation issues on State Route 37 and identify a long-term solution for the challenges facing this Corridor.

Caltrans opted to conduct the PEL for the State Route 37 Corridor for many reasons, including; PEL allows for the examination of a broad area. And as you will see in a moment, options well beyond the current State Route 37 were considered.

PEL sets the stage for focused future projects; establishes a long-term transportation vision that is built on the input of key stakeholders; considers conceptual design, traffic analyses and evaluation of environmental impacts; solicits input from the public, elected officials, agencies and tribes; establishes buy-in on vision, purpose and need alternatives and environmental issues; and lastly, enables more effective decision-making.

One of the primary reasons Caltrans is conducting this PEL Study is to address sea level rise and look for solutions to projected inundation.

The various alignments and alternatives we have evaluated for future improvements to the Corridor all considered sea level rise. For context, we are showing two aerial photos of State Route 37. The photo on the left shows existing conditions today, while this photo on the right shows what nine feet of sea level rise inundation is projected to look like in 2123. The dark blue that you see here ranges from 8 to 12 feet of inundation, the medium blue is 6 to 8 feet of inundation, and the light blue is from 4 to 6 feet. These photos are from the Commission's Flood Explorer tool.

Here are the alignments that we considered during the PEL. You can see here that it was a large number and it shows them going all the way from the South Bay area here across the Bay and then all the way up to the north using the existing corridor of 116 and Highway 12. So we went through a very intensive evaluation process.

And I wanted to talk with you a little bit about this evaluation process. In the very beginning, prior to Level 1, we had established a purpose and need that grounded the entire PEL Study. The first level of screening was to measure those alignments against the Project's purpose and the need.

When we did that we were able to eliminate a few of them and move into the Level 2. In these levels the alternatives were then evaluated against detailed criteria related to design, environmental factors, traffic and feasibility.

It is important to note that the entire process illustrated above was deeply informed and/or driven by stakeholder participation. Stakeholders helped us from the very beginning and that includes your staff at BCDC. They help to shape the purpose and need, to conducting each level of evaluation.

And as you can see on this graphic, the goal is to carry forward the best performing alternatives and set aside those that are problematic so that the environmental review which is required by state and federal regulations can be more efficient and clear.

Without a PEL, the sorting and screening of the alternatives can become subsumed in the environmental review process which can really drag the process out.

As I mentioned earlier, a key aspect of a PEL is to integrate transportation planning and environmental considerations towards a more efficient environmental review process. And by environmental review I am referring to the state and federal laws, CEQA, or the California Environmental Quality Act, and NEPA, the National Environmental Policy Act. CEQA and NEPA in turn require us to prepare studies stating what the environmental effects will be.

Because of the time constraints I am going to give you a very abbreviated overview of this Purpose and Need Statement and how the alignments were measured against it.

You can see each of the points of the Purpose and Need Statement. These again were developed with a lot of input from our stakeholders and ground that process.

When we moved forward to the more specific criteria we looked at like vehicle miles traveled and whether or not they would generate more trips; the wide range of topics that you can see in the document including like cultural resources, et cetera.

As a result of the Level 3 screening the alternative that emerged on the top was constructing a causeway all along the existing Corridor. We called this Alternative 5.

What this is going to include is it will be an expressway design. There will be two travel lanes in each direction. There will be a shoulder running lane for peak period use, potentially for buses. The posted speed limit would be 60 miles an hour. There will be accommodations made for bikes and pedestrians. They will either be adjacent to the highway or they will be on

the structure themselves. It will be mostly a causeway with limited embankment. It would also allow us to remove some of the fill that is supporting the existing roadway. There would be access through interchanges, intersections, and some limited direct-access points.

We also worked really closely with SMART and we have the opportunity here, if SMART so chooses, to have their rail line adjacent to the state highway system.

Alternative 5 really came about as our preferred alternative because it utilized the existing transportation corridor minimizing land conversion. It balances the potential impacts to upland resources and aquatic resources along the existing corridor. It best preserves the regional travel patterns, including equity for the equity-priority communities we have. There would be no induced vehicle miles traveled. There would be minimal use of agricultural land. It allows for landward marsh migration. And it is the least need for noise abatement. There is the least adverse change to visual quality and there would just be moderate impact to tidal marsh.

So coming out of the PEL study, this is what it would look like. The areas that you see here in blue, those are going to be a causeway structure. The areas that you see in green will either be at-grade or will be a limited embankment. And then at the red dots you will see these are the access points that we will need to consider. And the stars are the interchanges or intersections that we will be looking at.

The Report also makes some recommendations on how best to move forward constructing the long-term project. It is called our Implementation Plan. A corridor of this length is projected to be very costly and our rough estimates are anywhere between 8 and 24 billion dollars which is a hefty investment and not an amount of money that we have right now.

So what the team did is we looked at the Corridor and broke it up into sections that could be constructed independently. They would meet the legal requirements for the Federal Highway Administration. And as we move forward and as money becomes available those sections could be combined.

Where we see most of that opportunity would be at the main interchanges and on here they are identified one at Sears at 37 and 101, and then 6 up here is identified at 37 and 121, and then there will also be a major interchange here at Walnut Avenue. Those interchanges could be standalone interchanges or they could be part of their adjoining sections.

Our PEL Report will be out this month. As soon as it is released we will make sure and send it to all of our stakeholders, including your staff.

With that I wanted to turn it over to Ahmed to talk about the US 101 to Atherton Avenue Flood Reduction Project. This will be the first project that evolves out of the PEL Study.

Mr. Rahid addressed the Commission: Thank you, Tammy, for the wonderful presentation. Good afternoon, Commissioners. My name is Ahmed Rahid. I am the Acting Regional Project Manager from Caltrans for the 37 Corridor. Today I am going to provide a brief overview of the Flood Reduction Project, its current status and also the schedule.

The Project is located in Marin County. It starts from the 37-101 intersection and goes all the way to the east to Atherton Avenue. Within our project limit the 37 Corridor is a four-lane expressway.

This part of the 37 is vulnerable to flooding. Those of you who live in the North Bay remember that we had to shut down this part of the roadway, this part of 37 twice in the past five years. The first time it was 2017 where we had to shut it down for almost 28 days and the second time was again in 2019 where we had to close it for 8 days. This project will address the recurring flooding and also the projected sea level rise for year 2130.

This slide shows you the existing elevation along our project limit and also along the surrounding levees. Just to clarify the orientation, on the left side we have where we start the Project where US 101 and 37 intersection. At Location 1 we have the Novato Creek Bridge, which we are going to replace, and the Project terminates at Location 2, Atherton Avenue.

For the color coding, the green elevation is roughly from 18 to 20, the yellow section is from 10 to 12 feet, and the red section is 4 to 6 feet and below.

As you can see, the majority portion of our Project, which is from 1 to 2 is within that limit 4 to 6. And just to compare, the current FEMA 100-year, base-flood elevation is 11 feet within our project limit, so it is already below that limit.

This will give you a background. We started the environmental phase of the Project the summer of 2021 and last year in November we did the first scoping meeting. Back then we were mostly focused on the interim solution and we propose to do an interim embankment for the entire stretch.

We heard from our partners from the agencies and also from the public. That alternative was not well received so we went back to the drawing board.

And since then the Programming and Environmental Linkages Study or the PEL Study, which Tammy mentioned about in the previous section of the presentation, that Study completed and they recommended to use the existing corridor for the long-term project.

So to align with the recommendation and also to avoid any future throw-away cost the Project Development Team decided to stay on the existing corridor and also do a causeway to the year 2130.

So our alternative is to do a causeway from 101 all the way to Atherton Avenue. Unfortunately, we do not have the funds to do the intersection right now so what we are doing, we are going with a phased approach.

The first phase of the project will be the Novato Creek Bridge replacement and it will be to a year 2130 elevation.

And this is the current schedule of the Project. We began our environmental in summer of 2021.

We did the first scoping meeting back in November 17 of last year. There is another scoping meeting upcoming in two weeks, December 14, and the invitation and advertisement will go out soon.

We are targeting to circulate our Draft Environmental Document by February 2023, complete the environmental phase by June of next year; and depending on funding availability, begin construction in 2027.

That is all I have for today. I am going to hand it over to Andrew.

Mr. Fremier acknowledged: Thank you, Ahmed and Tammy.

The last portion of our presentation has to do with the Sears Point to Mare Island Improvement Project. And I want to focus on the purpose and need here as it is really related to the 37-121 Interchange as well as the single-lane section along 37.

The basic purpose is to improve traffic as it flows during peak travel times between Mare Island and Sears Point. There is a state-funded operational improvement project that will go on the 37-121 Interchange; and then the Metropolitan Transportation Commission and the four counties along with Caltrans are working on the additional lane in the constricted section.

Its primary purpose is really to relieve that congestion that we see in the morning and in the evenings, which provides a real opportunity to increase the challenges associated with the housing imbalance and the workforce being in the east and the work being in the Marin and Sonoma area. And there are, as I mentioned, in my preamble, very few multimodal travel options and frankly no transit today in the Corridor. But it really is just the beginning of what we are committed to doing in this Corridor. And I will get to that at the end of the presentation.

So the current Environmental Document for the widening section has three alternatives in it. The first one was to study the use of a movable barrier that would go down that section and do a small amount of widening on one side, to provide for two lanes in the peak direction. The barrier would then move at least twice a day, every day, in order to provide peak capacity in one direction.

We also took a look at part-time use lanes which would have widened the sections to an eight-foot shoulder and two lanes in both directions. But much like we have in the lower deck of the Richmond Bridge today, the shoulders would only be open during the peak periods and in the direction of the peak travel.

The third alternative really has two variations. One is designing a second lane with a minimum shoulder of four feet and then the second alternative builds an eight-foot shoulder. These two configurations are probably the likely ones to come out but we still need to get the environmental process finished.

In this case we do anticipate during the course of design, which takes place after the Environmental Impact Report is approved, we would be working with the Department of Transportation and the environmental community to minimize the widening needs so that we could provide good traffic operations but yet also put in less infrastructure in the Bay.

I also want to point out that a good portion of the Project costs are really related to things that are required to do anyway. There has been a concern that the Project price tag of about \$450 million has a lot of throwaway work in it. A good half of that is really related to public access, transit, keeping the road in good viable condition during the course of its life. And then some of it is associated with work that will have to be removed, but none of it makes the removal of the dike when the ultimate project is finished any more difficult than it currently will be today.

As I mentioned, we currently see significant congestion. In the eastbound it is anywhere from 100 minutes and this Project is anticipated to reduce it to about 26 minutes. In the westbound peaks, we see about a 60-minute delay, this work will reduce that to about 30 minutes.

We always take a look at what kinds of user benefits are supplied by this investment. As I mentioned, the project costs in the mid-\$400 million range is comparable to the benefits that we see in user delays being realized by being able to get to work on time and get home on time by a pretty comparable amount in terms of these kinds of analyses.

I mentioned transit. We do think that one of the biggest benefits of this Project will be to capitalize on a lot of the mobility areas that already exist on both sides of the Corridor. The Vallejo Fairgrounds would have a hub where Solano Express Bus, SolTrans and Napa Vine could gather folks. We also have a hub at the Novato side where Golden Gate Transit, Marin Transit and SMART are located.

There are several park-and-rides in the area that we would like to improve, Vallejo Fairgrounds, Mare Island, Black Point and Rowland. And then we do think we can capitalize on some of the ride-sharing tools that are out there to try to congregate carpools because we know that is one of the hard things to do.

What we would be adding would be a 24/7 HOV lane that would allow for transit to have priority as well as HOVs at all times of the day.

And then we would have weekday all-day service from the Solano Express getting you from Vallejo into Novato.

We also have a lot of funding for public-access improvements. And as you are well aware, the Bay Trail is not complete in this area but there is a significant amount of public access that we think we can improve.

So with the help of the Bay Trail's Steering Committee we have focused our energy on improving an area that does not currently have a connection shown in this area here in the study area in the red box that is blown up on the right. And we would invest in making that connection to the existing Bay Trail where there currently is a gap.

We have also done quite a bit of work with equity communities on the Vallejo side to try to find out what kinds of public access or improvements are necessary there to improve access to not only the Bay Trail but also the Water Trail. So we have identified through a series of work that was done by the Solano Transportation Authority in 2019, 13 potential projects that could be included in the work that we would move forward. So we are continuing to work on this, these are all studies at this point, but we think there are some great opportunities to improve public access.

Right now bikes are allowed on the Corridor but it is a very difficult ride and there is almost no ridership. It is very rare that anybody rides the Corridor because you are going along adjacent to traffic with a very difficult shoulder.

We anticipate that that will be worse in this condition and so we do not see that the interim projects will allow for bike and pedestrian access but we are committed to doing that in the ultimate projects and we think this public access improvement in the last two slides is a good compromise for moving forward.

I want to talk about some of the other commitments that we are making and they are significant. We have gotten this work identified from our direct work with the resource agencies in the state of California.

The two I want to talk about are commitments that we are going to make in conjunction with the projects I defined as the 37-121 Interchange and the widening in Segment B, as we call it, from Sears Point to Mare Island. And that is a commitment to replace the Tolay Creek Bridge, which is currently about 60-foot long.

Our advice from the environmental community is to make that Bridge quite a bit longer, in the 430, 440-foot range. That really allows for ecological improvements to get started that will take a long time to be done, up above the Bridge in that area just north of the Tolay Creek Bridge. And it is actually probably one of the most important improvements that we could do to support resiliency projects that are being designed and underway by others.

The second is the Strip Marsh which is shown on the left picture. This area is just south of 37 near the Cullinan Ranch area and just west of Mare Island. It is an incredibly important section of Strip Marsh that was actually tried to be mitigated when the barrier was put up in the mid-1990s.

Since then the Water Board has come up with some better strategies for how to invest in repairing it and making sure that it stays sound and actually protects the marshes that it is designed to protect well into the future. We do think it marries well the ecological and transportation needs that the California Climate Adaption Strategy is committed to.

So these two improvements are commitments that we are making during the construction time of the phased projects that we have been talking about in this Corridor.

So we have mentioned quite a few things that I want to just sort of reiterate to make sure that they are very much front and center of the discussion so that we are sure that what we are talking about here is a project that is important to a lot of people.

First of all, equity. The investment in transit service and the availability of carpool opportunities are front and center for most of our transportation improvements. We think this project delivers those.

We also are very focused on the concerns of price and what that does to folks that are not able to pay the fare. So we are focusing on creating means-based discounts for tolls and for transit and we are committing to do so during the course of the development of the Project.

I have talked quite a bit about sustainability. The Project does do quite a bit to reduce interim flooding. There is quite a bit of subsidence out there in the Corridor today; that will be improved in our contract.

We also think that the pricing does a very good job of reducing vehicle miles traveled. So we think that is an important element for the environment as well as for bringing some match funds to the Project that will allow us to really capitalize on state and federal money that is available for projects like this.

And then it will also help us understand and advance towards the long-term sea level rise adaption that will come in conjunction with this Project but will continue on for many decades after this is opened.

This is a real important one. At the impetus of two secretaries from the state of California, Wade Crowfoot from the California Natural Resources Agency, and Toks Omishakin from the State Transportation Agency, we have been working very closely with the resource agencies to establish a partnering arrangement that really proves the commitment to both ecological restoration and the importance of this equity project.

So what we are doing and what we feel confident we will execute in time for the environmental document to be released is a partnership with resource agencies that will continue to focus on reducing whatever the project impacts are and advance as many of the early ecological benefits that we can during the course of the construction.

We want to continue to advance the work on long-term resiliency.

And continue to plan on collaborating and streamline the permit process, because any project we do in this Corridor has substantial ecological and resource commitments that are difficult to permit.

We do need folks to understand, though, that flood protection and equitable transportation solutions are important.

We also recognize supporting the ecological restoration of the Baylands is front and center as well.

The end of my presentation and the end of our whole presentation is to talk about the project timeline for the segment I have been talking about. We anticipate that the Final Environmental Document will be released towards the end of this calendar year. That will allow us then to get started on the actual design work and minimizing the footprint as well as getting the permits in hand and catching the Tolay Creek work up to this construction project.

We would build from 37-121 Tolay Creek and our widening project all at the same time. We anticipate awarding that construction contract in early 2025 and then constructing it through 2026.

I think we can stop sharing the screen and turn it back to you, Chair Wasserman, for questions and answers.

Chair Wasserman continued: Are we going to have a presentation from the Baylands Group before we go to questions and answers?

Mr. Goldbeck replied: Yes, I think that would probably be best.

Chair Wasserman asked: Is the Baylands Group ready to speak?

Ms. Rickard presented the following: My name is Ariana Rickard and I am the Public Policy and Funding Program Manager for Sonoma Land Trust and I am going to present from the perspective of the Baylands Group.

Okay, so the Baylands Group. The State Route 37 Baylands Group is composed of North Bay wetland land managers, ecological restoration practitioners and other stakeholders interested in and responsible for the conservation, management and restoration of the San Pablo Baylands.

Our group is committed to ensuring that as we address North Bay infrastructure needs that the redesign of Highway 37 advances the ecological restoration and conservation goals for the Baylands and improves the climate resilience of the region's built and natural communities.

Our members have committed significant resources and time to participate into the multiple Highway 37 planning efforts such as the PEL and the Design Alternatives Assessment.

The redesign of Highway 37 to reduce flooding and traffic congestion represents both an opportunity and a potential threat to achieving longstanding conservation goals for the North Bay Tidal Wetlands. And what you see in this map is restoration that has been completed, that is in planning, that is what Tammy already referred to as the San Pablo Baylands.

And you can see those borders highlighting our planning areas. The red is our Sonoma Creek Bayland Strategy and that is outlining all our plans for restoration, acquisition, enhancement and protection of those wetlands. That Sonoma Creek Baylands Strategy is available on the Sonoma Land Trust website.

And then the orange border is our Petaluma River Baylands. That strategy is going to be ready in March 2023.

So you can see that whatever happens along Highway 37 directly affects existing wetland habitats and our ability to restore tens of thousands of acres of additional habitat.

So it is imperative to understand that Highway 37 is not only a transportation infrastructure project, it is also a landscape scale climate resilience project with benefits to the entire Bay Area that anticipates a response to the known threat of sea level rise. So the need to improve highway conditions cannot be separated from the ecological needs of the San Francisco Bay and reducing the impact of sea level rise on its communities.

So I just want to talk a little bit about the restoration urgency. So our plans, we want to get our restoration done and we need to have certainty in what is happening with the Highway 37 planning efforts so we can get going on our planning and our implementation.

So as you saw on the previous map, there is the opportunity there to restore tens of thousands of acres of tidal wetlands. And then when we restore those wetlands, they provide many benefits such as acting as green infrastructure.

So with those tidal wetlands during floods and extreme high-tide events, they reduce flood damage and erosion in the surrounding low-lying areas, improve water quality by removing pollutants, provide habitat to threatened and endangered species and also commercially and economically important species such as Dungeness crab and Chinook salmon, and providing climate resilience and recreational opportunity.

And there is widespread recognition in the conservation and climate adaptation communities that the flood-prone agricultural lands of the North Bay represent the largest and best opportunity in all of the San Francisco Bay to restore complete tidal ecosystems at a landscape scale.

But like I said, there is some urgency here. And specifically, if landscape-scale tidal wetland restoration in the Novato, Petaluma and Sonoma Baylands is not implemented by roughly 2030 these crucial ecosystems are unlikely to persist into the mid-to-late 21st century.

In addition, as you saw from the previous presentations, if Highway 37 is not elevated out of the Baylands, much of the Highway is expected to become regularly flooded by roughly 2040.

All the planning that is happening and the Baylands Group investment and interest in providing comments, we released a position paper in July of this year just outlining our main recommendations for Highway 37 planning. That position paper is on the BCDC website, on the Sonoma Land Trust website, and on the State Coastal Conservancy website. So I am just going to outline those four key recommendations from the paper.

First, we are happy with the PEL recommendation, ultimate recommendation for a causeway, elevated causeway on the current alignment as the ultimate project. We would like to see Highway 37 transformed into a multimodal facility on a pile-supported causeway along the existing alignment between Novato and Vallejo.

Additionally, highway redesign should include compatibility with rail, transit, bicycle and pedestrian infrastructure redesigned to the extent they together lift the transportation corridor out of the Baylands to restore hydrologic connection and expand restoration opportunities in adapting to sea level rise.

And our second point, to start the ultimate project now to enable timely flood risk reduction in wetland restoration and to achieve the desired and necessary environmental flood risk management benefits. Placement of highway 37 on a causeway must be accelerated before rates of sea level rise become too fast for tidal wetlands to keep pace; to accrete that sediment to keep pace with sea level rise. Again, tidal restoration of diked Bay lands along Novato Creek, Simmons Slough, Petaluma River, Tolay Creek and Sonoma Creek can be implemented in parallel with these improvements.

Third, one of our mottos: integrate, don't mitigate. And we are happy to see some of the transportation agencies using that language too. What do we mean by that? Those bridges and embankments do disrupt the hydrologic connection and habitat connectivity, so if you elevate then you deal with that issue.

And again, to deal with sea level rise and increase resilience, to raise the road and the rail to accommodate that projected sea level rise.

As Andy indicated, the need to lengthen the bridges, specifically Tolay Creek, to accommodate those future flows and the wetlands and the Baylands are restored.

And then finally our last point, that the interim project should be low-cost, low-impact fixes or serve as initial phases of the ultimate project.

To be successful, any project meant to reduce flood risk or alleviate traffic congestion before construction of the ultimate project is initiated must present a logical substantial step toward implementation of the preferred ultimate project. So like these ideas of the phasing to the ultimate project.

And then again, I appreciate Andy's comments from MTC about the Tolay Creek Bridge and we appreciate the commitment from MTC to getting that done.

So just to reiterate, the importance of this environmental improvement, that this is an essential action for us to be able to complete the restoration of the Tolay Creek Baylands and Tolay Creek Watershed, which is a vital area of marsh diked Baylands transition zone and connections to the adjacent wild lands. So what is on the screen is a map from the Sonoma Creek Baylands Strategy. On the left side of the screen is the Tolay Creek Baylands and that whole area that could be restored if we lengthen that Bridge and allow more of a tidal connection.

So descriptions and conceptual plans for the restoration of the area are already outlined in our Sonoma Creek Baylands Strategy. And if we do not lengthen the Bridge as part of the Segment B Interim Project then we will not be able to restore 1,100 acres of the Tolay Creek Baylands and we will not be able to implement our full Sonoma Creek Baylands Strategy.

So just in conclusion, we appreciate BCDC's support of wetland restoration. We believe this wetland restoration will start immediately to ensure habitat resilience to sea level rise as tidal marshes need to be established by 2030 so they will flourish and provide ongoing benefits with sea level rise accelerating the middle of this century.

And improvements to the Corridor must be integrated with the continued implementation of existing habitat goals and the extensive conservation planning for this region to ensure ecosystem function and landscape resiliency in the future.

And the Baylands Group looks forward to collaborating further with the region's leaders, Caltrans, MTC and local transportation agencies to build this future together. Thanks.

Chair Wasserman acknowledged and asked: Thank you.

Rafael, does that conclude the presentations? Steve is nodding, yes.

Mr. Goldbeck replied: Yes.

Mr. Montes agreed: Yes.

Chair Wasserman continued: Thank you.

I would invite anyone from the public who wishes to comment, you would have three minutes to do so.

Alyson Madden: Hi, thank you very much. This sounds very, very interesting and I have enjoyed listening to it. I did have my hand raised after one of the earlier Executive Director or staff reports and I just left it up. I do not want to take the time from it now but is it possible? I do not know if that is the kind of Agenda Line Item when the Executive and staff give their reports if that is the kind of thing the public can raise their hand on? That is what I did.

Ms. Atwell responded: Okay, thank you. But you can come back to the next meeting and follow up on it and/or you can do a public comment.

Ms. Madden asked: At another time or now?

Ms. Atwell replied: No, at another time because public comment is closed and we are only discussing Item Number 8.

Ms. Madden acknowledged: Right, okay. I wasn't sure if the public was allowed to comment on those other two Agenda items that came after Public Comment so that is why I raised after the Oyster Cove. I won't speak on it now but I will send an email. And there is some important clarifying information just because I advise and counsel.

Ms. Atwell acknowledged: Thank you very much.

Ms. Madden stated: Yes. The tenants there. Thank you.

Mr. Quigley spoke: My name is Josh Quigley; I am with Save the Bay and just wanted to offer our comments on this issue regarding Highway 37. Save the Bay and many of our partner organizations, as well as many local elected leaders, see an enormous opportunity to make the Highway 37 rebuild a signature climate resilience and congestion reduction project for the Bay Area.

As you just heard, the PEL process revealed that raising much of the road on a causeway is the environmental and superior alternative. The reasons for that are that it improves climate resilience. It reduces flood risk. And it also reduces traffic congestion.

In addition, it is going to accommodate sea level rise past 2050 and facilitate extensive tidal marsh restoration and habitat migration.

Furthermore, the Causeway Project could access growing state and federal funding targeting climate resilience and green infrastructure and not just traditional highway funds. So in that respect, you could actually have lower lifecycle costs than many of the so-called interim measures would have.

The Causeway now has broad environmental support because even though it would have temporary impacts during construction it would bring far more benefits.

We think that it would be a huge loss to pursue interim projects that propose to widen the berms through the marsh that provide less resilience and include far worse impacts to wetlands without environmental benefits.

Those segments would be difficult to permit, would be costly and complex to mitigate and would likely prompt lengthy litigation. So therefore they do not actually provide interim relief any sooner than the superior Causeway Project would provide.

We think, furthermore, that BCDC should underscore those permit hurdles and strongly encourage the accelerated pursuit of the causeway segments that provide more climate resilience and congestion relief sooner and would serve as a model for adaptation to sea level rise for the entire state. Thank you very much.

Mr. Shilling was called to comment: Hi, everybody. My name is Fraser Shilling. I am the Director of the Road Ecology Center at the University of California at Davis. We are positioned in the Institute of Transportation Studies.

And some of you may know that for about five years I directed a project looking at SR 37. It was the SR 37 Stewardship Project. It was in collaboration with Caltrans District Four and Headquarters. Part of the funding came from the US Department of Transportation.

And I have a couple of comments/questions. These did come up in the PEL process. I really appreciate that the PEL process took place and thank you to Caltrans.

One is that it is not clear that the statement about induced traffic can really be upheld reliably. I have checked with traffic modelers and I have had traffic modelers work for me and as you expand highway capacity you are more likely to induce traffic.

And I remember there was a Caltrans modeler back about six years ago who ran a model for different alternatives and found the same thing. So I think that is worth investigating.

And the irony, of course, that if you induce traffic in this case you increase greenhouse gas emissions which results in more sea level rise.

Number two, causeways, in other countries the pilings are often controversial because they can cause erosion. So even though the pilings are an improvement over the embankment they are likely to cause their own erosion into the marsh. And so if you have a causeway on pilings in the marsh through the North Bay you are likely to induce erosion of those marshes.

The third, and I am not sure if anybody has ever done this except for in my center, we actually measured exact elevations of the levees around Section 4 of Segment A which was in the top right of the map that Mr. Rahid showed. Some of those elevations are remarkably low compared to likely 100-year flood events and really likely scenarios for sea levels, like two feet above, two feet above high-high tide, which is a pretty low elevation.

So I would argue that Section 4 really should be considered a priority, not just the section that has flooded recently but the one that if that levee fails will flood fairly irreversibly.

Finally, in the past the causeway built on the alignment has actually meant the Causeway being built adjacent to the current alignment, which is obviously a new impact to the marshes and is not quite the same as building the causeway on the current berm alignment. So it would be really worth clarifying and committing that the new causeway, the new highway, would be built on the existing berm and not as a new structure out onto the marsh somewhere. Thank you very much.

Mr. Wells spoke: Hi, thank you. This is Warren Wells, Policy and Planning Director for the Marin County Bicycle Coalition. I just wanted to thank staff for the presentation and just note a couple of things.

I have been part of the PEL group for the last year and a half or so and I just want to express the appreciation for considerations of bike and pedestrian access on this Corridor in the long-term causeway.

As Mr. Fremier pointed out, there is very little bike and pedestrian travel on this Corridor as it stands today because you would really have to have no other option, you are biking or walking on a shoulder with very fast traffic going by.

So it is kind of hard to measure demand based on what is there now. Obviously, it is a long corridor but I think in the long term it is something that we will see a fair amount of use of, especially with the nature access along this Corridor.

And to that point, I also want to express appreciation for the consideration of the public-access improvement that Mr. Fremier noted the Sears Point Bay Trail connector as part of that interim project. This is something that Marin County Bicycle Coalition as well as Napa and Sonoma have been asking for for a couple years and we are very happy to, I am very pleased to see that included in the presentation. That is all I have. Thanks so much for your time and consideration.

Mr. Feinstein commented: Hi, everybody. Nice to be talking to BCDC again. I am going to be followed by Steve Birdleough and we are two arms of the Sierra Club working on sea level rise and transportation in the Bay Area.

My part of it is sea level rise adaptation. So I would like to start off by seconding what Josh Quigley said earlier. The real issue here is whether the Causeway, and thank you PEL for coming to that conclusion, it was not the easiest thing in the world and the early goals did not include addressing this environmental issue the way we felt it should. But PEL came around and concluded the Causeway is the best way to go and it is very encouraging.

But it is not at all clear that it is actually going to take place. It can be one of those documents that sits on a shelf. And you all say, wow, it was a great idea that never happen, especially when we are looking at an implementation plan that if you go the full four, roads will speed up traffic, possibly unless you get lots more cars, which you may well as Frasier suggested, but nonetheless, spending a lot of money on this interim project. And the closer it gets further and further away the dramatic need for it reduces if you do reduce the constraints on traffic and maybe it never happens until it is too late and everything is flooded.

So it is great to hear that the interim project is just an interim but I am not seeing that in the description of how it becomes an interim project and how the Causeway starts happening.

On Section A it is great to see they are just going right into doing the Causeway Project when they have the money. But for Section B, Mare Island Sears Point, it is really encouraging wordage but there is no reality behind it that I can see. So the concern that I have is, again, that everybody congratulates themselves on coming up with a great vision and it doesn't take place.

So I would really like to see something a little more concrete about how this interim project helps move forward the Causeway and however, whatever takes place that the interim project is, in fact, the first step towards the Causeway. Are you putting in your places where you can put the pillars in while you create the new road or something like that? Otherwise, it is nice rhetoric but there is no reality to it as far as I can see so that is a huge concern.

If you can do it, though, this will be one of the projects that people remember as a fantastic step forward in terms of addressing climate change. So congratulations for the concept at least, thank you.

Mr. Birdleough offered public comment: Thank you. I want to second Fraser Shilling's suggestion that you do not accomplish anything by adding a lane in terms of speeding up traffic.

There are lots of studies that have verified that as you add lanes, you add cars to the freeway or the expressway and that gets you right back to where you began. Because the big difference between Marin County and Solano County is the cost of living. And so people are willing to spend an hour and a half to live at half the cost they will live in Marin County and there is an unlimited number of people that are willing to do that.

So the real savings that you get in terms of commute time is by shifting people from their automobiles into buses and into carpools. And by providing an HOV lane you allow that.

But once people get on the two-lane segment they are driving at 45 miles an hour. It is not the two-lane segment that is holding things up. It is the fact that you can't give the people who want to carpool or go on a bus to get to the head of the line. So what is needed is a couple of miles of causeway at the west end so that you can get that lane jump so that the people that are sharing rides are able to get onto the two-lane segment at the head of the line and the people who are not sharing rides have to wait. There will be no difference for the people who aren't in the HOV lane by the addition of that additional segment.

Now, that may be a little hard to understand but I do hope that people will take time to focus on the fact that road widening does not reduce congestion. Thank you.

Chair Wasserman continued: Thank you. Questions, comments from Commissioners?

Commissioner Gorin chimed in: Good afternoon, everybody. Welcome to my world. I have been part of this conversation for about ten years now. I want to thank all of the incredible staff work, certainly on the part of the congestion management agencies and the four county elected officials. We have been hard at work on this for a long time going through the various alternatives that we just heard about today.

The Policy Committee heard almost exactly this presentation this morning so a lot of my questions were answered but I had to drop out before we had a discussion about the interim project on that section.

First of all, thank you, Tammy. We talked about today you are due to retire. So congratulations, and thank you so much for all of your work on this project and clearly outlined the various segments moving forward.

I have the most concern about the interim project and especially as it relates to the Baylands strategy. Thank you, Ariana. Boy, do you talk fast, that was a lot of information.

And a reminder to BCDC that this work, the Baylands conservation work is being funded by the Bay Restoration Authority. It is so important to the health of the North Bay as we are approaching rising tides faster than anybody wanted to contemplate. And thank you to BCDC for outlining how critical this segment is to the transportation system for all of the Bay Area.

So the question that I have is, oh my, that is a lot of fill that you intend to put on the ground. I know you emphasized that some of the cost of that interim project is not totally wasted. But can you help us, Andy; understand what percentage of the potential cost of the interim project along that segment from Sears Point to Mare Island will have to come out to elevate a causeway in the future?

Mr. Fremier answered: Well, Commissioner Gordon, I thank you for your input. If I understand the question properly, we think roughly half of the cost of the \$430 million is related to work that will have to be removed and half of the cost is related to work that is important regardless to keep the roadway open and also to provide the public access and the transit benefits.

Commissioner Gorin continued: Thank you. And as one of those people that have sat for hours on Highway 37 coming home from BCDC meetings I do understand from a very personal way how congestion is impacting so many people, the least of which are the employees and the employers providing goods and services across that critical linkage.

But the reality is I am concerned about, and you will properly evaluate the environmental impact of hauling all of that fill out there and then hauling it somewhere else eventually if we have the ultimate project.

And I know when I asked the question that, how are we designing the interim project as well as the ultimate project, Caltrans' response is, well, we are designing it at the same time; but I do not quite understand how that could be. So how are we designing both projects at the same time?

Mr. Fremier replied: Yes, you opened up a whole series of really good questions that have, I think, reasonable answers, but they are sort of hard to put into one mix.

Let me first start with the money. So far, at least in terms of Interim B, the only money that has come to the table is about \$8 million of bridge toll money that is outside of the investment from the Regional Measure 3 Program that is still coming forward.

That work is really designed to do due diligence as to whether or not this made sense to be a Bay crossing. That work is complete based on the environmental work that we move forward in the interim project and that cost about \$8 million.

We have about a \$20 million design estimate for the interim project, of which we believe we have that money available to us through the state of California, although it is not completely resolved yet.

The money that is identified to get us really started on the work for the ultimate is also supposed to come from some state resiliency funds in which there has not been any kind of a definition yet on how that program will be managed. But we believe that the state of California has committed to giving us that money and we are hopeful that in the spring that would allow us to really get started on I think answering some of the hard questions.

You did see that viaduct that was shown in the Baylands slide and it goes over the exact same footprint of State Route 37. The only way to build a viaduct like that would be to actually close 37 for a long period of time.

So I think some of the challenges associated with us are really trying to understand what impacts a 30-foot viaduct would be in terms of keeping the lanes open and also to be able to construct it. So that will be a significant challenge.

Tammy also identified a whole bunch of public-access points and private-access points that have to be dealt with. That takes quite a bit of engineering in order to be able to do that and we would spend that \$60 million on trying to answer really the fundamental questions around where SMART is which reflects a change in what our elevation might be. It also incorporates how you would do a constructability analysis to minimize the impacts of such a viaduct and really answer, I think, some of the environmental questions that are coming forward.

I think what we have been trying to emphasize is that the eight-foot shoulder produces about nine acres of fill that would be required to be brought in. A four-foot shoulder requires about four acres of fill. The commitment that Caltrans and MTC and our partners in the four counties have committed to is trying to reduce that eight-foot shoulder as much as possible.

So the idea is to minimize that nine acres of fill, hopefully at least as far down as four acres of fill, maybe even better. And that is what we really hope to be able to do and are confident we can do quite a bit of improvement on during the actual design work.

I do want to point out one thing that I think is important. A concrete viaduct of that size also takes a considerable amount of material and so finding the cement and the sand and the gravel and the steel associated with that is also going to be a significant challenge. So I do not think we ought to reduce the impacts associated with how much construction material is needed to build a 30-foot viaduct down that corridor and the challenge of finding that material in reasonably near areas.

So I guess my point would be that we do not think anywhere from four to nine acres of fill creates that much more deconstruction that will be done when the roadway, the Causeway is finished. And we do think it provides an immediate benefit to the equity challenges that the community has that is working in the west and living in the east.

And then finally I would say that the Tolay Creek work and the Strip Marsh are extremely important to this resiliency question and I think are very complimentary to the work that the Baylands presentation presented.

It will allow them to get started and I think do really effective work in that corridor, the marsh corridor north of the Tolay Creek. So I do not think we should minimize the value of those two improvements and really being complimentary to the presentation that Baylands gave us.

Commissioner Gorin acknowledged: I could probably take all of the time for my questions but I won't. I want to hear from the other Commissioners, but one last question. Given the Baylands urgency, sense of urgency, a message on the wetland restoration work, how can we design an interim project if not an ultimate project, to really emphasize the wetlands creation, both in front of the berm as well as behind the berm? Are we confident that the inflow through Tolay Creek is going to be sufficient to really build on the tidal action for wetlands creation?

Mr. Fremier stated: I believe we are. In all cases we are taking the advice of the environmental community. The Estuary Institute is the ones that have helped us with how much width or length we would get out of Tolay to allow for those improvements and the Resource Board gave us the Strip Marsh improvement.

So we are counting on really that resource community to help us with making the right choices that do move us as close to the long-term improvements that we can make. So we are confident that those two improvements are consistent with the work that is planned.

Commissioner Gorin concluded: Andy, thank you so much. Caltrans, Tammy, everyone involved in this. This is a massive project and a shade of things to come for around the Bay. I appreciate all of your efforts and I will probably still pepper you with questions and comments later. Thank you.

Commissioner Moulton-Peters was recognized: Thank you and thanks to our presenters today. I have a couple of questions for Ms. Rickard and then one for Mr. Fremier.

Ms. Rickard, I appreciated all your information, very helpful to see. My question, I have two of them, regards the extended bridge that has been proposed now to be extended from 60 to 430 or 460 feet. It looked to me like that would allow the kind of aperture you are looking for to allow the tidal flows to move in and out. But I wanted to just confirm I understood that correctly. Would a bridge of that length accomplish what you are hoping to accomplish in terms of opening up the wetlands, allowing it to begin to restore itself?

Ms. Rickard answered: Yes, thanks for that question. My understanding is that the study is being done on exactly what those dimensions need to be and that is something that, as Mr. Fremier indicated, SFEI is working on in partnership with MTC. So I do not know, I do not think we have a final study or an answer but that is being addressed.

Commissioner Moulton-Peters acknowledged: Right, and so I am less concerned with the absolute dimensions. But the concept of extending a bridge at this point in time as part of the interim sounds like it is going in the right direction that you would like to see.

Ms. Rickard agreed: Yeah, we would like to see the Tolay Creek Bridge lengthened. We did not see it in the draft EIR but we understand that MTC is making a commitment to including that in the construction of the interim project.

Commissioner Moulton-Peters continued: Great, thank you. Second question. There was discussion about the public access on the Vallejo portion of the wetlands out there and I wondered if there has been consideration of expanding the Bay Trail access in the Sonoma, Petaluma and the Novato Creek area? I think there is a road from State Highway 121 out towards Sonoma Creek and I just wondered if that was also part of your hope for inclusion in the Project?

Ms. Rickard stated: We have not focused so much on the public-access question. The Land Trust is more acquisition and restoration and not so much on the public access. At this point that has not been our focus. So I do not really have much information on that.

Commissioner Moulton-Peters acknowledged: Fair enough. But it sounds like that use would not be incompatible with wetland restoration, potentially. So just trying to get a flavor for how Sonoma Land Trust feels about those and Baylands.

Ms. Rickard replied: Yes, I think it is always just sort of like where public access is appropriate. If there is some sensitivity with threatened/endangered species it is not appropriate there. So it is something that we look at case by case for where it makes sense to have the public access in the Baylands.

Commissioner Moulton-Peters responded: Okay, great, thank you.

And then the last question for Mr. Fremier just has to do with the Tolay Bridge that you talked to us about versus use of a causeway design. I am wondering, will you be assessing, after the environmental, will you be able to just look at a bridge versus a causeway in terms of costs and benefits and effectiveness? Is that anything that is contemplated or is the interim at this point pretty much focused on the expanded bridge that you mentioned over Tolay Creek?

Mr. Fremier replied: Yes, thank you for that, Commissioner Moulton-Peters. I think it is the latter. Our approach is really to try to keep the elevation primarily the same. We want to deal with obviously areas that are subject to flooding today but that is sort of a minor improvement. It has nothing to do with the ultimate resiliency work.

The difficulty that we have in picking a final grade today is really related to multiple areas. We are all familiar with the fact that the SMART tracks go perpendicular to 37 just east of the 121-37 Interchange.

Until that elevation is really understood we have a hard time understanding how we are going to go either over that at the proper elevation, or as Tammy mentioned, where we are going to touch down. Because eventually you have to touch down again at some current elevation unless you can afford to build a causeway all the way to Sonoma Creek or something, which would also require the replacement of Sonoma Creek Bridge, which is not contemplated in our project.

So we are thinking that really by creating the length of the Bridge we are doing our best at getting the opportunities for that restoration work that the Baylands is complementing starting.

I also want to mention just out of clarity, our commitment in terms of doing Tolay Creek is that our construction project will not start until we get the Tolay Creek environmental work and planning work and design work caught up to the rest of the Project. So while it is not part of the purpose and need of either 37-121 or the interim widening, the commitment is very much sincere that we are going to build all three of those projects under a construction or a series of construction projects that are done at the same time.

So our goal is to get the restoration done in the Strip Marsh and the Tolay Creek improvements alongside the other improvements that we are contemplating.

And then also continuing the work on what engineering is required to get to an ultimate elevation and how that impacts some of the private and public connections that are so critical to where that elevation ultimately is determined.

Because remember, once you get up in the air 30 feet you have also got to come down to get back to wherever these locations are. And that includes way back into Lakeville Highway. It includes Black Point. It includes the Vallejo Sanitation District, a lot of the other private accesses that are there as well as some of the Bay Trail connections. So any change in elevation is significant in terms of how much more work we need to do.

And frankly, the commitment of getting dollars to this Corridor is going to be the most successful piece of work that we can do to get started to really answer the questions that are not well understood yet today.

Anything you are seeing about an ultimate causeway does not have a lot of engineering built into it yet and that is really the work that Caltrans, MTC and the four counties really want to get started on in earnest so that we can bring honest answers to those questions with technical solutions or concerns and be able to really address these questions properly, but not lose time on providing that the equity improvements that we are talking about with the widening and the public access.

Commissioner Moulton-Peters continued: Thank you. And if I could just briefly, Andy. Thank you for the information to Commissioner Gordon on the difference between the four-foot-wide shoulder and the eight-foot-wide shoulder and the fill associated with that. Could you confirm something Mr. Birdlebough asked earlier about? The HOV lane is what the intent is for the second lane, as I understand it and then the pullouts that have come up from time-to-time and how you see those being used. Again, trying to minimize fill as much as we can.

Mr. Fremier explained: Yes. The real purpose of an eight-foot shoulder is to assist the Highway Patrol and Caltrans in incident management. So if you have a breakdown or an accident of some sort the eight-foot shoulder does allow for some emergency pull out.

Our belief, though, is that as long as we acknowledge this is really an interim project, that we can probably live with maybe less than a complete eight-foot shoulder and provide emergency access maybe where there's already that much width there or in places that are very priority-based for the Highway Patrol.

We also know that we can add turnarounds in the barrier that will assist in incident management and we are looking at intelligent transportation solutions like cameras and other data that would help us manage incidents a lot better. That work right now is really going on between the Highway Patrol and Caltrans.

As we have mentioned a couple of times, the environmental document is when you start the design. So what we are really asking for is that folks allow us some time to catch Tolay Creek up to the construction work and to do these incident management improvements that are consistent with something a lot closer to the four-foot-shoulder option and not have to do anywhere near an eight-foot shoulder from end- to-end.

Commissioner Moulton-Peters opined: Thank you. We have certainly seen that we could live without the emergency lane on the Richmond San Rafael Bridge when we put in the bike lane and Caltrans and CHP seem to have worked out vehicles that break down. So I would see us being able to do something similar on 37. Thank you.

Commissioner Showalter commented: Good afternoon. Yes, this is really an exciting project to contemplate. I am fascinated by all the parts thereof that are included in it.

The part that jumped out at me was the 900-acre loss of wetland that we need to restore and the strip, the strip restoration east, or the SME, I forget.

We have only had nine inches of sea level rise and yet it seems to have caused almost 1,000 acres of wetland loss. That is really serious. That is a very big deal.

So from my point of view I am really interested in getting the SME Project done as soon as possible. Yesterday would have been better but we do not want to put this off at all.

So I wanted to ask, and I probably should know the answer to this, but if I do not remember it other people might not either. Who is monitoring on a regular basis the extent of our wetlands in the Bay Area and what we are gaining and what we are losing? Is that SFEI? Whose job is that?

Mr. Fremier answered: I am going to need a lifeline for that.

Commissioner Showalter replied: Well, we need to identify somebody whose job it is.

Chair Wasserman chimed in: We may not be able to answer that question but I think it is an important question and we need to get an answer.

Executive Director Goldzband suggested the following: I am actually going to let Steve answer it because I think he wants to.

Mr. Goldbeck stated: I am just going to say yes, SFEI has been focusing on those aspects. I do not know of any recent document that relates to that but actually we will get in touch and get back to the Commission on that. Because you are right, that is an important aspect to track, what is going on with our wetlands and acreage makes sense.

Ms. Rickard added: I am just going to mention that there is the Wetland Regional Monitoring Program and I can put that in the chat for more information about where this monitoring is happening and the tracking.

Commissioner Showalter acknowledged: Thank you. Then the other thing I would like to say about this is that not only is this important from the viewpoint of restoring this marsh, and of course the transportation corridor, but I really think that this is also an important group of tasks that we need to master as a region.

There are going to be a lot of places where marshes will be at risk of being inundated and gotten rid of. We need to be on the alert for watching that and we also need to know how to go in and fix it.

So I think that in addition to just restoring this 900 acres of marsh, which is a great idea, I am all for it. I think we really need to seriously consider that this is going to be a part of the toolkit that we are going to need for the next 50 years in the Bay Area. So we need to get that toolkit really well honed. And this is an opportunity to learn how to do that. Thank you.

Commissioner Eklund was recognized: Thank you very much, Chair Wasserman. First, Andy, could you send us the slideshow that you used today because there were a couple of slides that were not in our version that was sent to us.

Executive Director Goldzband noted: Our presentations are always posted on the website, Commissioner Eklund. Andy, you certainly can do that, but just for everybody in the public, it is on the website.

Commissioner Eklund acknowledged: Okay, so the new slideshow is on the website. Okay, great. Because there were a couple of slides that were missing between public-access-improvement opportunities to equity, sustainability and funding delivers. So anyway, there are a couple of slides that were missing.

I have a couple of clarifying questions and then I do have some comments.

First is, it is not clear to me what portions of your interim project are elevated besides the Tolay Creek Bridge and the Strip Marsh?

Mr. Fremier answered: Commissioner Eklund, very little of it. It is really where we have already seen consistent flooding that is happening. There is a little bit of an area near the Tolay Creek portion of the section and another near the Mare Island section where we have got low points or subsidence. So it is pretty minimal.

Commissioner Eklund continued: Okay. My other question is, why are we doing an interim project that is costing 430 or 50 million or more when the ultimate project would have to redo the majority of the Causeway at a higher cost? Why aren't we doing the elevated causeway now to save some money for the future?

Mr. Fremier explained: I think it is primarily tied to the equity concern of getting folks to work and getting them home. And frankly, as I mentioned, about half of the cost associated with the investment that we are talking about is related either to the transit improvements, the public access, or keeping 37 open for a while so that it can stay, it is an important route.

The couple hundred million dollars that are throwaway is really the investment that is the challenge against, as Tammy mentioned, a multibillion dollar project. And I cannot minimize enough, the impact of a 30-foot causeway in that Corridor is not going to be easy to resolve, both from a permitting or an engineering and access perspective, not to mention a constructability perspective.

So just remember, there has been, I think if you look at both sides of the Sections A and B, about \$20 million have been put in the Corridor today. That is a long ways from multiple billions of dollars.

We have a pretty significant lift to get the \$430 million, but we have got confidence in our funding plan and our tolling options. We are confident that that is the best way to provide the equity solutions that are necessary and not get kind of broiled into a lot of the high-price questions that need to be answered before we can even begin to design an ultimate facility.

Commissioner Eklund also asked: And then my last question is, have you examined the current users of Highway 37? Because what I have seen since living in Marin my whole life and traveling that route a lot, most of the users that I have seen would not lend themselves to using public transit because they are bringing their equipment with them. But have you done a study about the current users?

Mr. Fremier stated: We do the best we can with origin and destination information. You know, I have heard the discussion that a lot of folks are working individually. But frankly, HOV lanes, especially when they are not priced can be for two or three. We are talking about equity overlays in terms of pricing that would allow some folks to get into that lane.

So look, we are confident that when you marry the requirements for not inducing new traffic and providing solutions that are really incentivizing people to get into other modes of transportation, that this is the right solution for a wide variety people.

Commissioner Eklund added: My comments are that I have been following Highway 37 since UC Davis was hired by I think was the state of California to do some studies. Meetings were held in Vallejo for years before other organizations started getting and we formed the Highway 37 Working Group, which I have been attending periodically over the past five to eight years or however long those been going on for.

I have always believed that we need to do, you can call it an elevated causeway, I call it a bridge. But I know you can't call it a bridge because of the implications associated with permitting on that. But I believe that we need to do an elevated causeway first and not do the interim project so that we can really restore that entire North Bay Area as wetlands and allow for sea level rise to be accommodated naturally, rather than having adjacent communities along the Bay build sea walls. I think that to me that that is the preferred, that should be the preferred project.

I have not seen the PEL Report and I will be looking forward to seeing it. That does recommend that that is the preferred alternative. I really think that we need to have more discussion about what the preferred alternative is.

I am hoping that BCDC will have that discussion because the present proposal will have to get permitted by, I guess, BCDC and other state and federal agencies. Rather than pursuing something that may not be supported by the regulatory agencies I think we should have this discussion soon about what the preferred alternative really should be for solving this issue on Highway 37.

I totally agree with the Baylands Group proposal. I think that is what we should be working towards and not an interim project.

So those are my quick questions. I have a lot of details but I won't take the time in this venue to do that.

But I really firmly believe that the interim project is not going to get us to where we want to go. We will never see that elevated causeway in our lifetime, or maybe even our children's lifetime, because of the cost of the Project. It is only going to go up over time.

And this interim project is costing more than the money is available. So, we should not waste the money that we are going to be using now, in my opinion, even if it is 50 percent would be wasted. That is a heck of a lot of money and that is public taxpayers' money.

I think if the public was given that opportunity to weigh in on it I think that they would look at looking at the preferred alternative in a different way and looking hopefully for an elevated causeway.

Those are my comments. I hope that BCDC does have this discussion at some future meeting rather than just giving out comments, but have an opportunity to discuss what is good for us. Thank you.

Mr. Fremier added: Commissioner Eklund, if I could just mention one thing. I think you will appreciate this a little bit. If you remember back when we were all talking about the Greenbrae Interchange and the concern was over an LA-style freeway. The interchanges that Tammy was talking about are significant. So there will be a lot of public discussion about any elevated causeway that goes in when we start looking at how it connects to existing facilities that are very critical. So I think that also will require quite a bit of effort and time. So we are absolutely committed to getting more information to you all to help understand the impacts of what a causeway looks like as well as how we can build it in segments, as Tammy mentioned, that are effective in addressing the sea level rise and the resiliency concerns that are topic number one.

Commissioner Nelson was recognized: Thanks. A couple of thoughts and then I have questions for both of our speakers.

First is that obviously this Project is important because of the transportation, climate vulnerability, ecosystem implications of the Project. But it is also hugely important for a broader reason and that is because all around the Bay we are going to face challenges like this where we have to find a way to navigate pressing short-term needs and pressing long-term needs and the relationship between those two things. We have to make sure that we push ourselves to find ways to accelerate those long-term rates because for a whole host of reasons it is very easy to imagine, not just in this case, but all around the Bay Area, that meeting those pressing long-term needs could result unintentionally in our kicking the can down the road in terms of meeting our long-term needs. We have to push ourselves not just with this project but all around the Bay Area, push ourselves to make sure that that is not the case.

So first a question for Ms. Rickard. You talked about, Ariana, you talked about the Tolay Creek Bridge and the importance of that large expansion; and the importance of accelerating that to make sure that we have got restoration of those marshlands well underway by 2030. Could you talk about the importance of the overall Causeway?

Do you see a causeway as significantly accelerating the ability of us to restore those Baylands in a way that makes them less vulnerable to sea level rise down the road? The real question I guess is, does the Tolay Creek Bridge meet the needs in order to make sure we are accelerating restoration or is the Causeway more broadly important?

Ms. Rickard replied: Yes, thanks for that question. No, the Causeway is more broadly important because then if you are elevating the whole transportation corridor out of the Baylands then you have that hydrologic connection.

So even for Tolay Creek if we could do like I mentioned or as we mentioned if you are phasing to the ultimate. What is happening over at the Novato Bridge, they are going to the elevation for 2130 sea level rise. If we could do the same thing at the Tolay Creek Bridge and have it elevated already to that elevation, that helps us get to the Causeway and helps with that hydrologic connection.

So, that elevated Causeway just really helps with all that restoration and water flow. So that is why we really would like to see that advanced.

Commissioner Nelson continued: A great way to set up the questions for Mr. Fremier. Let me start with a thought about the Project purpose. Arthur Feinstein said that he was concerned that the long-term causeway is uncertain at this point. And I have to say, I share that uncertainty for several reasons. One of those is because the description of the interim project leaves climate adaptation out of it.

If that were a modest project I completely understand. You are not going to redesign a freeway when you are repairing potholes. But this is nearly a half billion dollar project. And so I said, it seems to me that we want to, on the one hand, force ourselves to link adaptation planning and implementation with these shorter-term needs and also make sure that meeting short-term needs does not delay things. So can you help me understand?

And the broader concern is that this briefing was not just about the interim project, it is about plans for Highway 37 and it really strikes me that almost all of the discussion has been about the interim project, not so much about the long-term project.

That really sets up in my mind the risk that a big investment, this is a big investment in these interim needs, could unintentionally put us in a position where the long-term just gets kicked down the road.

So can you help me understand why Caltrans thinks of this as an interim project and then another, a separate long-term project, rather than trying to find a way to phase, to think of this as one project that we tackle, that Caltrans tackles in phases?

Mr. Fremier explained: I will give it my best but I think we talked about it. I will start with 8 to 24 billion dollars. That is kind of, I think, an eye-opening number.

Commissioner Nelson interjected: I get that. I am not asking you to commit to the entire Project. But is there a way for Caltrans to think about this Project in a way that allows you to design and implement projects in a bite-sized way?

Mr. Fremier opined: Well, I think that is exactly what we are proposing. The Caltrans presentation was actually that.

The Novato Creek crossing, which has gone through a whole bunch of iterations that would have been temporary, is now looking at an ultimate solution. It is much easier on that side of the Corridor to do so. And that frankly, might be the most important phase to get fixed first, I suppose. We need to take a look at that again with the future engineering work that we are talking about doing.

And I do not want to minimize the fact that the Tolay Creek work is very critical to a good portion of the resiliency work that is needed to get that marsh restoration moving.

I did try to emphasize it. I am going to try to emphasize it again to you, that the Strip Marsh improvements and really repairs from work that was trying to be done when the barrier got put down in 1994 and it was not successful; those two improvements are very significant to opening up resiliency opportunities that will be worked on in the Baylands Program for many years to come.

So I find that the work and the way we are proceeding is very consistent, I think, with the goal of moving both things forward as quickly as possible and keeping that roadway open for the traveling public during that time.

I want to say one more time that we think of about half of the money that we are investing in the 430 to 40 million dollar project is around transit improvements, public access and keeping the roadway open. The rest of it, while it is throwaway, is relatively minimal in terms of the kinds of impacts it is putting on the existing facility.

The commitment in the long run is to get rid of the dike that is there that was built when the road was built in the first place. And it does not get any more difficult when you start to remove the fill or pavement that we are talking about putting into the Corridor. So I think we are trying to do exactly what you are asking. And I think the idea that the PEL has given us phases to consider and to concentrate on make a lot of sense.

I need to point back to why Tolay cannot go to the permanent elevation just one more time. It is very dependent on what happens with the SMART Corridor. If the SMART Corridor stays on the current alignment for all of its efforts, freight and passenger use in the future, it is going to have to come out of the marsh as well. That elevation has not been established. We cannot put a bridge over it or decide what the right engineering solution is until that work is better understood.

That also is part of the work that needs to be done in concert with SMART over the next couple of years to help us understand that better so that we can then start to figure out what the ultimate alignment is to be.

Every foot that you go up makes major improvements that have to be reconstructed on the 37-121 Interchange as well and that starts to be a really complicated interchange to deal with. Potential transit options around SMART or all of the different traffic movements that are required in that Corridor. I think those are very serious challenges that we need to understand.

We anticipate when we get started on the ultimate work to be able to bring in a lot more visuals that will help people understand what the ultimate might look like. And remember, there has been no engineering done on that yet. But all of the environmental work that is being done today for interim and for the PEL work that Caltrans has done contributes to answering questions about where the problems are going to be as we navigate that long-term solution.

I think we are trying to argue that we are meeting what you described as building it in bite-size phases that are really designed to work towards whatever the long-term solution might be.

Commissioner Nelson continued his inquiry: So can you help me understand what that means with regard to Tolay Creek? I hear you that until you know what is happening with SMART it is hard to plan the final, the ultimate design. What does that mean on the interim? Does that mean that you are planning an approach there that you might well have to simply deconstruct and rebuild, demolish and rebuild when the final plan is clear?

Mr. Fremier answered: Yes. I mean, our anticipation is it will be a very simple Bridge. It is not a complicated Bridge, even at 430 feet. So it will be probably steel beams and a concrete deck on some piling.

That actually is some of the throwaway work that we are talking about most likely. I think good engineers can do lots of things, though. So it might be possible to raise that deck to the proper elevation. I just think it is too early to consider what that might be. But there is a potential that that simple Bridge might have to be replaced in the ultimate Project.

But it really has to do with how you have to tie it back down to where the railroad currently is. And the railroad currently is very close to the current Tolay Creek alignment so it is difficult to be able to put it at the proper location without affecting the railroad immediately. That railroad today is a freight line that is active and SMART generates some revenue from it and that is not something that we could just ignore in interim phases.

Commissioner Nelson acknowledged: I hear you. As you said, one possible outcome is constructing a bridge that could be raised over time once you have figured out what the right elevation would be. Are you looking at that interim bridge essentially as a causeway that could be raised once you figure out what the right elevation would be?

Mr. Fremier answered: When we get the \$60 million from the state of California we will start doing some engineering work that hopefully can answer those questions.

Commissioner Nelson continued: Just one last simple question. Have you determined the alignment of the Causeway over the long-term? Mr. Shilling asked that question. Meaning, would it be on the existing Highway 37 footprint or a new footprint? Have you determined that?

Mr. Fremier explained: Well, the PEL has decided that it is going to be in the same alignment. But I think that question was very astute, frankly, because when the unsolicited bid came in several years ago to sort of decide this idea of what the ultimate might look like, their intention was to build to the south a new alignment and then keep the existing roadway open in the westbound direction.

You know, that is a simple engineering solution is build to the right and then eventually go to the left. It is too early to decide that.

Frankly, if we are going to stay in the existing footprint we are creating some real challenges that are going to require a lot of creativity to solve. So I think those are the questions that we will answer when we get started on the real hard work of investing in the long-term solutions in that segment. It is not going to be easy.

Commissioner Nelson acknowledged: Thanks. I will stop there.

Commissioner Peskin commented: Thank you, Chair Wasserman. I will attempt to be brief and less articulate than some of my colleagues but I do want to associate myself with the comments of Commissioner Eklund.

I realize this is an imperative, not only as it relates to sea level rise but to the existing intolerable and inequitable congested conditions. I also understand that there is not funding that is immediately available both for the short-term solution or the quote/unquote ultimate solution.

But given all of the complexities in permitting, given what it would take to add fill to a federal wildlife refuge, I harp back to my days of the SFO runway expansion debacle. And at a high level would suggest that anything and everything that could be done to move towards a one-time ultimate solution with any interim solution really being a phase of that ultimate solution, will probably be the most expedient, albeit ultimately expensive solution.

I suspect that given all of the political and environmental forces that we can see in these relatively early days lining up that we would all be better off relative to permitting and time and heartache biting the bigger bullet earlier. That concludes my observation at this time.

Commissioner Gorin chimed in: Thank you so much. I just want to echo the comments of my colleagues. I am very concerned about the interim project lasting forever and kicking the can down the road and not getting to the ultimate project, which is exactly where we need to go and everybody agrees is the perfect project. A huge amount of money to fund that. Absolutely.

The legislation authorizing the collection of tolls has not moved forward and that is a potential funding mechanism for the phasing and the projects along here, involves some equity issues as well, of course.

I am really concerned that public access is being lost along the stretch between Sears Point and Mare Island. Specifically for, ironically, you show a bicycle icon but yet there is no bicycle access.

Some of the mitigations for this could be the Bay Trail to be extended along there to provide bicycle access. Many, many, many people in my district would love to have access by bicycles there. So I am concerned about the purview of BCDC and the loss of public access along here except by car, potentially.

I think we should also encourage maximum creativity in allowing and really reinforcing the tidal action north and south of the Causeway. And even though we are extending the bridge along Tolay Creek I am not sure that that is sufficient to really build the wetlands that we need for climate adaptation. I have a feeling that this interim project is going to be closed at some point in the future because of the rising tides around the Bay.

So that is the purview of BCDC. I depend on you for the expertise to provide answers for the wetlands restoration as well as pushing for mitigation for public access and the ultimate project as quickly as possible. Let's go harvest the money somehow. Thank you all.

Chair Wasserman commented: I am going to make a couple quick comments and there are some questions embedded in them. I am putting those questions out because I think they are ultimately important to answer; I am not seeking answers at the moment.

One is, particularly with the pending retirement that was announced or that we heard about in the beginning; who is the Brian Mulrone for this Project? I do not necessarily expect that level of wit. But I think it is, as everybody has said, a very complex project with many moving parts and many different players. I think it is going to be very important to have someone like that in terms of having the continued overall view.

Second, when this comes back to us, and I am sure it will come back to us several times, I think there needs to be even more emphasis on the equity discussion or equity issues that Andy talked about.

We are all concerned that you create an interim solution and it puts off the urgency of the permanent solution and that becomes a problem, I think, given our policies.

We also need to be concerned about the impact on equity to not taking action on a quicker basis where you probably have the money.

I suppose my last comment is to echo one of Commissioner Showalter's comments. This is going to happen all over the place. Commissioner Eisen and I drove in from the East Bay today and really for the first time in my memory there were portions of the Nimitz in Oakland that were flooded. I know last year portions in Fremont were flooded. Highway 37 has some complexities that are not echoed in these other places but those are going to be serious issues, as well.

All right. I think with that I thank you for the presentation. No action is required today. We are going to hear about this again and probably again and again, justifiably. That concludes this item and I thank the presenters and all of the people who commented both from the public and the Commission.

9. Public Hearing and Vote on an Enforcement Committee Recommended Enforcement decision, Including Proposed Cease and Desist Order and Civil Penalty Order Number CCD2022.007.00 (BCDC Enforcement Case ER1988.024.00). Chair Wasserman announced: That brings us to Item 9, a Hearing and Vote on a Recommended Enforcement Decision for a Proposed Cease and Desist Order and Civil Penalty Order for John's Place, Cul-de-Sac, Benicia, Solano County.

This is a complex case. There are nine Respondents in this matter. As a preliminary issue I would like to find out how many of the Respondents are here and wish to speak. Please unmute yourself and identify yourself as I call out your names.

(The city of Benicia, John and Lois Herrington, Linda Sue Magnelli, Steven and Melody McKee, Daniel and Janis Staton, Chia-Chi "Chuck" and Meifan Tu and Robert and Ellen Whitehead were acknowledged as present.)

Chair Wasserman continued: Adrienne Klein of the Commission's enforcement staff will have 20 minutes for her presentation which is a real challenge given the complexity of this case and I recognize that.

When Ms. Klein finishes her presentation, those Respondent groups who are present will be provided six minutes each to make a presentation on the matter. If more than one person wishes to speak for each of the Respondents, for sake of argument a husband and wife, they need to allocate the six minutes between them.

After all the presentations have been made we will open the Public Comment Period and members of the public who are not legally associated with any of the Respondents will be recognized. Public comments will be limited to three minutes each.

After the Public Comment Period has occurred and been closed the Commission will be allowed to make follow-up questions of the staff and Respondents and deliberate on the matters.

All speakers need to limit their presentations and comments to the evidence already made part of the Enforcement Record that has been published online with this meeting's Agenda and the policy implications of such evidence. So I am warning you now that if you are going to try to introduce new testimony that is not part of the Record I am likely to cut you off.

Before Ms. Klein begins her presentation I invite Commissioner Vasquez of the Enforcement Committee to give a brief summary of the Committee's hearing on this matter. I challenge you to be brief. Commissioner Vasquez, you have the floor.

Commissioner Vasquez presented the following: Thank you very much, Chair Wasserman. On November 3, 2022 the Enforcement Committee held a hearing and voted to recommend to the Commission to adopt the Executive Director's proposed Cease and Desist and Civil Penalty Order in this matter.

After hearing the presentations by Adrienne Klein of the Commission staff and by the Respondents and their representatives, the Enforcement Committee voted to adopt the Executive Director's Recommendation as the Enforcement Committee's Recommendation to the full Commission.

The order requires the removal of unauthorized retaining walls; the construction of shoreline protection; the restoration of public access along the local shoreline; the timely submittal of two Notices of Completion and three overdue partial permit assignment forms; and imposes a \$61,110 administrative civil penalty to be paid within 30 days of issuance.

Pursuant to BCDC regulations Section 11332 entitled "Commission Action on Recommended Enforcement Decision," when the Commission acts on an Enforcement Committee's recommended enforcement decision the Commission's actions are limited to one of the following:

One, the Commission may adopt the recommended enforcement decision without any change to the proposed cease desist and/or civil penalty order. This is the Enforcement Committee's Recommendation.

Two, the Commission may dismiss the entire matter by voting not to issue the proposed cease and desist and civil penalty order.

Three, the Commission may adopt either the proposed cease and desist order or the proposed civil penalty order, and reject one of the other orders.

Four, the Commission may remand the matter back to the Enforcement Committee or staff for further action as the Commission directs.

Or fifth, 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 procedures required as the Commission must follow under regulation Section 11327.

At this time I invite Adrienne Klein to make her presentation.

Ms. Klein addressed the Commission: Good afternoon, Chair Wasserman, Commissioner Vasquez, Members of the Commission.

We have got a brief outline for you.

The matter before you is to cause a BCDC-required beach access stairway that has been closed for nearly 12 years to be repaired and reopened by the end of 2024. This stairway is located in a public-access area required by a permit that was issued in 1977 to authorize a 10-parcel residential subdivision.

The city of Benicia who maintains the public access area and improvements closed the stairway in 2011 following the collapse of an unauthorized concrete block retaining wall on one of the 10 residential parcels.

The beach access stairway is constructed over the unauthorized concrete block retaining wall and therefore when it collapsed the city of Benicia determined that it was a public safety risk and closed it.

Soon after its collapse the owner of the parcel with the unauthorized concrete block retaining wall, along with all co-permittees, obtained an amendment to the 1977 Permit to construct a new shoreline protection project. This owner also obtained BCDC approval of construction plans for this new shoreline protection project.

However, during the past 11 years, the owner has not yet removed the collapsed concrete blocks from the shoreline nor has she built the authorized shoreline protection project.

Therefore, a necessary precursor to reopening the public access is to cause the owner to remove the concrete blocks from her property and implement the new shoreline protection project by the end of 2023; giving the city of Benicia one year to complete its work on the beach-access stairway.

The next six slides are images to visually orient you to the site. The first aerial image shows the city of Benicia on the Carquinez Strait and the blue circle identifies the location of the John's Place subdivision on the shoreline.

Next, this image shows the 10 residential parcels that surround the John's Place cul-de-sac located left of West 6th Street which is running down the middle of the image. Lots 1 and 10 are marked with white text to show the 10 parcels that comprise the subdivision, with the other eight parcels located between them. Lots 4 and 5 toward the left are marked also with

white text because the public-access area and beach-access stairway that are the subject of this proceeding are located on these two parcels as shown by a blue arrow at the left side of the image. There is a second blue arrow to the right of Lot 1 toward the bottom identifying a view corridor which is another requirement of the 1977 Permit.

This image taken from the beach looking toward the development shows the unauthorized concrete block retaining wall not long before its collapse. This structure and the residence behind it are located on Lot 4 and owned by Linda Magnelli. At the left hand side of the image the closed beach-access stairway straddling the retaining wall is visible and behind it the residence located on Lot 5.

The blue oval in this aerial image highlights the unauthorized concrete block retaining wall after its collapse and the stairway is also visible that leads to the beach.

The blue arrow in this street view image denotes the entrance to the public-access area that leads to the closed staircase that leads to the beach.

Finally, the image on the left shows the public access area as it appears from the cul-de-sac; and on the right shows it from the top of the bluff looking back toward the cul-de-sac with the closed stairway located behind the photographer.

So there are five violations.

First, the unauthorized concrete block retaining wall. This is a McAteer-Petris Act violation.

Second, as a result of the closure of the beach-access stairway, there is a failure to provide and maintain the public access on Lots 4 and 5 as required by Special Condition II.B of the Seventh Amendment of the 1977 Permit.

And finally, there are three partial permit assignment violations. This is a form required to be completed at or after time of transfer and it is required by both a special and a standard permit condition.

Now for the chronology of events.

Sometime in the 1970s the unauthorized concrete block retaining wall was constructed on Lot 4.

In 1978 the Commission issued the 1977 Permit authorizing the aforementioned subdivision and, as a condition of approval, required that public access and views be provided on Lots 4 and 5, that a public-view corridor be required on Lot 1, and that open space be required at the base of the bluff and on the submerged lands offshore of the property.

Also in 1978, and this is important, the subdivision map including the BCDC required public access was recorded on title.

In 1983, and this is also important, the city of Benicia accepted the easement for the public access on Lots 4 and 5.

And then in 1991, the Commission issued a minor permit to the city of Benicia and the owner of Lot 1 authorizing the construction of the stairway we have been discussing in the public-access area on Lots 4 and 5.

This permit was the result of a requirement of a 1990 Cease and Desist Order to the then-owner of Lot 1 to resolve another violation. So, the 1990 Order and the 1991 Permit resulted in the construction of the beach-access stairway in the public-access area originally required in 1977.

In 2011 the unauthorized concrete block retaining wall collapsed and the City closed the beach-access stairway. Also that year, co-permittees applied for, and BCDC issued, the Seventh Amendment to the 1977 Permit authorizing the construction of a new shoreline protection project device on Lot 4.

In other words, the owner was aware prior to collapse that new work needed to take place and had pursued the necessary authorization. This project at that time also received plan review and approval from the BCDC staff engineer, rendering the project ready for construction.

Despite being, as it were, shovel ready, between 2012 and the present, Linda Magnelli the owner of Lot 4, failed to construct the new shoreline protection project and to remove the concrete blocks from the shoreline.

In 2019, BCDC attempted to cause resolution of this violation and to that end worked with Mrs. Magnelli who requested permission for a modified shoreline protection project from the one authorized in 2011. However, the co-permittees did not universally agree to the amended project and therefore the shoreline protection project authorized in 2011 must now be constructed.

Due to the significant harm resulting from these longstanding unauthorized fill and public-access violations, staff determined that it was necessary to commence a formal enforcement proceeding to cause resolution. Therefore, in September of this year staff issued a violation report and complaint to all co-permittees. Today's hearing is the culmination of this formal enforcement proceeding.

That concludes the timeline. Many but not all of the Respondents submitted a Statement of Defense. The Commission's regulations provide that as part of this hearing the Respondents' defenses and staff's rebuttals be summarized.

Two Respondents asserted that this proceeding and a resulting order would hold them liable for the costs associated with the removal of the unauthorized concrete blocks and construction of the new shoreline protection project and that this would constitute a taking.

Respondents are mistaken. Only Linda Magnelli the owner of Lot 4 where this violation exists would bear the cost to resolve this McAteer-Petris Act violation.

Next, one Respondent states that the staircase requirement is not part of the 1977 Permit nor of the recorded subdivision map and the 1990 Order and 1991 Permit did not, but should have, involved all owners.

Respondent is correct that prior to 1991 the staircase was not part of the public-access requirements for the project. But Respondent is incorrect that the staircase is not a valid obligation because it was added later through an enforcement action and subsequent permit issued to two rather than nine permittees.

The city of Benicia has accepted the rights and obligations of the 1991 Staircase Permit and the public access area must be reopened with the beach-access stairway.

Three, several Respondents state that because: (1) The Permit or the subdivision map are not, according to them, recorded on title; or (2) Because one or more title reports may not have disclosed the BCDC public access requirements; or 3) Because the public access has been closed for many years, that the permit's obligations are somehow invalidated or that they should not be held liable for these requirements or violations thereof.

There is case law which makes clear that the burdens of permits run with the land once the benefits have been accepted. As the prior owners accepted the benefits of the permits, the Respondents must continue to comply with the permit's public access conditions, whether or not they had effective notice of those requirements at time of purchase.

The Permit contains a standard condition that states, in part, "...all the terms and conditions of this amended permit shall remain effective for so long as the amended permit remains in effect or for so long as any use or construction authorized by this amended permit exists, whichever is longer."

As has been determined, the residences authorized by the amended permit exist. Further, co-permittee city of Benicia and holder of the public access easement is not making any of these arguments and wishes to restore the public access required by both permits.

Four, one respondent states that the beach access is unsafe. This is irrelevant to the matter. And furthermore, there is no evidence, no information in the record to suggest that this is true.

Five, a Respondent states that there is other onsite beach access and also states that adjacent offsite access supersedes the need for the onsite access. Respondent is in error regarding other onsite beach access, there is none, and the availability of offsite access is irrelevant to implementing the public access required by the 1977 and 1991 Permits.

Respondent city of Benicia states that they should not be penalized for the public access closure which was necessary for public safety and is the responsibility of the private property owner to resolve.

BCDC recommends a penalty solely to Linda Magnelli for the fill violation. BCDC recommends a second penalty against all permittees as they are jointly liable for the public access violation.

The City may independently negotiate with its co-permittees if it believes that it should not be liable for any portion of the civil penalty.

Respondent Staton states that they should not be penalized for the permit assignment violation. The language of the permit condition is clear that seller is required to initiate the assignment process. However, in the absence of seller fulfilling its obligation the condition requires buyer to execute a permit assignment form.

Staff is proposing the minimum daily penalty of \$10 provided under the law and using a 37-day time-period for each partial assignment violation. Staff could have chosen but elected not to choose a longer time-period, which would have resulted in a significant rather than a de minimis penalty for each missing partial permit assignment form.

The proposed Cease and Desist Order would require all Respondents to cease and desist from violating the law and the Permit.

It would require Linda Magnelli to remove the unauthorized blocks and construct the authorized shoreline protection project according to the approved plans by the end of 2023 and to subsequently submit a Notice of Completion.

It would require the city of Benicia to thereafter reconstruct the public-access area. There are existing approved plans. They may use them or pursue approval of new plans. That work should be completed a year following the shoreline protection project. The City would then also be required to submit a Notice of Completion.

And then there is the requirement for the three partial permit assignments within 30 days of Order issuance, which would be tomorrow if adopted today.

The Enforcement Committee adopted the staff recommended penalty of \$1,600 per day for the unauthorized fill violation and for the Permit public-access violation. Though both violations are susceptible to resolution, each one has resulted in significant harm to public access and consumed significant staff resources, factors the law directs to be considered in determining the appropriate penalty amount.

The duration of the fill violation has been calculated from September 1, 2013, the date the new shoreline protection project authorized in 2011 was to have been completed under that permit; and the duration of the public-access violation has been calculated from September 1, 2014, one year following the prior due date. At this daily penalty amount for more than 2,000 days, the penalty for each of these two violations reaches the \$30,000 administrative maximum.

The penalty for the fill violation would be assessed solely to Linda Magnelli, as stated, and the penalty for the public-access violation would be assessed, also as stated, to all permittees.

The partial permit assignment violations are minor harm violations and accordingly have been ascribed a minimum penalty, as mentioned, \$10 a day for a 37-day time period, that is between the due date for the Statement of Defense form, October 11, and the date staff initially expected this matter to come before you, which was November 17. As such, Respondents Staton, Middleton and Vitolano would each be liable for \$370. And all penalties are due within 30 days of Order issuance.

Therefore, following the closure of the public hearing, the recommended Commission motion would be that the Committee's recommendation be adopted in full along with proposed Cease and Desist Order and Civil Penalty Order CCD2022.007.

This concludes the staff's presentation, thank you.

Chair Wasserman acknowledged: Thank you, Adrienne. We will now call on the Respondents. We will start with the city of Benicia, six minutes.

Mr. Upson spoke: Good afternoon, Commissioners and BCDC staff. My name is Erik Upson. I am the City Manager of the city of Benicia. This afternoon with me today is our City Attorney, Ben Stock and my Special Projects Manager, Rick Knight, who has a great deal of historical knowledge on this subject.

So I want to start with some good news which is that the city of Benicia is in complete alignment with the goals and the desired outcomes of BCDC in this matter. We want to see this project completed. It has been too long and we are fully ready to move forward with our responsibilities. We accept our responsibility in this matter and we are prepared to handle our responsibilities when we can.

The second good news is that we have been nothing but impressed with BCDC staff through this process. I think they have been engaged with us. They have been available. I think the communication in terms of the City has been excellent throughout the organization. So in those respects I think we were in a good place.

I think really for us where I have an absolute duty and obligation as the City Manager is that, that the City would be fined in this matter would be unfair and unjust to the taxpayers of the city of Benicia. I just cannot sit idly by and allow that to happen when I think there is no disagreement, from what I have seen, that the City is in a position where we physically cannot do the work yet. We just cannot, it would be unsafe.

The stairs have been red tagged by our building official. We are not in a position that we can do the work. We are ready once the property owner adjacent completes the work to do what is necessary to get that project completed. And we are fine with a date certain upon completion of that work to be assigned to us. That is, I think, completely fair and we are willing to accept that and I think that is fine.

I think the inherent issue is that it is just unfair to the taxpayers that the City would be fined in a situation where we have been a good partner. I think if you talk to staff we tried to hold up our end of it. We have signed the agreement. We have helped bring meetings together. We have tried to help the property owner make connections and get the assistance she needs to get her project completed.

But the bottom line is we cannot do the work until that part of the work gets done first. And so I think it is one of these situations where the rules are leading to a place where something unfair is going to be done and we cannot sit idly by and allow that to happen.

I think there is a solution. I think for me the most clear solution is that the permits are severed into individual permits and then you hold each permit holder accountable for what they are responsible for. I think that is fine. When it comes to our turn we will be prepared to be held responsible. So I think that is the logical solution.

I think then the question, that begs the question, why wasn't that done sooner, why wasn't that approach taken? I have been the City Manager for two years. This came up to my level about a year ago I would say and we have just been (inaudible). I think that is the challenge on our end.

We look forward to working collaboratively with BCDC to get this done. We just hope that the Commission can find a way to recognize the unfairness of fining the taxpayers of Benicia in a situation where we really are not able to do what is required of us at this point, even though we are fully ready, willing and able to do that. I think that concludes my statement, thank you.

Chair Wasserman acknowledged and continued: Thank you very much. John and Lois Herrington? Are they here?

Mr. Herrington chimed in: Okay, I am sorry. We did not unmute very well. McKee wants to go first. Do you think you could accommodate that, Mr. Chairman?

Chair Wasserman replied: Yes.

Mr. Herrington answered: Thank you.

Chair Wasserman continued: Go ahead, Mr. McKee.

Mr. McKee spoke: I live on Lot, I guess it is 8, and I have been sucked into this thing recently. Kind of like the argument that the city of Benicia was making; it seems kind of unfair that for nothing I ever did I am on the hook for part of that \$30,000 fine. Of all the options I heard mentioned at the start, there has got to be a version where you modify it into something reasonable.

Meanwhile, I wanted to just, I have a friend with a drone. And I do not know if this is going to show up, these little postage stamp size boxes. But here is how the stairs look now. You are seeing at high tide. We are going with Vines, it is not too hard to obstacle there.

Chair Wasserman interjected: Excuse me, I just need a quick moment. Adrienne, have we seen, is that picture part of the record?

Mr. McKee answered: I doubt it, I just created it.

Chair Wasserman stated: Then I am sorry, sir, we do have some strict procedural rules here. We cannot consider new evidence at this hearing.

Mr. McKee acknowledged and continued: Okay. Which is too bad because I also have an image from, a 1953 black and white image that is right here that you cannot consider that shows the wall here from 1953 and not 1970s as has been asserted.

And whether you call this an unauthorized wall as it gets named over and over again in the Report, who knows if that was authorized. Has anybody gone back and checked the record from the 1950s on that? So I am not sure how that affects anything but it is a point I felt that needed to be made because Linda did not put up any unauthorized wall and that should not be added to her list of things.

Because I am an architect I have some connections and I met with a C21 contractor who is good at moving heavy things and a plan is being formed to get an excavator down into position there. It is extremely difficult.

The options include opening a hole in the side of Linda Magnelli's garage to let a Bobcat through and that is probably not going to be enough so we are looking at the other side of her lot. Dirt would come in and be piled up to protect like stepped walls of hers so heavy machinery can cross over. So this is, to me who has come on board recently, this feels like progress is being made.

I would like us to have a little more time. I get the timelines she has a year and then the city of Benicia has a year after that.

But why wallop us all with a fee at the start? It does not make sense to me. It seems like if we, you know, we are all moving now. The threat of the fee has got us meeting and doing stuff and so let's use that energy to get this wall done.

The neighbors, well, in the way I can help Linda. I plan on doing it. And so we can get this thing done in a way that does not feel like we are getting punished for just like living a few houses down from this thing.

I guess that is my say and thanks for your time.

Chair Wasserman continued: Thank you, sir.

Mr. Herrington, do you want to go now?

Mr. Herrington stated: Yes, sir, I would be happy to.

Chair Wasserman acknowledged: Go ahead.

Ms. Klein noted: You muted yourself by accident, Mr. Herrington.

Mr. Herrington responded: I am sorry. Thanks, Adrienne. I am a little older so I am not technically perfect. Put slide 5 back up, please. Is that possible?

Ms. Klein answered: It will take a minute, Mr. Herrington, but you can go ahead.

Mr. Herrington continued: Okay. Well, Chairman, my wife and I purchased this house and Lot number 2, you are going to see it in a second. There it is; where Lot 2 would be two to the left of that blue arrow, over 22 years ago. And at the time we purchased it we had a title report from a reputable title company, First American, as most of my neighbors did, and none of our title reports show anything relating to the restrictions on anything except the deeded amount of the rocks below us for public access.

And we have scrupulously honored that. We see fishermen every day; on weekends people picnicking. And they come down a stairway to the right of the blue arrow, which is 170 steps from our house.

It has been alleged here that public access has suffered. If you look on page 2 of the Enforcement Report dated June 3 you will see four letters down. I am sorry, I got the wrong one. It makes me go too fast if we have time limits. Anyway, you will see in that Report, page 10, dated October 24, the harm caused by the failure of assignment and the assignment violations is minor. And I use that word.

Below that in that Report you will also see on the same page, failure to get BCDC staff counsel approval of assignments does not have an adverse impact on public access. I think that is true because the public is using the rocks. It is not a beach. It is kind of a rough, rough rock area. They are using it in large numbers and we are letting them do it and enjoying it and talking to them and most of the homeowners are.

I would second Mr. McKee's statement. I wish we would stop calling this wall unauthorized. It makes it seem like somebody is in the wrong here and built a wall and I think that is not correct. The wall was there after World War II, built out of surplus material from Mare Island. Those blocks weigh a couple three tons apiece. Obviously they were used as anchors for a dirigible or a boat and a buoy that would moor it. But somehow the wall was there when the subdivision was granted in 1977 and nothing was addressed about it.

There are three pages of CC&Rs on this subdivision and not one mention of that wall or public access or a stairway.

So we are totally in the dark until last April that anything that the BCDC required was necessary. We never even met our sellers and the sellers were supposed to require assignments of everybody that bought something. And nobody has any sellers and a couple of them got their land through estates where somebody died. So there was no opportunity to know about it or to get that done.

So I am looking now at, if you wouldn't mind the next slide, which is slide 6. I am sorry, slide 10, please. It lists three things that we are in violation of. Also in the Report it says my wife and I as Respondents are guilty of illegal actions. Now that is like accusing somebody of a crime. We have never been convicted of any crimes and I am upset that you would say that we did illegal actions. We have not done anything. We haven't denied public access. We haven't done anything that would fall into those three categories. And if we are being fined because we did not do an assignment then I quote you back to the report that says it is very minor if you did not do an assignment. These fines of \$30,000 are huge.

The next thing in the June 2 letter, I am sorry, June 3, page two. Mr. Matthew Trujillo from BCDC writes me in response to my quote to him that we did not have anything on our title. Certainly the subdivision map was recorded, it has to be, but there was nothing on the record of requirements. And he says in his letter to me, the permits and public-access requirements are recorded on each parcel's title.

That is not correct and I don't know why he would say something like that. I have asked twice in letters to please see the recorded documents. As of this date absolutely nothing has come to me. A lot of paper has come, not none of it has been signed in front of a notary public, which requires you if you are going to record something.

So some of you, I don't know if you are lawyers or not, Civil Code Section 1468 says that restrictive covenants on real estate must be recorded in the county where they are valid or they are unenforceable. And the requirements under this Permit of 1977 are restrictive covenants. It may be a permit, you can call it what you want, and you could say it runs with the land, but it is a restrictive covenant and it needs to be recorded to be enforceable.

I can go on and on. But look, I think all of you have homes, all of you. I mean, we didn't know about this thing until April, 22 years after we lived here.

So I finally say to you, the wall needs to be built again. So let Linda build the wall. You don't need to fine the whole neighborhood to get the wall built. I think if you want to fine people for doing nothing you are probably not in good grounds. So let Linda build the wall. Mr. Chairman, I appreciate your time. I am concluded.

Chair Wasserman acknowledged: Thank you, sir.

Linda Sue Magnelli.

Ms. Magnelli addressed the Commission: Oh, my turn, thank you. I appreciate everyone trying to listen and understand this. My situation is I have gotten these permits, as Adrienne has said, and people have been very helpful and cooperative. The one thing that happens is that I have houses on both sides of me and the drop from the street down to the water is at least 25 feet or more from the street. And then getting equipment down there has been near impossible.

Different ways. Throughout the years different people have offered ideas and suggestions. We have tried them; Like go on one side of my house and knock out the wall in the garage, or go on the other side. And the City was very cooperative, allowing us to knock down my fence and try to build an off-ramp from the height down to the water where they can get the equipment. Then we tried the miniature Bobcat. And then we thought about possibly a conveyor belt. So it is not that my engineers and people are not trying to assist me.

And recently I got together with Steve here who is a resident and other people. We have a very talented community here and they are trying to help me figure out how to get the equipment back there because those stones are huge, huge blocks as they have been described to you and they cannot be lifted, even with some of the machinery we can get out there. They are heavy and so they have to be chopped up into parts, which is sensible, and then they can be hauled possibly with this.

Now, the one man I spoke to with the help of Steve, he has a new Bobcat tractor. It is a tractor with tractor plates instead of wheels. And so maybe we can build the off-ramp down so that this tractor can go down.

Everything else we looked at had wheels. So getting a wheeled thing down that steep embankment has always been a problem.

So at no time have I never not tried to get personnel who can help me solve getting the equipment to the location. That has been my hang-up and now I finally think I have a talented group of helpers. Thank you so much for listening.

Ms. McKee asked: Could I have Linda's next three minutes since my husband used all of our six? I hope so.

Chair Wasserman answered: No, I am sorry, no.

Ms. McKee repeated: No.

Chair Wasserman moved to the next speaker: The next speaker is Janet Middleton.

Adrienne, do we see Janet Middleton?

Ms. Klein replied: Let me check.

Chair Wasserman moved the commentary along: Ms. Staton, why don't you go ahead.

Ms. Staton commented: I have a letter prepared. The BCDC contends that 11 permittees are responsible for the public-access closure because an old seawall is collapsing on the staircase going down to the water. The BCDC has contended in several places that the wall was built in the early 1980s by Linda Magnelli. This has been disproved by the permittees with a picture from the Benicia Museum that undisputedly shows the wall in its present location with a date of 1953 on it and the John's Place Restaurant behind it.

The seventy-plus year old wall was clearly built incorrectly because the blocks were stacked directly on top of each other instead of being tiered back like most retaining walls.

If the BCDC and the city of Benicia had an engineer's report done on the wall before approving a permit to install a staircase they would have been told that the wall was not structurally sound and should not have been built in front of this incorrectly built seawall.

This is not the fault of the nine permittees who never signed off on the staircase from the beginning but the fault of the BCDC and the city of Benicia for not doing their due diligence by hiring a civil engineer to give their stamp of approval on the existing seawall. The BCDC could have required the wall to be moved at that time.

Instead, they pushed the permit through without consulting or requiring all of the permittees' signatures.

This has now backfired on them. The BCDC is fining all the permittees for something totally out of our control. Throughout the entire process Adrienne Klein has been adamant that all permittees needed to sign the permit to make it valid.

Only the city of Benicia and the owners of Lot 1 applied for and were granted a permit to build the staircase between Lot 4 and Lot 5. What happened to the need for the other nine permittees' signatures on the permit to build the staircase?

We are now being fined for a staircase that cannot be opened until the wall issue is resolved. The fines are unfounded because this issue is totally out of our control, and again, is a permit that we never agreed to or signed on to.

The easement that was granted, a public-access view corridor, not a staircase, between Lot 4 and Lot 5 has never been closed. The public has always been able to stroll down the corridor to view the Carquinez Bridge.

We are requesting the BCDC to remove all fines and allow Linda to move ahead with her wall project that was approved and signed for in Amendment Number 7. This has already been assigned by all permittees of that era.

In regards to the fees for the partial assignment form, there was nothing on our title report telling us about permit number 1977.021.08, let alone requiring us to sign this form at the close of escrow.

The previous owner of Lot 5, the Almendingers, have passed away, so there was no one to even acknowledge this permit when we bought the house. BCDC has had forty-five-plus years to get this recorded on our title. It seems like a sufficient amount of time to record a document that is so important to the BCDC. We are requesting the BCDC remove this fine as well. Thank you.

Chair Wasserman acknowledged: Thank you.

The Tus, Chuck or Meifan or both; but limited to six minutes.

Ms. Tu spoke: We acquired the property back in 2009 and then until last year we did not aware we are the respondent or the co-permittees. So just like our neighbors say on the entire John's Place, they explained exactly.

We just do not agree. We don't think we were purposely trying to invalidate any permit or any responsibilities. It is that we did not aware of the requirement of partial assignment and we did not aware that we supposed to maintain the entire easement.

And then we would like you to consider to remove the fine and then we fully support Linda and our neighbors to try to have for the project to proceed as soon as possible to have the public access to the Bay, to the beautiful water. And that is my comment, me and Chuck.

Chair Wasserman noted the comments: Thank you.

Ms. Tu replied: Thank you.

Chair Wasserman continued: Stephanie Vitolano?

Ms. Klein stated: I do not believe she is present, Chair.

Chair Wasserman acknowledged: Thank you.

Robert and Ellen Whitehead?

Mr. Whitehead chimed in: Yes, hello, this is Mr. Whitehead. Can you hear me?

Chair Wasserman replied: Yes, go ahead, sir.

Mr. Whitehead asked: Am I allowed to defer my comments to Melody?

Chair Wasserman clarified: So you are not going to speak?

Mr. Whitehead: Give my time to Melody to do what she wants to do as far as explanations.

Chair Wasserman gave permission: Yes.

Mr. Whitehead stated: Okay. I would like to do that if Melody still wants to.

Ms. McKee spoke: Thanks, Bob.

Mr. Whitehead acknowledged: Okay.

Ms. McKee continued: I am no lawyer and I do not even know my neighbors very well until now. So, I suppose threatening to fine us had some good effect already. I know all my neighbors' names and we all met in my living room. So I am not really their spokesperson but I feel obligated as their host that day to tell you some of the things that we want you to know.

So, if I try to put into language a counterproposal or to put into words what we want, we'd like you to not fine us. Give us 12 months to try to get it together. The threat of fining us was a wonderful motivator. It got us up off our assets and now perhaps we can work together to get the project done.

Linda will have some support. If she can use her savings to pay for the project instead of the fines that would really help. I think we just need more time. And now that you have got our attention the time will be well spent, unlike the previous 11 years. We didn't even live here for most of that.

So I would like you to consider voting against giving us a financial penalty and see what we can do for you. Thanks.

Chair Wasserman acknowledged: Thank you.

All right. Do we have any public comment?

Ms. Atwell replied: I see no hands raised, Chair Wasserman.

Chair Wasserman continued: Thank you. Questions, comments from Commissioners?

Vice Chair Eisen was recognized: I regret that I wasn't at the Enforcement Committee meeting when this was first gone over because it is extraordinarily complex. I thank my fellow Commissioners for working their way through it all, already.

The ultimate goal, I gather, is to get this public access opened up. That requires both removal of these concrete blocks and then rebuilding a staircase. Somebody will correct me if I have got any of that wrong.

I am not fully understanding what the role is in either of those tasks of the neighbors of the original Respondent, Linda Magnelli. Maybe that could be explained a little bit better because their requests and their arguments today have essentially been that they were not told about the requirements. There was nothing they could do to further the goals of public access.

So I am more concerned about their arguments than the others. So if maybe, Adrienne, you could explain a little bit more about why these individual neighbors have responsibility for a portion of that \$30,000 and three them for the failure to advise their buyers of this obligation.

Ms. Klein explained: Thank you, Commissioner Eisen. I will take the assignments first. So that is really a sideshow to the main show. But because it is a paper violation that needs to take place and because yes, it is just a side show. So it is a simple, easy requirement to complete.

And we are obligated under the law when we get to this stage to impose some manner of a penalty and we have calculated the smallest possible penalty using the shortest possible time period. So we are just asking for that easy paperwork. We are happy to help the owners complete it. It seemed like Mr. Herrington thought that was a requirement we were imposing on him but we are not, that is just the Statons, Vitolano and I'm not sure --

Vice Chair Eisen interjected: Middleton.

Ms. Klein acknowledged: Thank you, thank you very much, Commissioner Eisen. So to the other point, many, many property owners in a multi-residential development will have a homeowner's association and then we would have a single permittee and a single respondent. In this case there is no HOA and therefore we have a permit with multiple permittees.

And although only the shoreline protection project is the responsibility of the Lot 4 owner Linda Magnelli, the public access, the permittees are jointly and severally liable for it to be maintained as required by the permit, in spite of the fact the city of Benicia through a resolution took responsibility for its maintenance.

And as a sidebar to address the point about recordation, there is a subdivision map recorded on title and that subdivision map shows the public-access areas required by the permit. And that subdivision map being recorded on title fulfilled the permits obligations for recording those requirements.

So I hope I answered the sort of question about the physical who does what and why. In terms of the penalty, again, the permit. We are following the provisions of the law and the regulations and we do not believe that we can separate the responsibility for the public access to any. We just believe that all the permittees are jointly and severally liable for making that public access available and for the penalty portion of that public-access violation. And unfortunately it has been longstanding.

There was mention of another permit that people hadn't signed. There was mention of an agreement and this is partly where things get confusing. A lot of time was spent between staff and Linda Magnelli's engineer working on a different project. That would have had the same result, a new authorization of a shoreline protection project. But not all the permittees felt comfortable signing that permit and therefore, we were not able to use a new amended permit with the new project as the way forward.

It would have had deadlines in it, which I guess is sort of what the permittees are asking for. But we spent all year working on that and we were unsuccessful despite our best efforts in convincing owners that this was an approach and therefore we were left, we were put in this position of starting the formal enforcement proceeding.

Commissioner Lee commented: Thank you. So my question actually is related to what we are trying to do today since this is an enforcement proceeding. It means that today we are actually voting to proceed with these penalties; is that correct?

Chair Wasserman replied: Yes.

Commissioner Lee continued: Okay. There has been some suggestion from some of the speakers that, now I think they got the message, now they want some time to get their act together. Do we have the authority to say, well, we would stay this penalty for the time being and give them time to try to fix this problem? Because obviously it has been going on for many, many months; and that upon their completion, as they are supposed to have been doing all this time, is it possible for us to actually give a stay for say 6 months or 9 months, 12 months, to allow them to get this fixed and then we could then decide what penalties should be imposed?

BCDC General Counsel Scharff fielded Commissioner Lee's question: Commissioner Lee, let me take that question.

Commissioner Lee replied: Please, thank you.

Mr. Scharff stated: The answer is no. This is Greg Scharff, General Counsel for BCDC. The answer really to that is no. The Commission either needs to accept this, reject it or send it back to the Enforcement Committee. Those are really the three options. But let me let me explain where our thinking on this is so maybe it will give the Commission some comfort.

So there is a permit, as Adrienne Klein mentioned, the 1977 Permit that requires public access. All of the owners of the properties that are here are signatories to that Permit. Now, the particular people may not be but the owners of the property at the time in 1977 are signatories.

The public access has been closed for roughly 11 years. That is a big violation. We are basically saying you owe \$30,000. And the way we are going to handle that is yes, it is joint and several liability, but we are going to apportion it amongst each person. And if each person writes their check, and you can divide by the number of people, if they write their check they will not be responsible for more than their portion of it.

If they do not write their check and we then have to go forward on that, then that will be something that would be an enforcement and then they will all be jointly and severally.

So from a practical matter, no one person is going to get stuck with the \$30,000 if they all pay it. They will be stuck with a few thousand dollars and that is the way it would be enforced.

When it comes to Linda Magnelli's thing, I think she is basically being fined \$30,000. It is up to the Executive Director, if he wishes to at some point, reduce that penalty depending on how it works in terms of her moving forward in an expeditious way to get this done. And I think we are always open to that because we understand this is a process.

But what we are looking at here is making sure that the public access is opened and Linda Magnelli does the work and that there has to be some fine for the fact that this has not been open, the public access has not been open for 11 years.

And then as for the paper violations, they need to execute the paper on that and it is a de minimis fine. I forget what the numbers were but it was like \$300 or \$400, I thought, for those fines. So that is how the fine works out on all of this. Is that clear?

Chair Wasserman chimed in: It is to me.

Commissioner Lee continued: Thank you, Mr. Scharff. I do want to make sure. Where I am coming from is, at the end of the day I think we all want this to be fixed, right? That is the goal. And the fine is really a mechanism to try to enable and encourage the owner to take the responsibility to do the work. So I am just trying to make sure that even if we vote to have the fine, A, will we collect it, B, more importantly, will this problem get fixed?

I think I am just trying to find a way to really encourage the parties to get this fixed as soon as possible so that the public right-of-way will be obtained by the public, right. And then at the end we can figure out what the appropriate fine should be. You mentioned that the Executive Director has the prerogative to reduce the fine of that 30 to some other amount based on the successful completion of the project.

I think that certainly is something that would be acceptable to me so that at the end of the day we are really just trying to get this finished and not really trying to collect the fine.

So that is all I am saying. So if we were to vote to accept the current penalty I just want to make sure this is enough incentive for them to actually go and get this done and potentially have some reduction of the fine down the road based on the mitigation, should we say.

Chair Wasserman acknowledged and called on Commissioner Moulton-Peters for comments: Thank you very much.

Commissioner Moulton-Peters.

Commissioner Moulton-Peters commented: Thank you, Chair Wasserman. I am sure this was in the materials but I wanted to understand. Do we have an estimate of the cost of the mitigation itself and what we think it would cost to remove the blocks and rebuild the wall? It seems like this is pretty significant and I personally would rather see money spent on mitigation than fines. So I just want to understand if we have got an estimate for the repair.

Chair Wasserman responded: If somebody has a quick answer to that I will accept it. My guess is you do not given what Linda Magnelli said. I want to make a suggestion because we are close to losing a quorum here and if we are going to act on this at all we need to have a vote.

I think Greg did point the way forward. I would point out that he left out that the decision to reduce a fine or eliminate a fine is jointly made by the Executive Director and the Chair.

There is no question this case is a mess. There is no question we would not do this the same way today if there was any way to avoid it if this was new permit. But I also think we all agree it needs to be resolved.

My suggestion is that we approve the Recommendation of the Enforcement Committee. Respondents have the right to appeal, it is a very simple process, they will be fully informed about it, appeal the fine. Adrienne is shaking her head but I have been told otherwise. Somebody want to correct me? I do not want to misinform the Respondents. Greg?

Mr. Scharff stated: The question you were saying is they could appeal the fine?

Chair Wasserman replied: Yes, appeal to the Chair and Executive Director.

Mr. Scharff opined: I do not believe once you guys issue that they can do that. I actually do not believe that can do that once you guys issue the CDO, the Order. I believe it takes a negotiation between us and them afterwards.

Deputy Attorney General Shari Posner added: For what it is worth, this is a Shari Posner from the AG's Office. I would agree with Greg. I think that the Chair may be thinking about a process that is available in the standard fines procedure but is not available in this enforcement procedure if memory serves.

Chair Wasserman acknowledged: Got it. I appreciate that, I am sorry for my mistake. Then explain to me, Greg, please, and to the Respondents and to the Commissioners, the process that would happen if there were negotiations after we have approved this, if we do.

Mr. Scharff explained: So the process would be that we would talk with the Respondent. So there are really two things going on here. There are the fines for the public access, which I do not see being reduced, frankly; it is \$30,000. I see it being split and each party paying their fair share, frankly, which is a few thousand dollars. Now, it does not seem a reason to negotiate that.

The other issue is the \$30,000 fine with Linda Magnelli. My sense of it is that we would be willing to talk to Linda about that, to get her fine reduced once her work is completed. And we probably would not require collection of the fine until after the work is completed. And we would probably be willing to enter into a settlement agreement with her that basically states that to reduce the fine if she does. That is what was in our mind on this, frankly.

Chair Wasserman asked: And is that settlement agreement approved administratively or does it need to come back to the Commission?

Mr. Scharff answered: I would have to look and see if it comes back to the Commission but I think we could probably approve it administratively, but I have to look at that. But that is sort of the sense of where we would go on that.

Chair Wasserman summarized: So it seems to me the two choices here are to approve the Recommendation and allow the staff to negotiate. I see your hand up, Brad, I will come to you. Or two, return it to the Enforcement Committee. But before I say what I think, Brad, your comments.

Commissioner Wagenknecht commented: We on the Enforcement Committee struggled with the same the same thing and we finally came up with the Staff Recommendation and I was willing to move that at this point.

Chair Wasserman stated: I will accept that motion; is there a second for it?

Commissioner Eklund chimed in: I will second the motion, this is Pat Eklund.

Chair Wasserman acknowledged: Thank you. There was some competition there, I will take Pat's second.

Anybody want to comment on the motion?

I do not see any. Peggy please call the roll. I'm sorry, the motion was to approve the Recommendation of the Enforcement Committee.

Commissioner Wagenknecht agreed: That was my motion.

Chair Wasserman observed: Somebody has a hand up, I cannot tell who. Commissioner Lee.

Commissioner Lee commented: Thank you. I think Mr. Scharff explained it clearly. That if we accept the motion as currently recommended the idea is that the fine will likely be reduced upon the showing of the completion of the project. So I just want to make sure that is all part of the motion when we go forward and now I can approve that, thank you.

Chair Wasserman opined: I do not think we can direct that the fine would be reduced in the motion itself. I think there is a certain amount of trust here in the staff and in what our general counsel has told us. And I know the Executive Director concurs, in what will happen. But I do not think we can include that in the motion, I do not think we have the latitude to do that.

Mr. Scharff concurred: That is correct. You cannot include it in the motion. You have really three options under our regulations.

Chair Wasserman stated: This has frustrated me in the past, I'll tell you that. Go ahead, Commissioner Lee.

Commissioner Lee continued: Sure. Even though we cannot include it in the motion, obviously this is a public hearing and the comments are being made. So the discretion is going to be with the Executive Director and the Chair and with good faith and trust we expect that you would carry out as discussed. Thank you very much.

Chair Wasserman acknowledged and called for a vote: Thank you. All right, no other comments? Peggy please call the roll.

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

VOTE: The motion carried with a vote of 18-0-0 with Commissioners Ahn, Eklund, Gunther, Lee, Moulton-Peters, Peskin, Showalter, Wagenknecht, Klein, Arreguin, Ambuehl, Pemberton, Nelson, Vasquez, Gilmore, Gorin, Vice Chair Eisen and Chair Wasserman voting, "YES", no "NO" votes, and no "ABSTAIN" votes.

Chair Wasserman continued: Thank you all very much. I want to make a couple of quick comments and this is in particular to the Respondents.

At the end here you have heard a certain amount of banter and humor amongst the Commission. Frankly, it is one of the ways that I and we keep our attention and presence when we go through these long hearings. Sometimes I do it in the short hearings. It is not because we are not taking this very seriously. We are.

And we recognize and I think you have heard in the comments of a number of the Commissioners that they recognize the most important thing here is to get this situation physically corrected so that there is public access along the route that does not work currently.

I think you will find, as a number of you talked about, staff and our attorneys will work with you cooperatively to get that done. And I appreciate getting it done is not an easy task but it needs to be done as expeditiously as possible.

Mr. Scharff noted the following for the record: Zack, one more thing before we adjourn. I just wanted to say to the Respondents that they should deal with me on this on a going-forward basis and we will get this resolved.

Chair Wasserman acknowledged: Thank you.

10. Adjournment. Upon motion by Commissioner Peskin, seconded by Commissioner Gorin, the Commission meeting was adjourned at 4:40 p.m.