

San Francisco Bay Conservation and Development Commission

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September 30, 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 September 15, 2022 Hybrid Commission Meeting

1. **Call to Order.** The hybrid meeting was called to order by Acting Chair Eisen at 1:05 p.m. The meeting was held with a principal physical location of 375 Beale Street, San Francisco, California, and online via Zoom and teleconference. Instructions for public participation were played.

Acting Chair Eisen stated: Good afternoon and welcome to our hybrid BCDC Commission meeting. My name is Rebecca Eisen; I am the Vice Chair of the BCDC and for today I am the Acting Chair of the BCDC as our Chair is on a well-earned vacation today.

Acting Chair Eisen gave instructions to Commissioners for responding to the Roll Call. She asked Ms. Atwell to proceed with Agenda Item 2, Roll Call.

2. **Roll Call.** Present were: Acting Chair Eisen, Commissioners Addiego, Ahn, Beach, Blake, Brown (represented by Alternate Gilmore), Burt (joined after roll call), Butt (represented by Alternate Arreguin), Eckerle, Eklund, Gorin, Gunther, Lee (represented by Alternate Kishimoto), Lucchesi (represented by Alternate Pemberton), Moulton-Peters, Peskin, Pine, Ranchod (joined after roll call), Showalter and Wagenknecht.

Acting Chair Eisen announced that a quorum was present.

Not present were: Department of Finance (Almy), Department of Business Transportation & Housing (El-Tawansy), Contra Costa County (Gioia), Governor (Hasz, Randolph, Wasserman), Solano County (Spering)

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

Acting Chair Eisen gave instructions for participating in the hybrid meeting. She emphasized the following: Commissioners must have their cameras on, instruction for public attendees was given, those in attendance at 375 Beale Street were socially distanced, comments must be focused and respectful and emails received were noted.



Mr. David Lewis addressed the Commission: Good afternoon, David Lewis, Executive Director at Save the Bay. I have an announcement and then also an item of concern to raise.

I hope everybody is taking advantage of the month of September by getting to the shoreline of the Bay and helping their constituents do that as well. There are exciting ways to do this and a lot of resources on the website bayday.org with opportunities for everybody to visit portions of the Bay they haven't seen before or revisit portions that they love and share those with other people.

I want to raise an issue of concern related to Cargill's Salt Ponds in the South Bay. We know that BCDC staff has been working for some time on an updated permit for Cargill's operations and maintenance of the berms and levees that they are responsible for throughout the South Bay.

These have been one-year permits from BCDC for years and the Commission is rightly interested in a longer-term permit and more stringent requirements for levee in the face of sea level rise. So BCDC did an environmental assessment over a year ago and we appreciate the staff is trying to resolve concerns that were raised in the comments on that.

But this permit issue is becoming a growing pollution threat to the Bay that most people are not aware of. Cargill has six million (unintelligible) of toxic bitterns sitting in ponds just south of the Dumbarton Bridge right next to the Bay.

These are highly concentrated leftover salts from the (unintelligible) process, both liquid and solid that are stored in these ponds. And if released into the Bay by accident it would be (unintelligible) to fish and wildlife.

Bitterns can be added to these ponds. We have no assurance that the berms separating them from the Bay will keep the bittern from leaking.

In fact, on Google Earth photos it appears there may have already been seepage or overtopping.

So if we have a particularly large atmospheric river storm it is possible that significant addition of rainwater could cause the bittern in these ponds to overflow into the Bay.

And if we have an earthquake those levees could fail. And as sea levels rise the high tides in the South Bay, especially in combination with a king tide or a severe storm could also overtop these levees.

So the public deserves to know what actions BCDC and other agencies are taking expeditiously to address this situation to reduce the risk of levee failure and pollution to the Bay.

And Cargill Salt in not being sufficiently responsive to the Commission's needs to get this permit done. So I wanted to put that on your radar screen and I thank you for your attention.

Acting Chair Eisen moved to Approval of the Minutes.

4. Approval of Minutes for the August 18, 2022 Meeting. Acting Chair Eisen asked for a motion and a second to adopt the minutes of August 18, 2022.

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

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

5. **Report of the Chair.** Acting Chair Eisen reported on the following:

I would like to start by welcoming to the Commission Letty Belin. Letty Belin is the Commissioner that Commissioner Gunther has appointed as his Alternate from the Water Board.

Alternate Belin spoke: I’ve been a lawyer for a long time. After my disappointment at Stanford Law School at the time had no one on the faculty that could teach environmental law. I was pretty frustrated by that.

I joined a public-interest law firm down in Los Angeles and started my work on environmental cases.

But when I learned about the start-up environmental law firm of Shute, Mihaly & Weinberger here in San Francisco I joined them in 1982.

One of the first cases I worked on was Clem Shute was Leslie Salt versus BCDC with Leslie Salt claiming that it wasn’t responsible for fill that had been placed on its wetlands.

So BCDC issued a cease and desist order to Leslie Salt which prompted Leslie Salt to file a petition for writ of mandate and stay that order.

We lost in the trial court but we eventually won the case in the court of appeal which was very satisfying.

So that was my introduction to BCDC. I am happy to be able to come around the circle and participate for BCDC now.

We moved to New Mexico and I worked for the Attorney General Tom Udall in running the Environmental Enforcement Division for several years. And then in 2009 I joined the Obama Administration and for eight years I was the Councilor to the Deputy Secretary.

And one of my primary jobs was pretty much an impossible one, to deal with quote, California water issues. It included things like the State’s proposal to build tunnels under the Delta, the deterioration of many fish species and Delta Smelt and various runs of salmon.

I wish I could claim that we made a whole lot of progress on those issues but all I can say is, they were really hard issues and we did what we could.

So since then I came back to the Bay Area and I focused on water issues. I am the newest member on the Water Quality Board for the San Francisco Bay. I am really looking forward to getting up to speed on BCDC and working with you all.

Acting Chair Eisen acknowledged: Thank you Alternate Belin. Thank you for that great introduction. We are all anxious to meet you in person if that ever is possible.

The Environmental Justice Working Group met this morning. I would like to ask Commissioner Ahn, who chairs that meeting, to provide a brief report out on that.

Commissioner Ahn reported the following: Yes, thank you, Acting Chair Eisen. We had an Environmental Justice Working Group meeting convened today and first of all Our EJ Manager Phoenix announced the call for applications for a new EJ Advisor.

There was actually a meeting on September 14 to a Q&A session but applications can still be accessed on the front page of BCDC's website and are due on September 30. So please encourage people you might think would be really good to inform our Environmental Justice processes at BCDC to apply by then.

We also had a mention of the Racial Equity Action Plan Workshop that is upcoming on October 6 for our Commission meeting. The strategy and the goals and objectives as well as the agenda for the meeting were discussed.

Finally, we had a presentation from BCDC to update us on the progress of the Racial Equity Team. They shared draft objectives that they had worked through in five sub-topic areas: be a diverse agency, grow our capacity, justify implementation policies and programs that communicate effectively and are accessible to all.

They then opened it up to a conversation with Commissioners and our advisors on how to best present this information at the upcoming October meeting.

And that concludes my report.

Acting Chair Eisen acknowledged: Thank you, Commissioner Ahn. I want to slide then into another item on our Chair's Report.

a. **The next Commission meeting is scheduled for October 6.** At that meeting we are going to hold a workshop on social equity and environmental justice and all Commissioners and all Alternates are invited and encouraged to attend. That meeting is going to be held completely virtually.

Two other things, at our last meeting we encouraged our Chair Wasserman to write to Governor Newsom regarding Senate Bill 867. He has done so. I have his letter here.

I just wanted to read to you a couple of lines from it. It is a fantastic letter. I will start by saying the first paragraph: I am writing to urge you to sign Senate Bill 867. Sea level is already rising in the San Francisco Bay and along our coast. And the only questions are how fast it will rise and whether or not we will be prepared.

The recent science regarding the Greenland Ice Sheet shows at least 10 inches of rising sea level is already baked in. It is imperative that coastal local governments adapt to rising sea level to protect people, property and natural resources and that the planning be consistent across the State and address social equity.

This bill will require such plans and provides an incentive to prepare them.

The complete letter, I assume, is available.

One other thing on our Chair Report. We do have five written public comment letters that have come in regarding Agenda Item 8. They can be found on our website.

b. **Ex Parte Communications.** Commissioners, if you have inadvertently forgotten to provide our staff with a report on any written or oral ex parte communications you are invited now to report them by raising your hand and unmuting yourself.

Ms. Atwell noted: No hands raised Acting Chair Eisen.

Acting Chair Eisen acknowledged: All right. Thank you.

We now turn to the Report of the Executive Director and in this case the Acting Executive Director, Jessica Fain.

6. **Report of the Executive Director.** Acting Executive Director Fain reported: Thank you very much, Acting Chair Eisen.

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

We have a packed Agenda for today, so I will get started with a few announcements.

The first thing I want to do is introduce Eileen White who was recently appointed as the Executive Officer at the San Francisco Bay Regional Water Quality Control Board.

Eileen is no stranger to Bay Area water management. She is an engineer by training. She most recently served as the Director of the East Bay Municipal Utility District's Wastewater Department and has served on the board of the Bay Area Clean Water Agency and the San Francisco Estuary Institute.

Eileen will also provide us with a brief update on the harmful algal bloom situation facing San Francisco Bay.

Ms. White presented the following: Thanks for that introduction, Jessica. Just a little background.

I began my job at the Water Board on July 11 and about two weeks later there was a report of an alga bloom near Alameda. By early August the reports came in that it had spread. We saw it in the Oakland Inner Harbor. We saw it in Lake Merritt.

By mid-August it had grown and it was being spotted in Richmond and Belvedere to the north and San Mateo and Foster City across the Bay.

The bloom then extended out through the Oakland Bay region of the South Bay and expanded somewhat into the Central Bay.

There has been a lot of media on this event. There has been a lot of talk about this particular species is one of several species that can cause water to take on a reddish-brown color commonly called, Red Tides.

Red Tides are rare in San Francisco. So the large size of this alga bloom calls for our immediate attention and action.

So we monitored this alga bloom. We coordinated with agency partners to try to understand what caused this bloom so we can take the lessons learned to prevent future blooms.

So at this point I want to let you know, the alga bloom has dissipated. Dissolved oxygen levels are back to normal. So now we are in the stage of analyzing the data working with the San Francisco Estuary Institute who we partner with to try to understand what caused this alga bloom.

And I will just tell you, as a lifelong Bay Area resident and as someone who has run around Lake Merritt multiple times a week for the last 20 plus years; it was very upsetting to see the loss of fish in the Bay and in Lake Merritt.

And so I just want to provide you a little background. We don't know what actually caused the bloom. It was probably some combination of drought, climate change, less sediment, more sunlight being able to come in, less turbidity; but we do know San Francisco Bay receives some of the highest nutrient loads, that nitrogen and phosphorous, among estuaries worldwide.

And until recently it has not exhibited the problems typical of nutrient-enriched estuaries.

Nutrients didn't trigger the event. Nutrient levels in July and August were the same as May and June. But nutrient levels did allow the alga bloom to grow.

Effluent, that's the water that starts from the Bay Area publicly-operated treatment works or wastewater plants account for the majority of the nutrient loads to San Francisco Bay which human waste is a source of that nutrient from the publicly-operated treatment works.

And, in fact, the wastewater treatment plants contributed to over 60 percent each day to the nutrient loads in the Bay.

And what we have been trying to figure out is, how much of (unintelligible) the San Francisco Bay to these nutrients?

And the San Francisco Bay Regional Water Board has been studying water quality and nutrients in San Francisco Bay for decades. And knowing that it is a nutrient-enriched estuary the San Francisco Bay Regional Water Board convened a nutrient management strategy in 2014 in recognition that the consequential nutrient-related management strategies would benefit from a multi-stakeholder process.

So we've got NGOs such as Bay People. There is EPA. There are representatives from the POTWs all at the table. So we are being transparent as we learn about the science of nutrients, harmful alga blooms and climate change in San Francisco Bay.

We have acquired under the first nutrient watershed permit that was issued in 2014 the wastewater utilities were required collectively to contribute over \$800,000 a year to the studies of San Francisco Bay, climate change, nutrient and harmful alga blooms.

With the second nutrient watershed permit issued in 2019 POTWs were contributing collectively \$2.2 million a year.

And parallel we've asked the POTWs to identify the most cost-effective solutions for reducing nutrients.

So as part of the 2014 Nutrient Watershed Permit they were required to complete a comprehensive study looking at different methods for reducing nutrient loads for their plant, whether it be optimization, doing side-stream treatment which is treating a portion of the effluent that is discharged to the Bay or the full amount that is discharged to the Bay.

As part of the most recent nutrient watershed permit you are now looking at nature-based solutions such as horizontal levees and watershed restoration as far as reducing nutrients and also looking at opportunities for recycled water.

So I guess in summary there has been a lot going on. This was a terrible environmental disaster for San Francisco Bay and we don't want it to happen again.

So we are working with all our partners to try to understand it and we will be issuing the next watershed permit in 2024 and we want to make sure that we use the best available science to inform our decision making.

I do want to note that based on the study in 2018 it was estimated to cost over \$14 billion to reduce nutrients in San Francisco Bay by the POTWs.

So we want to also pursue all state and federal funding to be able to best make use of the public funds in reducing nutrients. And we want to make sure we make no-regrets investments in our infrastructure as we address protecting the water quality of San Francisco Bay making the best use of public dollars.

So with that I open to any questions.

Acting Executive Director Fain asked: Any questions from Commissioners?

Commissioner Burt chimed in: Can you clarify a couple of things? One is, why Lake Merritt simultaneously had the issues with the same as within the Bay? And second, under what your last comment on the role of recycled water with advanced water recycling with RO and the need to discharge the salts there; if we don't have a breakdown of organics with a supplemental step in advance recycling do we necessarily reduce the nutrients through that adoption of advanced water recycling?

Ms. Belin responded: So your first question regarding Lake Merritt is connected to the Bay. That is why there were fish killed primarily in the South Bay and then Lake Merritt.

And then Lake Merritt the problem is it is connected to the Bay so the fish came in; by the time the dissolved oxygen levels had dropped and generally if they are above five and they had dropped as low as zero at some point; they could not get out.

And it also is very shallow so there was lots of sunlight. So it made for large number of fish kills in Lake Merritt. So that is why we saw so many fish killed in Lake Merritt.

And then regarding your second question, part of the study is to look at the opportunities for recycled water and you are bringing up really good points because it is kind of looking at competing priorities.

Ideally you get the most nutrient removal if you are, you know, using it for irrigation like ball fields where kids play soccer. When you start looking at the more advanced direct credible reuse of recycled water that is where we need to look at where the opportunities are for reducing nutrients and then what are the issues you have to deal with regard to the recycled water issues that you bring up?

So that is part of the study that should be completed within the next 18 months.

Commissioner Burt acknowledged: Thank you.

Commissioner Eckerle was recognized: First I just wanted to say, thank you Eileen for being here and for your great presentation.

I just had a question; this might be for Jessica or staff. And that is, what is our process for kind of communication and readout to the Commission when things like this happen? Like obviously it was all over the news and we are hearing it from all sorts of different channels but it didn't seem like there was a clear communication for pathways to kind of direct information to us as a Commission.

So I just wanted to ask if we had a process for that or perhaps I missed something in my inbox.

Acting Executive Director Fain answered: We rely on the Water Board in this instance as the sort of liaison lead agency on water quality issues. But we certainly invited Executive Officer White here today to share this and brief you on this issue.

We'd love recommendations for other ways you think we could keep you involved and informed. So if you have specific ones, happy to hear those.

Commissioner Eckerle continued: Yes, I think going forward it would be great even to email communications; like this is happening, if you have questions, you know, who to reach out to. I think that would be great.

Acting Executive Director Fain stated: Thank you Executive Officer White for joining us. I don't see any other hands so I am going to continue with my Executive Director's Report.

a. **Budget And Staffing.** This week, after two and a half years, we officially reopened our beautiful office here at 375 Beale Street. Staff is coming in a minimum of one day per week. And we've organized a schedule to promote team building and collaboration.

For many staff, this is their first time working in this building. So far it's been going smoothly and we welcome you to stop by the 5th floor office in this building.

On to hiring: I am pleased to announce that Rachel Cohen has been offered a position as a Coastal Program Analyst I in our Enforcement Unit. Unless we hear from you otherwise she will start in October. This is bittersweet for me, as Rachel has served as BCDC's exceptional Planning and Sediment Division's secretary. I couldn't be more thrilled that she is continuing her career at BCDC. Rachel graduated with distinction from the University of Delaware Joseph R. Biden School of Public Policy in 2019 with a Bachelor of Science in Energy and Environmental Policy, which makes her a Blue Hen.

b. **Policy Issues.** Now on to policy issues. As Commissioner Ahn mentioned, we are currently accepting applications to fill a vacancy on BCDC's Environmental Justice Advisors. The EJ Advisors bring extensive experience and unique perspectives from people working and living in socially vulnerable, underrepresented, indigenous, and EJ communities in the Bay area.

The new advisor will join an outstanding team of 5 who have been advising BCDC for the past year and a half. The application is available on our website and responses are due on September 30. So please help us spread the word.

You may have spotted Phoenix Armenta, BCDC's EJ Manager, out on the street this past month where they were tabling at the Hip Hop for Change Environmental Justice Summit at the Presidio and at Lake Merritt's Shifting Shorelines event with the Exploratorium and other environmental educators.

When we can, we are working to get out more into communities. So let us know if there are any events we should be at. Contact Phoenix if you have ideas.

On September 8th the Enforcement Committee received a staff briefing on the unhoused persons issue at Union Point Park in Oakland. Staff reported on their two recent visits to the Park and found that a few encampments have returned to the Park.

Enforcement staff meets regularly with staff of the city of Oakland to discuss the progress of their continuing Park clean-up efforts. Going forward, staff will work more closely with Oakland City staff on solutions to comply with the terms of its Commission Order.

Earlier this week, the Coastal States Organization hosted a workshop on beneficial reuse laws, policies, and regulations in Long Beach and Brenda Goeden from our staff participated. The workshop included all western states working together to identify common challenges across the states and potential solutions.

The State Legislature concluded its session recently. I'd like to now turn it over to Steve Goldbeck to provide a legislative update.

Deputy Executive Director Goldbeck addressed the Commission: There are several bills that passed the State Legislature and that are of interest to the Commission.

First is SB 852, Climate Resilience Districts by Senator Dodd. The bill would provide for local resilience districts that could use tax law and funding for climate change adaptation projects including rising sea level.

This bill has not only passed the legislature but has also been signed by the governor. It should provide a very useful tool for financing the future to address rising sea level.

Another bill is SB 1078, Sea Level Rise Revolving Loan Pilot Program by Senator Allen that would establish a pilot program to fund acquisition of properties in low-income, socially-equity communities that are vulnerable to inundation by rising sea level.

SB 1065, Abandoned and Derelict Commercial Vessel Program by Senator Eggman would address the significant problem of abatement of derelict and abandoned commercial vessels in state waters including San Francisco Bay.

And the last I will mention is SB 1067 Sea Level Rise Planning and Adaptation by Senator Laird. It provides for preparation by local governments for adaptation plans for rising sea level, approval by BCDC or the Coastal Commission for those local (unintelligible) in their jurisdictions.

And you just heard Acting Chair Eisen read from the letter from Chair Wasserman to the governor about that bill.

These latter three bills have passed the legislature and have been enrolled for consideration by the governor to sign or veto the bills.

The Commission took a position of support for all three bills. We did not agendaize this item so I will stop now. So we will provide a more detailed legislative briefing when we know which bills have been signed.

We are working to identify funding for adaptation to rising sea level that is in the recently enacted state budget. And we will also provide information on that as well. Thank you so much.

Acting Executive Director Fain acknowledged: Thank you, Steve.

Finally, let me elaborate on what Acting Chair Eisen said about the next BCDC meeting: On October 6th we will be hosting a virtual public workshop for you on BCDC's Racial Equity Action Plan during our regular Commission meeting time. During this meeting, you will be asked to think about what a racially equitable BCDC looks like and what steps we can take to get there.

You'll have a chance to break into small groups with community representatives, staff, and members of the public. Please note that this meeting will be entirely virtual – please do not show up at 375 Beale! This is to enable the technology to run smoothly and maximize participation. Stay tuned for an email announcement that we encourage you to share it widely with your community members who be interested.

And finally, please complete your paperwork for direct deposit by the end of the month. This is so you can receive your per diem payment for Commission meetings. Anu Ragnathan sent an email about this. We currently have 14 Commissioners and Alternates who have not completed the paperwork.

That concludes my Report, Acting Chair Eisen, and I am happy to answer any questions. And I believe Commissioner Eckerle wished to comment.

Commissioner Eckerle commented: I just wanted to piggyback on Steve's updates just to share that the proposed budget does include \$101.5 million over several years to the Ocean Protection Council to implement SB 1.

And so, just as a reminder, that bill mandates that the State help support local and regional governments with their adaptation planning and implementation projects.

So this is huge news. We are in the process of figuring out how to move this forward. We will be using the Sea Level Rise Leadership Team as the functional equivalent of the collaborative that is mandated in that bill.

I just really wanted to share. We have heard loud and clear here and everywhere else that there is a critical need for funding, on-the-ground funding in local communities. That funding appears to be on its way.

Commissioner Gunther commented: I am hearing some loud, occasional background noise. I don't know if anyone else is, it is interfering with my ability to hear the speakers. (Several Commissioners nodded heads on screen)

Jessica, I just wanted to ask you about the Union Point issue. You said that there are some homeless encampments have returned to the Park.

Is there, are these people being allowed to stay there at the moment? Are there efforts to move them to other places in consideration of the agreement that we reached? What is happening actually on the ground?

Acting Executive Director Fain responded: Staff briefed the Enforcement Committee on this matter last week. Unfortunately a representative from the city of Oakland wasn't able to attend to that meeting.

And so my understanding is that at the next Enforcement Committee they will bring this back and staff are in discussion with the city of Oakland.

Commissioner Gunther continued: So we don't actually know what the conditions are on the ground in the Park at the moment?

Acting Executive Director Fain stated: I don't know if our Enforcement Manager or anyone from our Enforcement Team is on the phone. Our understanding is that, yes, there have been several folks who have returned to the Park as of last week. I'm not sure if that is the same as this week.

Mr. Goldbeck chimed in: I'm not sure if Matthew is on. I'll just state that he has been out inspecting the site. So we do have our own eyes on it but we do want to hear from the City about what actions they are going to take in response.

Commissioner Gunther chimed in: Okay, so we will know more at our next meeting. I just keep hearing that there are people in the –

Chief Counsel Scharff chimed in: Yes, Commissioner Gunther, we will report back to you at the next meeting on this issue.

And if you really want to know right now we could probably get Matthew who has actually visited the site in the last few days.

Enforcement Manager Trujillo chimed in: Could you repeat the question?

Commissioner Gunter responded: The question is just, what are the conditions on the ground right now at the Union Point Marina; in the Park.

Mr. Trujillo explained: Conditions on the ground are that, yes, as of last week when I went out there I found two tents that were up, one tent that had been taken down in the secondary placement area which is on the north side of the Park.

As you go through the Park there is a great deal of trash throughout the Park. The restroom facilities have been appeared to be permanently closed. People are doing their business on the side of the building and somebody spray painted, Public Restroom, question mark on the metal gate.

The closed restroom doesn't appear to be strictly a permanent requirement but we can look more into that.

There was a brand new, makeshift shack that is present on one of the lawns, kind of midway through the Park. And then to the south there was a, I guess a boat that had been moored directly offshore such that it was accessible through a gangway where there are people living on the boat and apparently parking their vehicles on the pathway.

So the Park is still being underutilized by the public and it seems like I can understand why given the state of the Park.

Commissioner Gunther acknowledged: Thank you.

Mr. Scharff added: Commissioner Gunther, I just want to assure you that we are on top of this issue and speaking with the city of Oakland and if necessary we will file an enforcement proceeding against them for violation of their settlement agreement.

So we are not obviously going to let this stand.

Commissioner Eklund was recognized: I just wanted to reiterate, I have two things to say. One is, I wanted to reiterate what Dr. Gunther said about the distracting noise.

It looks like most of the panelists have muted themselves but it may be coming from the Board Room, I'm not sure. It sound like somebody is moving paper or moving a microphone or something but it is very distracting and difficult to hear.

I am obviously concerned about Highway 37. I would love to get some sort of a briefing on BCDC's involvement with Highway 37 and what involvement we can have as a Commission because I think that this is an important area and it has huge implications regionally as well as statewide and larger.

So I'd love to have an update to the Commission and on what our involvement has been and what our involvement will be in the future. Thank you.

Acting Executive Director Fain acknowledged: Thank you, Commissioner Eklund. We agree and we are currently in conversation about when exactly to schedule that for a Commission briefing.

Commissioner Eklund replied: Great, I look forward to that happening soon. Thank you.

Ms. Atwell chimed in: The engineers are working on why there is something in the background. Everybody has their mics off so we are aware of it.

7. Consideration of Administrative Matters. Acting Chair Eisen stated: Our next item is Consideration of Administrative Matters. Deputy Executive Director, Steve Goldbeck is here if any of you have any questions regarding the Administrative Listings that were mailed on the second and ninth of September.

Are there any members of the public that have any questions either in person here or who are participating virtually?

Ms. Atwell stated: I don't see anybody in the room coming to the podium on this item. And I do not see any hands raised so I see no public comment.

Acting Chair Eisen asked: Any questions or comments from Commissioners regarding the Administrative Matters? (No questions or comments were voiced)

8. Briefing, Public Hearing and Possible Vote on Live-aboards. Acting Chair Eisen announced: We are now on Agenda Item 8. This is a briefing and public hearing and possible vote regarding live-aboards.

We have come to this item. We are going to have a presentation first from the Bay Resources Program Manager of the BCDC, Anniken Lydon, and then we will have time for public comment and discussion after we have heard from her.

Bay Resources Program Manager Lydon presented the following: It still seems to be a little bit loud but hopefully you guys will be able to hear me through that. Good afternoon, Acting Chair Eisen and Commissioners. My name is Anniken Lydon and today I am here to discuss an issue that was recently raised to Commissioners and staff regarding live-aboard boats present within Oyster Cove Marina.

Today I am joined by the staff from the city of South San Francisco and the San Mateo County Harbor District that have been coordinating with BCDC on this issue. From the City we have Mike Futrell, the City Manager, Nell Selander, the Director of Economic and Community Development, Christina Hernandez, the Assistant to the City Manager. And from the San Mateo County Harbor District we have Jim Pruett who is the General Manager for the Oyster Point Marina.

To set the context for this discussion, the map on this slide shows the location of Oyster Point in the city of South San Francisco in San Mateo County and the two marinas that are relevant for this discussion. The Oyster Cove Marina is located to the west of Oyster Point and the city-owned Oyster Point Marina is located to the east of Oyster Point.

At the July 7 and August 18 Commission meetings a number of members of the public provided public comments to let Commissioners know that the live-aboards at Oyster Cove Marina were being evicted and they requested that the Commission and staff look into ways to potentially increase the live-aboard allowance at other marinas nearby to allow them to move there or to find other ways to help the situation.

Additionally, at the August 18 Commission meeting Commissioner Pine requested the staff to agendaize a discussion of the live-aboard issue at Oyster Cove Marina for the Commission.

Following that meeting Commissioners Pine and Addiego also asked staff to look into the potential for the live-aboards at Oyster Cove Marina to move over to the adjacent city-owned Oyster Point Marina.

Today I will provide some brief history of live-aboards in San Francisco Bay and BCDC's laws and current policies pertaining to live-aboards.

I will then provide some brief information about the situation at Oyster Cove and the adjacent Oyster Point Marina; and staff's proposed strategy on how to deal with the eviction of the live-aboards from Oyster Cove Marina.

After that I will then turn over the presentation to the staff from the city of South San Francisco to discuss the work that they have been doing to address this situation at the local level.

Since about the mid-1800s, it appears that floating structures and boats have been used as primary residences in small numbers around San Francisco Bay, especially during the Gold Rush.

Additionally, during World War II there was an influx of shipbuilders to the Bay Area and live-aboard boating increased in numbers.

Live-aboard boats have historically not been concentrated in certain locations of the Bay but rather were found throughout the Bay's recreational marinas.

On September 17, 1965, BCDC was founded to study, plan and regulate activities within the Bay as a unit.

Additionally, in 1969 BCDC was established as a permanent state agency with the mandate of regulating haphazard filling, evaluating the effects of individual projects on the Bay, protecting natural resources and ensuring public access to the Bay.

In 1983 there was a Bay Plan Amendment initiated to address and regulate live-aboards in San Francisco Bay and this turned into a long, policy development process.

In 1985 the Commission published a report on houseboats and live-aboard boats. This report was prepared as part of that amendment to address policies specifically related to live-aboards and to add those to the Bay Plan. Following the release of this report a public hearing was scheduled and there were three additional public hearings held on the issue.

Following those four public hearings the Commission convened an investigatory committee which met at least twice and reported its recommendations to the Commission. The Commission ultimately voted to approve the proposed regulations and Bay Plan policies as then recommended by staff based upon the investigatory committee's recommendations, except for one change that was made to the committee's recommendation, which is not relevant here.

In March of 1986 the Commission voted to adopt the live-aboard policies that are currently reflected in the Bay Plan and that will be discussed later in this presentation.

At the same time that it adopted the Bay Plan Amendment to add relevant live-aboard policies the Commission also adopted a regulatory definition of what is considered a live-aboard. Regulation Section 10128 defines a live-aboard as a: "boat that is not a transient boat that is capable of being used for active self-propelled navigation and that is occupied as a residence as that term is defined in California Government Code Section 244."

These live-aboard boats can come in a variety of sizes and types of boats and are used as a primary place of residence.

Given all of that history, the specific issue that we are here to discuss today is the live-aboard boaters at Oyster Cove Marina. Commissioners Pine and Addiego requested that this discussion be held and that staff look into the possibility of the live-aboards being placed at the adjacent city-owned Oyster Point Marina temporarily and how that could potentially occur.

At present all tenants of the Oyster Cove Marina are set to be evicted by October 15, 2022 including live-aboards and recreational boaters.

Currently there is an existing permit for Oyster Cove Marina that allows for up to 10 percent of that Marina's total boat slips to be made available for live-aboard boats, which is about 23 boats.

As we understand the situation from discussions with the city of South San Francisco staff, public comments at the Commission meeting and communications with the owner of Oyster Cove, there were about 32 people living on boats within the Marina at the time the eviction notices were sent out. It appears that 2 of those boaters have since left with a remaining 30 live-aboards still present at the Marina and required to leave by October 15.

Many of the live-aboard boats have expressed that they currently have no place to go in other existing marinas, given the waitlist for live-aboard slips can be many months long around the Bay Area.

There was concern expressed that some of the live-aboard boaters perhaps would be anchoring out outside of marinas in the Bay because they have no other place to go which has the potential to be both dangerous to live-aboard boaters and the environment as we have seen in Richardson Bay.

Commission staff believes that there is a high risk of this occurrence given that all 30 live-aboards are set to be evicted at the same time in one month's time.

As far as we understand it, the owner of the Marina is closing the Marina and intends to pursue some future use on the site, though at this time that ultimate use is not clear to staff. But in any case, the Marina owner does not intend to continue operating a marina.

Given the situation, as mentioned, Commissioners Pine and Addiego requested that staff look at the potential options for these live-aboards, as I have mentioned.

Oyster Point is the city-owned marina that is adjacent. It is operated by the San Mateo County Harbor District.

As the city of South San Francisco staff will discuss, this Marina currently has a number of empty slips and enough space to temporarily accommodate the live-aboard boaters from Oyster Cove Marina.

BCDC's permit for Oyster Point Marina currently allows that Marina as well to have up to 10 percent of the Marina's total boat slips be made available for live-aboard boaters. That is a total of 40 live-aboard slips for Oyster Point Marina and that Marina is already at the maximum. So this would be in exceedance of the 10 percent that they are currently allowed.

Notwithstanding that allowance limit, as the letter from the San Mateo County Harbor District indicates, which was included in the emails that the Commissioners were sent this morning, this Marina, being Oyster Point Marina, currently has the required facilities to support the live-aboards from Oyster Cove Marina temporarily and to still stay in compliance with all other requirements of their permit.

The City will further expand upon this but it is staff's understanding that the City and County are willing to accept the live-aboards on a temporary basis as a humanitarian effort to offer them a place to berth while they seek other legal permanent places to go.

As briefly mentioned before and important for the Commission consideration today, the Commission is empowered by the McAteer-Petris Act to regulate fill, excavation of materials and changes in use around the Bay. The Commission can authorize Bay fill so long as that fill is determined to be a water-oriented use and meets the other requirements of the McAteer-Petris Act.

Additionally, the Commission's actions are also guided by the Public Trust Doctrine and the public trust needs for different areas of the Bay.

An important consideration that the Commission had to grapple with when adopting the current live-aboard policies in 1986 was that residential uses of the Bay are not a water-oriented use and are not consistent with the public trust.

However, the Commission recognized that in small numbers within marinas the live-aboard boats can offer security benefits to the marina and that these boats may be incidental to and support the marina use.

When developing the live-aboard policies and evaluating the percentage of live-aboards that should be allowed within a marina under the adopted live-aboard policies the staff surveyed a number of marinas around San Francisco Bay at that time and asked about their current live-aboard numbers.

These results were used to initially recommend to the Commission in 1985 that marinas be allowed to have up to 5 percent live-aboards.

However, as described previously, the live-aboard policies in the Bay went through a number of public hearings following that initial recommendation and through the investigatory committee I mentioned. Staff ultimately changed the recommendation of the live-aboard percentage to up to 10 percent live-aboards within any given marina with some allowance for increases in this number due to security reasons.

Additionally, potentially allowing the Oyster Cove Marina live-aboards to temporarily move to Oyster Point Marina has other policy considerations including other policies in the Recreation section of the Bay Plan, Water Quality, Environmental Justice and Social Equity, Public Access and others.

I would like to highlight that the guiding principles of the Environmental Justice and Social Equity policies broadly compel BCDC to consider how its actions may impact socially vulnerable communities.

Given the information provided by the city of South San Francisco staff from their interviews with the live-aboards and the public comments from the live-aboard boaters themselves, it appears that many of the live-aboard residents may be low or fixed income, elderly persons with a disability, or possess other characteristics that make them socially vulnerable and in a difficult place to find an alternate location to relocate to.

Additionally, many of the people are connected to the city of South San Francisco and their community and need time to transition to another location. Staff consider this when evaluating a number of options to ensure that eviction of the live-aboards will not adversely impact Bay resources, that it can be managed in a manner consistent with BCDC's laws and to recognize that this community of boaters needs a transition period for individual live-aboard boaters to find a different situation that is appropriate for them, whether that be a legal live-aboard slip in a marina in the Bay or elsewhere or upland housing.

Although the eviction notices were sent out in June of this year in apparent accordance with the law and our own permit for Oyster Cove Marina, given our understanding of the waiting period for live-aboard slips, the October 15, 2022 eviction date does not afford the 30 evicted live-aboards much time to find a solution by that date.

However, I would like to remind the Commission that the Environmental Justice and Social Equity policies are meant to be viewed in concert with and should not be implemented in a manner that is inconsistent with the basic underlying policy goals and requirements of the McAteer-Petris Act.

On this slide I have highlighted the key live-aboard policy that the Commission and staff are required to consider when taking action. This is Recreation Policy 3.c and this allows for marinas to have live-aboards present within the marina so long as the marina and the boats meet a variety of conditions, which include:

That the number of live-aboards not exceed 10 percent of the total number of berths unless a greater number is needed for security or other incidental uses.

That the boats further the recreational boating use.

The marina provides sufficient facilities to support the live-aboards including showers, restrooms, parking and other facilities.

That the marina provides adequate sewage pump-out facilities.

And that that there is adequate tidal circulation maintained within the marina.

As mentioned before, Oyster Point Marina has a current BCDC permit that was approved premised on compliance with this policy and has special conditions to ensure that the marina can adequately support live-aboards within the marina in a manner that does not impact the recreational use of their marina or the environment.

Based upon all of that information and the above relevant laws, policies and regulations, staff evaluated a number of options that could potentially be taken. While I am not going to talk about all of these options in this presentation, they can be found in the Staff Report along with the benefits and disadvantages of each potential option.

Staff is here today to let the Commission know the proposed strategy and path forward.

Ultimately, staff intends to write or to proceed with writing a Letter of Intent to the city of South San Francisco and the San Mateo County Harbor District. This Letter will indicate that the staff understands the humanitarian aspect of the current Oyster Cove live-aboard situation and that the City and Harbor District are considering taking all remaining Oyster Cove Marina live-aboards to offer a temporary location for these socially vulnerable individuals to go and provide some relief as these individuals work to find a long-term solution to their housing needs whether that be at another marina or upland.

The Letter will state that BCDC does not intend to initiate formal enforcement actions related to the temporary increase in the number of live-aboards above that 10 percent specified specifically in the permit for Oyster Point Marina and as a result of the Harbor District or the Marina taking the Oyster Cove Marina live-aboards.

This temporary stay of enforcement for up to one year is premised on the understanding that this is a temporary situation to allow the live-aboard boaters time to find other legal live-aboard slips or upland housing and that they will actively seek out these options.

The live-aboards and the Marina would be expected to comply with all the conditions of the existing Oyster Point Marina permit.

The City will continue to work with these live-aboards to help them find resources to move to another legal location.

As mentioned before, this temporary stay of enforcement will only be allowed for up to one year to allow this transition time for the live-aboards, but that this should also be accomplished as soon as possible.

Staff believes that this path is the most reasonable option given the current timing of the situation and the current Commission's laws and policies

Staff's recommended path forward is reflective of and fully consistent with the agency's current policies of providing time and working with the regulated community or regulated parties to collaboratively resolve compliance issues with our laws and policies without having to resort to formal enforcement action in the first instance.

We would like to remind the Commissioners that staff is informing the Commission of its proposed strategy forward to deal with this issue; and that implementation of this strategy does not require a formal vote by the Commission today unless the Commission disagrees with the strategy. The staff intends to proceed as described unless the Commission objects and would like to direct the staff to pursue another option.

Now I would like to turn the presentation over to Nell Selander, the Director of Economic and Community Development for the city of South San Francisco, to provide you with some more specific details on the facilities of Oyster Point Marina and the work that the City and the San Mateo County Harbor District have been doing at the local level to try and help the live-aboards find resources.

Ms. Selander addressed the Commission: Thank you, Anniken. I am Nell Selander here with the city of South San Francisco. Good afternoon, Vice Chair and Commissioners. I will attempt to give you a very brief presentation that does not overlap too much with Anniken's presentation.

For context, the Oyster Point Marina and the Oyster Cove Marina are both located in South San Francisco, just south of San Francisco in Brisbane.

As you have already seen, they are very near one another, separated only by this area of land that is currently undergoing a pretty substantial redevelopment.

We understand that both Oyster Cove and Oyster Point Marinas are recognized in BCDC documents as high-priority recreational-access areas and so we sincerely appreciate the BCDC staff approach presented today to potentially not enforce the 10 percent live-aboard limit at the Oyster Point Marina. But we also do recognize that BCDC may need to look at the closure of Oyster Cove Marina in the future and the impact of that on recreational uses on the Bay.

So focusing in on the Oyster Cove Marina. It is privately owned by Kilroy Realty. It has 140 slips. Kilroy delivered notice on June 15 to boaters there that the Marina would close effective October 15.

As Anniken mentioned, there are approximately 30 live-aboards, extended stays, and other habitual tenants still searching for someplace to go.

We understand that a number of these folks are either elderly or disabled or low-income and needing a substantial subsidy to afford housing elsewhere.

Over the past couple of months City staff has made multiple attempts to connect with boaters residing at Oyster Cove to share housing resources with them and begin making a plan to move to either a different marina or upland housing.

We also have a town hall planned for next week on September 21 and that will be held at a restaurant down at Oyster Point, so very much accessible to this Marina and the folks that live there.

At that town hall we will be joined by different service providers from the County to make sure that these residents, these boaters have knowledge of and access to any housing opportunities or other assistance that they might be eligible for.

Regardless of the outcome of today's meeting, City staff will continue to work with these boaters that need help finding either upland housing or a different marina to go to. Some of our staff have been busy calling other marinas around the Bay and making sure they are aware of any waitlist that might be open or any slips that may be open for live-aboards and forwarding those resources on to the boaters at Oyster Cove.

So moving on to Oyster Point Marina. As Anniken mentioned, it is owned by the city of South San Francisco and operated by the San Mateo County Harbor District. This involves several operating agreements and we maintain a very close working relationship with the Harbor District. It is a well-run and well maintained Marina with public amenities including the Bay Trail, a public promenade and fishing pier.

As Anniken mentioned, it has 408 berths. As of August 1, 285 slips were occupied and 123 were vacant and so there is capacity there. As of September 8, 29 permitted live-aboards were at Oyster Point Marina.

In terms of accommodating the approach described by the BCDC staff, the Harbor District can accommodate the additional live-aboards and habitual tenants from Oyster Cove Marina. It has sufficient facilities including three separate restroom and shower facilities, a mobile pump-out facility and public and tenant parking. And these additional boaters will have little to no impact on the Bay Trail public promenade. There is a windsurfing at the park area and fishing pier. The Harbor District has committed that these facilities will be maintained and made available to the public.

The Harbor District General Manager, Jim Pruett is on the line this afternoon if you have any specific questions about the Marina's operations. And then in addition to Jim and myself, South San Francisco City Manager, Mike Futrell and the Assistant to the City Manager, Christina Fernandez are also on the line to help answer any questions you may have. Thank you.

Acting Chair Eisen, that concludes our presentation on this item.

Acting Chair Eisen acknowledged: Thank you so much, Anniken, and thank you to the city of South San Francisco staff for those presentations; both of them were excellent and very informative.

We are now going to open the public hearing on this matter. Any member of the public who would like to make a public comment may line up at the podium; or if you are Zooming to raise your hand. We will hear from the folks in the room first. I believe that a number of you have filled out cards to speak and Peggy is going to list the names. Please come up and you will have three minutes each to speak.

Mr. Klein commented: Yes, it was an excellent report. Again, thanks to Dave Pine very much and to Scott Bower very much.

We do have some issues and I would like to mention something, this fact that we had no dialogue with Kilroy and he's got permits coming up. Tideline, which we look upon as a heavy and is being used for this eviction. Tideline, we know they have permits coming up. Please recognize they would not dialogue with us. They were hiding the fact and I believe they knew for four years, they knew for four years that they were going to evict us. They did not communicate with us.

I'd also like to really ask you to amend the Bay Plan to increase the live-aboard occupancy in these marinas. It is not only a low-income housing issue, and I do understand from the report that was addressed, everything is addressed wonderfully. But it is a housing issue. It is a low-income, low-impact housing issue and it does need to be addressed. In my opinion, the Bay Plan does in fact (inaudible).

Thank you so much for your work, BCDC. We will be placed but will only have one year if the live-aboard allowance does not increase. We are going to have a very difficult time finding places. Let's consider that. And again, thank you so much for your work.

Ms. Lachmayr spoke: Hi, I am Lucia Lachmayr, also a resident at Oyster Cove Marina, and I just want to reiterate what Matt said.

I also would like to encourage you to think about perhaps amending the Bay Plan to increase the number of live-aboards. I love this report. It was incredible and very thoughtful and meticulous in laying things out.

The thing that it does not recognize is that a lot of these people have been looking for other marinas for years. There are people on the list for Oyster Point that have been on there for 10 years. There's what, 75 people on that list that live-aboard and they pay \$35 every year to stay on that list and they move two, maybe three spots. Most people, it will be like 40 years before they even get remotely close to getting any kind of live-aboard slip. It is incredibly hard.

The closest one that will accept people without like, you know, having the fanciest of boats. And we have, we are working class folks so we have modest boats. They are well maintained, they are in good shape. Like Matt said, it is low-income, low-impact housing. We are low water use. We are all stewards of the environment. I pick up at least a pound of plastic every time that I walk around with my dog.

You know, I send letters and emails to, you know; complain about the water spilling out because they are watering the sidewalks you know. I care about the environment and I care about where I live. We keep that place looking nice and sharp and take care of each other out there as well.

We have lost three or four marinas in the last several years so supply for people to move to is dwindling. Most of the people are around 70. The average age is around 70 for our Marina.

I can work on my boat. I worked on it all summer long. I had no break because I wanted to make it pretty so it was acceptable to another marina. But you have 70, 80 year old folks. And I have within like two, you know, throwing distance almost 80 years old and 82 years old. These are elders. They are not going to work on their own boats. They have to pay a lot of money to get them ship shape and even then there is no guarantee to move into another marina.

So I appreciate so much you considering having some kind of stopgap measure, that year to look. But also the reality is it is going to be really difficult to find anything in the Bay Area. Maybe Stockton, but then, you know, that is really far away from our entire community. So thank you for your time, very much appreciate it.

Ms. Madden was recognized: Thank you very much. My name is Alison Madden. I live on a floating home in Dog Town which is being closed. Pete's Harbor was closed. The Peninsula Marina was closed. That was all total about 800 slips in three marinas. Now Oyster Cove is going away and it is really important too.

Nobody wants to force Kilroy to keep the Marina or keep it open but our understanding is they want a ferry or a water taxi. And I am not sure if that is under WETA, if that would be approved and funded under that, or if it would just be private. And there is no doubt that that is a water-borne water-consistent public trust use.

We'd like to advocate that if it is at all possible to keep some of the Marina, maybe half. And if they do not want to run it maybe the San Mateo County Harbor District can take that on. They are a fantastic organization.

I also want to say that the staff memo and the slides were fantastic and so was the delivery. This is just the best treatment and consideration of live-aboards that I have heard or seen. Especially after our experience in Redwood City it is like night and day.

The entire area east of 101 had 800 low-impact, naturally- occurring affordable homes live-aboards and they are all gone and it is all high-density, upland condos and apartments, \$4,000 and \$5,000 apartments and this was a really diverse community.

I would also like to say I do not want to just repeat what is in the email. Thank you for accepting it after 10 a.m., I really appreciate that. I did bring copies. There's a whole bunch of information about there, about the way in which live-aboard boaters provide not only security but we usually run an upland yacht club, there's all kinds of boating safety, knot tying, all kinds of things that bring the community down there to interact with people on the water. Holiday Opening Day parades, holiday lighted boat parades, all kinds of maritime activity that is completely lost to Redwood City now. We do have one good new marina. I really love Mark Sanders' West Point Marina.

And so I also want to say that in Latitude 38 Tim Henry is the journalist, look for an editorial and some articles and some op-eds, there is a lot of discussion here.

I would like to encourage finding locations where it is not just existing recreational marinas but allowing something like Galilee in Sausalito which is a full live-aboard co-op, you know, floating home community that does maritime days and does a lot of public service. They helped restore wetlands and we clean the creek in Dog Town. There is so much stewardship of the public trust that goes on with live-aboards.

I think that is most of what I want to say. Like I said, I didn't want to just repeat my email. Thank you for accepting it.

Oh, one thing really important to note, the number of live-aboards, it was way in excess. And over the last several months people received a letter saying you must sign that you are never a legal live-aboard and that wasn't true. These people were innocent third parties. They didn't know how the Marina was being run and they are not being offered the relocation benefit.

Mr. Fisher commented: My name is Frederick Fisher and I am one of the refugees. I just want to, I just want to, sure. I just want to say a couple of words on behalf of the elders. I am over 80 and I am not the only one.

I was a legal live-aboard on the coast side in the County for several years and when I came over to Oyster Cove it was wonderful. There were these people who were elders like myself who lived there and it became a really nice community for me to live in.

So the worst has already happened, Kilroy has kicked us out. I just wish there was a way we could keep the community together, that would really be nice. It's a very nice community that went poof. Thank you. Sorry, my name is Frederick Fisher.

Ms. Schulke spoke: Needless to say, I am (indiscernible) Cove Marina. My husband and I are on fixed incomes. We retired within the last couple of years. We originally moved to the Bay Area in order for our jobs. My husband is a database architect and I am a registered nurse and we found it affordable to live on our boats.

I would like to also mention that our boats are not just sitting in a marina being a house. We take them out onto the Bay and participate in recreational activities. So, you know, most of us do.

I am, I believe the work that was put into that report and I appreciate what they have to say. I think that the long term solution, though, has to look at the percentage of live-aboards that are allowed.

Also, those lists aren't months long, they are years long. We have been on the Oyster Point Marina list for at least five years that I know of. We are on Pillar Point's live-aboard list. We are on every marina in the area. We have been on their live-aboard list for years with no, with no satisfaction. We have tried to find a live-aboard slip all the way up to Seattle, Washington with little or no results other than paying a lot of money out to be on somebody's list.

I can't stress enough, we are a community. But I also would like to add to you to remember that we all pay property taxes on our boats. We will be contributing to the revenue of the Oyster Point Marina rather tremendously. Those slips are not cheap. They are less expensive than on-shore housing but there is still a considerable amount of revenue that you will be receiving by moving us to one of the two public marinas.

We do not present an environmental hazard. And as we do not dump into the Marina, many of us will watch out and make sure that other people do not dump either.

So I really do not want to reiterate more and more and more about what everybody else has said but I do want to add one thing and that is that 10 percent is based on the reality of the 1980s and it has nothing, really no relevance at this point because of the loss of the number of marinas and the loss of the slips.

And we also are inspected annually to make sure our boats are in good shape, that they can be moved, that they do not dump into the Bay and that our electrical, the electricity on the boat is adequate and will not cause a hazard. So I would like you to take all these things into consideration.

And also, by the way, some of us might be willing to go to Pillar Point as it is another public marina. Thank you for your time.

Mr. Boggia commented: Hi, my name is Tommaso Boggia. Thank you so much Commissioners and staff for taking on this issue. I have been lucky enough to be a live-aboard, a legal live-aboard for the past 12 years in Oakland. I say lucky because not everybody is lucky to find a live-aboard slip. It is clear to me from the staff report that they did not actually do what is compelled to them by the Environmental Justice principle and talk to the people affected. Because if they did, as you're hearing from the testimony today, you would know that these live-aboard limits make it basically impossible for live-aboards to move once they find a slip.

The one year stay of enforcement is an unrealistic and inadequate option for what is a systemic problem.

Insofar as marinas are allowed because they provide public access for recreation, our regional housing shortage crisis and three decades of stagnant wages for working class mean that without allowing live-aboards you are placing a class restriction on who can recreate and sail on the Bay.

If you want to mandate public access and public recreation you cannot limit it by class. Live-aboards are not displacing recreational sailors. We are the only working class recreational sailors on the Bay. And your limit limits working class people and access.

Cities do not extend tenant protections to live-aboards. The impact of this unrealistic limit on marinas, with the lack of tenant protections, means that we continue to be placed in situations where harbormasters have virtually unlimited ability to harass, price gauge and evict us without cause as is happening in Oyster Point, as recently almost happened in Barnhill until the city of Alameda stepped in.

And I am not going to say what happened in Oakland in the past few years because I don't want to ruin relations with my harbormaster and I am worried about retaliation. And this is all caused by the limit that you placed, this arbitrary limit on how many people can be live-aboards in marinas.

Staff, please follow through with this exemption. But Commissioners, I urge you to direct staff to revisit the live-aboard limit and actually interview and collect direct experiences not only of legal live-aboards but the many people who are forced into an illegal living arrangement.

We call them sneak-aboards, they're friends. There's many of them. And you don't hear about them because they are afraid to talk to you because of this limit. So please reconsider this limit. Thank you so much for your time and your consideration.

Mr. Port addressed the Commission: Hi, I am Stewart Port. I am another working class boater from Oakland and also an upland waterfront dweller. I'd like to pose a riddle. When is a boat not a boat? When it's (indiscernible). When it turns into a marina. Well, under current BCDC regulations as interpreted by all Bay Area marinas, if you have been staying on your boat since Monday night, as soon as your head hits the pillow on Friday night your boat ceases to be a boat and you (indiscernible), not on a boat. But your neighbor's boat, which its owner visits maybe a couple of times a month to drink a few beers with the spouse and maybe sand a little paint and which hasn't left the marina since its last yearly inspection remains a boat and would have no particular problem finding a slip in any Bay Area marina. While yours, which is registered, inspected and in all ways legally compliant and seaworthy and which you actually sail at least once a month would find it virtually impossible to find a slip if you reveal that one bit of information, that you intend to live aboard it.

This, though even most harbormasters would be happy to have such a tenant. If this sounds absurd it is because it is. The Commission needs to revisit its policies governing live-aboard allowances for marinas. Thank you.

Ms. Atwell announced: Acting Chair Eisen there are no more hands, no more public comment.

Acting Chair Eisen continued: Thank you and thank you to all the public speakers that are here in the room and that appeared by Zoom. We now need to close the public hearing. Could somebody please make a motion and a second so that we do so?

MOTION: Commissioner Eklund moved to close the public hearing, seconded by Commissioner Wagenknecht. The motion carried by a voice vote with no abstentions or objections.

Acting Chair Eisen announced: It is now time for the Commissioners who have questions or comments to address this issue. Peggy, can you keep track of who wishes to speak.

Commissioner Eklund commented: We are still hearing this background noise. I know that sometimes the words get missed so if I am not clear, please don't hesitate to ask for clarity.

I guess this live-aboard issue; really it is a San Francisco Bay issue, San Francisco Bay, San Pablo Bay and probably Suisun Bay as well. When was the last time the Commission had looked at the live-aboard issue and why 10 percent was established throughout the San Francisco Bay Area?

Acting Chair Eisen chimed in: Anniken, do you want to respond to that question?

Ms. Lydon replied: Yes, sure. As far as our staff research indicates, I think it was when the live-aboard policies were initially developed in the early to mid-1980s.

Commissioner Eklund asked: Why was the 10 percent limit established? Was it an environmental issue? What was currently existing? What was the basis for it?

Ms. Lydon answered: I will start to try to answer that and then maybe Michael Ng, our staff attorney, can also jump in a little bit. He has been helping with the background research on this. But our understanding was that initially the planning staff at the time sent out a bunch of surveys to marinas that existed in the 1980s and then also looked at projected marina development or additional berths that were to be added. And based on the results of the numbers of live-aboards that were reported back in those surveys they estimated about 5 percent, I think, per marina, and so that was the staff recommendation that they originally proposed in the planning staff report that was published.

However, it is a little unclear exactly what the comments were at the time. But there were a number of public hearings and then this Investigatory Committee that was established to look into this further. So presumably there were some requests to have that be a higher number than 5 percent. I think the Investigatory Committee ultimately recommended to staff that it be 10 percent because it seemed reasonable and so staff took that recommendation and recommended it to the Commission and then that 10 percent was adopted.

Commissioner Eklund acknowledged: Well, I appreciate that. When I read the Staff Report and I saw the one-year limitation I said to myself, based on the little that I know about live-aboards, especially in Marin, is that it is really hard to find a spot. So my question there is, okay, so what happens after a year? Do we extend it for another year? What was staff's thinking about that?

Ms. Lydon responded: Yes, again I guess I will start answering and Steve and Michael can jump in. After the year's time we would proceed with formal enforcement actions at that time and start trying to work with the City to figure out some additional resolution, but that would be probably the course of action.

Commissioner Eklund continued: Okay. I guess I have some concern about that. First of all, I support the proposed action with the exception of the one-year limitation because I think we really need to look at whether that 10 percent was appropriately set back in the 1990s.

And the reason is, is because this is very good, that is the only affordable housing that some communities may have. There is not enough affordable housing in the San Francisco Bay Area to handle all of the people who need it, whether for rental or for ownership.

It puts a lot of pressure on cities and counties when you stop live-aboards and the people only have a boat. That boat may not be able to be sold enough to be able to even provide enough rent; then there might not be enough rentals.

The rental market is, well, we have heard in the last few days that the rental market has gone up so much that a lot of people cannot afford it. And the cost of housing, which is not necessarily cities and counties faults, unlike what the state says. You know, it is the desire for people to live in the San Francisco Bay Area as demanding higher prices.

But I really think that we need to do a more comprehensive evaluation of the live-aboards and what are the environmental impacts and why the 10 percent limit?

I guess I am going to support the motion with the exception of the one year. And then taking action, I think maybe one year we evaluate where we are in our evaluation and determine next steps.

I would like to have some other Commissioners because, again, I am new. I am just actually finishing my first year on this Commission. Even though I worked for the EPA for 35 years we really did not deal with live-aboards that much.

Anyway, those are my thoughts on it a bit. I would be very interested to hear what some of the other Commissioners feel.

Mr. Scharff chimed in: Commissioner Eklund, I would just like to clarify for a second here. The plan is that during that year that housing would be found either at another marina or an upland location. That it is not going to be a static, you can live there for a year. I think that has to be really clear. Frankly, it is a violation of the public trust to have housing on the Bay and we do not have the authority to allow housing on the Bay.

We are basically looking here at a non-enforcement idea. We would not be enforcing against the Marina even though they would be in violation of their permit while they figure out and take a year to move these people somewhere else. At the end of the year no one should be living there; and that is the thought. It is not a thought of that they stay here for a year and we reevaluate.

It is a separate issue, frankly. It is a separate issue if we decide to do a Bay Plan Amendment, which would change the number. Originally my understanding, actually, is that it was 5 percent was what was suggested to the Commission back in 1986. And what happened was the Commission looked at this and said, let's do 10 percent, but it's for safety and other reasons.

We frankly have to rethink our entire management oversight if we decided the Bay was going to provide housing because for 50 years that is not where we are.

Commissioner Eklund stated: Okay. So I would like to see documentation that says that live-aboards is (indiscernible). See where that is. Let me let me finish my questions, Greg.

Mr. Scharff replied: Sure.

Commissioner Eklund continued: I would like to see that documentation. And then secondly, looking for affordable housing, either on land or in other marinas; I can tell you right now and I think we heard from the public testimony, it is going to take longer than a year.

Who is going to be doing it? Is it going to be the City, the County, the residents? Is it going to be BCDC? I just have a lot more experience in the availability of affordable housing. But anyway, those are my comments. I would like to get more information from staff on that.

Mr. Scharff stated: We would be happy to send you; we will send it to you privately the information you have asked for regarding where in the McAteer-Petris Act it says this.

Commissioner Eklund acknowledged: Okay, great.

Mr. Scharff continued: We will give you a legal memo in on that. And just to answer your other question, it would not be BCDC. It would be the city of South San Francisco, frankly, that would be charged with that.

Ms. Atwell chimed in: Michael, do you want to respond to something that was said before I call on Commissioners Wagenknecht and Pemberton?

Senior Staff Attorney Ng commented: Sure. I was just going to speak a bit to Commissioner Eklund's questions about the legal authority. I think just for everyone's benefit since we are all here for the meeting.

The basic policy is that under the McAteer-Petris Act, Sections 66602 and 66605 of the Government Code specify that fill of the Bay should be limited to water-oriented uses. And then those provisions of the law provide a list of things, examples of water-oriented uses.

I think the view that housing is not a water-oriented use derives from the interpretation that, and there is a statutory canon of interpretation that when you have general language followed by a list of more specific things, that general language is interpreted to be understood to have a like kind of the things that are specifically mentioned.

That has been backed by an attorney general opinion from the 1980s that informed the Commission's approach to the live-aboard policies and the establishment of the regulation defining live-aboards in our regulations.

It has also been reinforced by published case law. A court basically concluded the same thing that based on that interpretation of 66605 and 66602; that it was reasonable for BCDC to conclude that housing is not a water-oriented use, as reflected in the Bay Plan policies on live-aboards.

But it is not exactly the case that live-aboards are prohibited under our law. The fact that we have live-aboard policies at all in the Bay Plan reflects sort of the unique characteristics of live-aboards as not simply residential but also not simply recreational.

So to the extent that that 10 percent needs to be reevaluated, as has been said that can theoretically be done through a Bay Plan amendment. But just wanted to provide some clarity there.

Commissioner Eklund acknowledged: Thank you very much for that clarity. That helps a lot.

Acting Chair Eisen continued: Thank you. And thank you, Greg and Michael, for that. I know that Commissioners Wagenknecht and Eckerle have their hands raised. I just wanted to point out that if we do consider an amendment to the Bay Plan, as several people have suggested that we do, all of these legal issues will have to be resolved in connection with that so that any Bay Plan Amendment we were to come up with is in conformity with the existing laws.

So I think in a sense that is for another day, maybe a day fairly soon, but another day. Commissioner Wagenknecht.

Commissioner Wagenknecht spoke: Thank you. This seemed like a thoughtful and reasonable direction for us to go, I felt. If you do not have a year limit you do not have any limit at all, it just gets spun out there. I am for the direction that was suggested here. Thank you.

Commissioner Showalter agreed: I was going to say the exact same thing. Do we need to take a vote or how do we move forward on this procedurally?

Acting Chair Eisen noted: Thank you, Pat. We do not need to take a vote unless there is substantial disagreement with the Staff's Recommendation, which I have not heard. In fact, what I am hearing is significant support for this extraordinary effort that the staff made to look at all of the options, to consider BCDC's own policies and the enabling legislation and to find the best path forward that will really help the situation. I think everybody is in agreement that the staff has done a remarkable job in a very short period of time.

So unless there is substantial disagreement with the path that the staff has laid out we are not obligated to take a vote and we can move on to the next item.

It looks like I have a couple of other speakers. Commissioner Pine.

Commissioner Pine commented: I would really like to echo your comments. I think that this is an imperfect solution. I think we all realize that a year can come and go very quickly. But the staff memo has really pointed out that the tools available to BCDC for addressing this are very limited and I really want to commend the staff for at least finding a way to get that year.

But it is not a perfect solution by any means. I for one would be open to considering a Bay Plan Amendment but that would take more than a year. I think this, under the constraints of the law, is really the best efforts we can make.

Commissioner Addiego thanked staff: Chair Eisen, if I too could just take a moment to thank staff.

Acting Chair Eisen replied: Yes, please.

Commissioner Addiego gave additional kudos: Specifically Jessica Fain for her efforts and Steve Goldbeck. This is almost farther than I imagined that the staff and the Agency could bend to try to accommodate a clock that is ticking very rapidly towards October 15. I am very grateful to my colleagues. I am happy for the residents of Oyster Cove that we have this time to work. As one city councilman I am committed to putting the full weight of the City into finding other accommodations for our residents so thank you.

Commissioner Burt chimed in: So just in the context of trying to have a sense of what should be our next steps, which part of what is basically in the staff action is implying where we will be a year from now.

Can I get just a little more understanding of this issue of how we can, that call that the waterborne housing is essentially a violation of the public trust while we allow 10 percent of the berths to be for housing? I do not get that.

Acting Chair Eisen directed the inquiry to legal staff: Greg, I do not know if you want to take that question. My understanding is that when the regulations were created in the mid-1980s the security issues that are provided by live-aboards allowed us to have live-aboards, even though we have this public trust issue. But Greg, do you want to add to that?

Mr. Scharff stated: No, I was just going to say you have it exactly correct. It is there for security purposes. They are supposed to be sprinkled throughout the marina and not all clustered together. That is the reason we are allowed to have the 10 percent.

Commissioner Burt continued: And then a related question. When we saw the vacancy rate at I think it is Oyster Point, right, the hundred-and-something berth vacancies. Does the staff have any sense of whether that is an historic vacancy rate or are there trends that we should be aware of and how that might compare to other marinas? So if we look at this comprehensively do we have a bunch of capacity or is this an anomaly here or what?

Acting Chair Eisen called on staff: Anniken, do you want to handle that? I definitely think that if we were to move towards a Bay Plan Amendment we would want to know an awful lot more information of that nature to inform our decision. But go ahead.

Ms. Lydon commented: Yes, maybe I can. If Nell is still on and able to answer that or Christina Fernandez from the City may also be able to answer that in terms of the City's Marina and maybe some of the general trends they have seen in the area. But it did sound like they have a number of recreational boat slips that are available. It looks like Jim has his hand up.

Mr. Pruettt commented: Good afternoon. I am Jim Pruettt, I am the General Manager of the Harbor District and we operate Oyster Point Marina. We are below the average occupancy rate for the San Francisco Bay area. We are close but we are below that.

One of the major reasons over the last several years that we have been below that rate was the fact that the Oyster Point development was ongoing and we lost a lot of boaters because of that.

Now that the Oyster Point development and the end of the split there is getting developed I expect our vacancy rate to increase as we move forward. It has been historical. But with the new facilities and the brightened parks we do expect our occupancy rate to go up and exceed the Bay Area average.

Commissioner Burt acknowledged: Thank you.

Acting Chair Eisen asked: So any additional comments from Commissioners?
Commissioner Beach, go ahead.

Commissioner Beach commented: Yes, I just also want to acknowledge the city of South San Francisco and the staff for the flexibility they found here. I really appreciate that. I like the thinking outside the box a little bit so I would encourage more of that.

I guess we have been talking a lot about whether we might consider a Bay Plan Amendment and I am wondering if we would like to go as far as asking staff to come back with a report on whether we might further inform that decision.

Acting Chair Eisen added: Greg, remind us of how a Bay Plan Amendment needs to be initiated. Does that require that some applicant ask for that amendment and then we take it from there?

Mr. Scharff replied: No, staff can be initiate with the Commission a Bay Plan Amendment. I think Jessica should really talk to this.

We have some Bay Plan amendments on the table, Bay Plan amendments take a really long time.

I am not saying that this would not rise to it but I think that we would probably need to come back to the Commission and talk a little bit about what that Bay Plan amendment would look like, what kind of direction we would want, what other Bay Plan amendments are on the table, what staff capacity is on a Bay Plan amendment, and how the Commission would like us to move forward. That is sort of my sense. We might be wanting to do that but I am going to defer to Planning and our Acting Executive Director, Jessica.

Acting Executive Director Fain stated: Yes, Greg, I would completely concur with that. It has been identified for a while that this is an outdated set of policies.

We did a NOAA assessment and strategy a few years ago and this issue around recreational boating has been identified for several years with the Commission so it is certainly something that is on our radar.

But as Greg mentioned, we have a lot on our plate. We have a lot of other requests, a lot to be juggling. So it is just a question of, I think, priorities of the Commission, direction, what we really want to take on and what is most important to deal with given our limited resources. So that is the tradeoffs.

Commissioner Moulton-Peters was recognized: I would be interested when this issue comes back to us if it were possible to have a bit of a report from the state on homelessness and low-income housing needs in the Bay Area.

I realize this is not our jurisdiction at all but it is the context we are operating in, as Commissioner Eklund commented.

If it is true that 800 slips were lost in Redwood City we are having boats come into Richardson Bay or houseboats that are trying to relocate into Richardson Bay. I am just asking if we couldn't get sort of a holistic look at the situation we are being asked to opine on, notwithstanding it is a lot of work to do a Bay Plan amendment. So that is my request, thank you.

Commissioner Pemberton chimed in: I just wanted to weigh in. I wanted to just reiterate what Acting Executive Director Fain said and Chief Counsel Greg. I know there are multiple potential Bay Plan amendments and a whole realm of workload that I am not privy to and I think we are not privy to while we are having this discussion and so I just want to be really sensitive to that and careful in how we approach maybe asking staff to go forth and do another set of work on an issue that while is important we do not have insight into the wider workload. However this manifests into next steps I just want to be really thoughtful and careful in how that occurs.

There is a very significant body of law related to the public trust and residential uses so that is also not something to be taken lightly or rushed together so I just want to mention that too.

There are a lot of attorney general opinions and a lot of careful, thoughtful product that has gone into assessing the public trust context of also residential uses and with the growing humanitarian crisis that we are seeing play out through the increase in homelessness. So I just want us to be really careful and thoughtful.

Acting Chair Eisen asked: Any other comments by Commissioners? I think it is clear that there is a lot of interest in what is going to happen in this Marina in the next year. I am sure that the staff is going to send out their Letter of Intent and follow the situation from then on out and will be letting us know how it goes.

Yes, Commissioner Burt.

Commissioner Burt was recognized: Well, I have heard, as you express, there has been a lot of interests by the Commission today but we clearly do not have the information to be able to even begin to think about whether we would want to propose a Bay Plan amendment.

But the way it is being left I do not see any next step forward where we would be able to look at this in a more informed and thoughtful way over the course of this next year.

I think Commissioner Beach had alluded to whether this should be a request to come back as at least a study session item in the next six to nine months and I would be glad to make that as a motion if that is required or if staff simply says that they can agendaize that based on what they have heard today, either way would be fine with me.

Commissioner Eklund stated: I would support that. If that is a motion I would second it.

Acting Executive Director Fain noted: I would say I think we are well overdue to provide a presentation to the Commission on the suite of the Bay Plan amendments that are in the pipe. What we can do is certainly provide a briefing on that context of what else is on our plates and what else we are grappling with. We can think about what kind of resources or external presentations we could bring to shed some more light on this particular topic. And certainly we can provide briefings and updates as we move forward into this year about the status of what is going on at Oyster Point Marina.

Commissioner Burt acknowledged: Okay. I think I am good with that, thank you.

Commissioner Gilmore chimed in: Acting Director Fain said basically what I was going to say. I think it would be helpful for staff to come back with a list of what Bay Plan amendments are in the pipeline, roughly how long it takes from start to finish before we actually finish a Bay Plan amendment, and the kind of resources in terms of personnel and time that are needed for each Bay Plan amendment.

Because right now we are asking to put more on staff's plate and we do not have a good understanding of what entirely is involved in doing one Bay Plan amendment, let alone several. So I would happily endorse what Acting Director Fain has suggested. Thank you.

Acting Chair Eisen observed: So it sounds like the staff has said that they are going to look at the suite of amendments that are in the pipeline and give us the kind of information that Commissioner Burt and Commissioner Eklund and Commissioner Beach have been asking for.

Are there any other issues that we need to address or shall we move to the next Agenda Item? Any other questions or comments? (No other questions or comments were voiced)
Thank you all so much.

9. Briefing from the U.S. Army Corps of Engineers Regarding Proposed Pilot Project Supplying Sediment to Marshes Using an In Bay Placement Technique. Acting Chair Eisen stated: The next item we have on the Agenda is a briefing from the Army Corps of Engineers regarding a proposed pilot project supplying sediment to marshes. Item 9 will be introduced by Sediment Program Manager Brenda Goeden.

Sediment Program Manager Goeden addressed the Commission: Let me know if you have any trouble hearing me. I am coming to you from the American Shore and Beach Preservation Association Conference in Long Beach today. So I am in a little different space but happy to be here.

Good afternoon, Commissioners. Today, Julie Beagle from the US Army Corps of Engineers will be presenting the Strategic Aquatic Placement Pilot Project, a project that aims to test our ability to place mud in the near shore Bay environment and the ability of the Bay's tides and currents to move the mud up and onto mudflats and marshes. Julie will provide the details of the project, where we are in the process, and the next steps to making this experiment a reality into 2023. It is important to note that this is an experiment with multiagency support and is an effort to see what is possible both in the placement, the transport mechanisms of the Bay, and the ability to detect where and how much sediment moves into the targeted area. This is the first-of-its-kind project in the Bay Area and will be a great opportunity to learn more about our Bay system.

This project came about through work undertaken by a Bay Area coalition working together to include beneficial reuse of sediment pilot projects in WRDA 2016 known as WIIN Section 1122. From that work the State Coastal Conservancy and Commission staff worked together on a Section 1122 proposal that requested \$54 million over 10 years to directly place sediment from four federal navigation projects at four Bay Area restoration projects as well as \$3.6 million for the Strategic Aquatic Placement Pilot Project. The proposal was one of the 10 proposals accepted nationally by the Army Corps of Engineers, but funding was only provided for the pilot project. The State Coastal Conservancy and Commission staff have continued to work with the US Army Corps of Engineers' District Division Headquarters and the Assistant Secretary of the Army as well as the Bay Area Congressional Delegation to secure additional funding for direct placement of sediment at wetland restoration projects. With that I will turn it over to Julie Beagle. I am sure you will find her presentation very interesting. Welcome, Julie.

Ms. Beagle presented the following: Thanks so much Brenda. Good afternoon, Commissioners, thank you so much for the opportunity to be here. I am really excited to present this pilot effort to you all, what we hope is going to be one of many tools that we need to be using in San Francisco Bay to help our marshes and mudflats adapt to a changing climate using dredged material. Thanks for the introduction, Brenda. My name is Julie Beagle; I am with the San Francisco District of the Army Corps of Engineers. I am supporting the Army Corps' *Engineering with Nature Initiative*, which is trying to use natural and nature-based features as much as possible to help our region adapt to climate change, using the power of nature.

So this project is really about using, letting the water do the work, and testing the ability of waves and tides to move material and then our ability to monitor it. As Brenda said, this has been a very collaborative, multiagency effort, which has really been a pleasure to be a part of. Our large team at the Army Corps plus the non-federal sponsors, who in this case is the Coastal Conservancy, Brenda Goeden, your own, has been a wonderful support and is the technical support to the Conservancy this entire time; and it is important to thank the Water Board who have been the CEQA lead for this project. It is a very interdisciplinary and interagency effort to try to move this new idea forward. The big picture that we are trying to address, is one that we all are aware of, this change in our sediment supply to the San Francisco Bay, along with sea level rise, has led to the localized drowning and eroding of marshes and mudflats along San Francisco Bay's shoreline. We know from our studies that it that will continue to occur and probably enhance and increase as sea levels rise. We also know that dredged sediment is really critical for adapting our shorelines using nature-based approaches. And that marshes and mudflats provide a really important buffer for our communities and also the important habitat and many, many ecosystem services that they provide.

So the idea here is that this new idea of shallow water strategic placement could be one of many tools that we can start to use in San Francisco Bay to help our marshes and mudflats do the job that they do so well now. We want them to be able to continue to do that into the future. We are also hoping that this can become a part of the way we do business. Can we lower the cost of doing beneficial use? So that is one of the things we are working on here. I think that you have all heard of the *Sediment for Survival* report that the SFEI came out with in 2021. It basically identified the enormous need for sediment to maintain marshes and mudflats with sea level rise under a series of climate conditions. The big answer is we need to reuse as much sediment as possible and all sediment in the system is important.

So as Brenda said, thanks to the Coastal Conservancy and BCDC, this proposal was submitted to the Army Corps Headquarters and was picked as one of 10 across the entire country. Brenda mentioned this large proposal and \$3.6 million was awarded to the San Francisco District to try this shallow-water placement pilot. So again, it is one of our tools in the toolkit that we are trying to develop. I start here because I think it is important to just start with a basic conceptual framework of how sediment moves from the shallows across mudflats and deposits on marshes. That is what the marshes need in order to keep pace with sea level rise.

In an ideal condition, on the left of your screen, there is this erodible pool of sediment that gets resuspended and then during daily tides or even in extreme water levels, moves across the marsh and is trapped by vegetation. That is how our marshes keep up and keep moving up in elevation. With our lack of sediment supply, and so much sediment is trapped behind reservoirs, or dredged and taken to different places, we are really missing that erodible pool and we are missing that supply. What we are trying to do with this project is mimic that natural process. We do not have that natural supply so how can we use dredged, can we reuse dredged material? Place it in that shallow subtidal area and then allow natural transport processes to move that sediment onshore. So it is just mimicking that sediment supply and giving a boost to the mudflats and marshes, creating resilience. Now, of course, we have a lot of monitoring to do.

This is new. It is a proof of concept. What we are trying to see is can we do this. Can we get delivery from shallow water placement? Can it move on to mudflats and eventually marshes? Can we do this without significant impact to the ecological function of the shallows? So placing material in the shallow subtidal will have an impact on that area for the macro-invertebrates, all the bugs and critters that live in the mud there, and it also may change water quality for that moment, for the time that that placement occurs. Another success criterion is can we keep sediment in the system? Can we keep that amount of sediment from going to a disposal site or somewhere else that is not providing the benefits that we know that marshes and mudflats provide? Really, can we do this? Can we contract this? This uses a different type of boat. It has to get very close to shore, as I will talk about in a minute. But really the idea here is testing a tool that we think will become more and more useful as the century progresses and our marshes really start to drown and erode at a higher rate.

I am going to talk a little bit about the phases that we have gone through so far with this project. As we said, we have funding to try this in one place. Now as a scientist I really wish we could test this in multiple places and see what works best. But we are doing it in one place so our goal here was to figure out where is the best place to try this if we have one shot to try it? So we are going to talk about how we got to that site selection. We did a lot of hydrodynamic and sediment transport modeling to try to get down to how much material, where should it be placed, at what time of year? I will talk a little bit about the environmental compliance and permit applications that we are undergoing. We have done a lot of outreach, tribal consultations, working with community groups. I will talk a little bit about that. Monitoring and then as to how we are moving forward.

As we said before, many marshes around the Bay are showing signs of erosion or are projected to drown as sea level rise increases. So that is where we started, where are marshes that currently are eroding or drowning or have a lack of natural sediment supply. So, then we tried to filter it because of the unique way that we are trying to place sediment to transport onto mudflats and marshes. We took out places where perhaps there was not enough wind wave action to resuspend that sediment, or areas that were not open to tidal exchange currently. We are trying to filter sites. We want to give the sediment the best chance it can get to get toward the target mudflats and marshes. So places along Carquinez Strait where the dominant forces move east-west instead of toward the shoreline. Those might be not the best place to test it in the first place, the first time. As you know, the Bay is very, very shallow. So in order to get the sediment close enough to the marsh to be re-suspended we need to get in there as close as possible. So we are trying to filter for places where a scow could get close enough to shore.

We are also trying to avoid populations of critical species or large eelgrass beds and nearshore reef projects. These may or may not be incompatible approaches but in this moment we are trying to avoid the large eelgrass bed, for example, off the Richmond shoreline. But we also feel that it is really important to direct federal dollars towards increasing the resilience of low-lying communities that have been historically underserved so can we test this in a place that could help with the resilience on disadvantaged communities. So through this large filtering process that was done through multiagency work and a lot of stakeholder engagement, we landed in two sites.

The Emeryville Crescent, which is near the Bay Bridge Touchdown and the Whale's Tail Marsh, which is part of the Eden Landing complex. You can see those in red on the slide in the north and the south. We used UnTRIM, which is a model that looks at the entire Bay, to model sediment transport, simulate existing conditions, and then what different placement alternatives would look like. The goal here was really to figure out which of these two sites would be most likely to transport more sediment in this on-time effort. And then how much sediment should we use, you know. We do not want to impact the Bay floor. We also want to make sure we can measure the benefits of this and that we can actually get sediment to the place we want it to get to test that this is an actual way to move dredged material toward mudflats and marshes.

So, we did a lot of sensitivity analysis trying to understand which site would be best and then how much sediment would be the right amount to test in this pilot project. Some of the things we looked at were these different volumes. We ranged from 50,000 cubic yards to about 125,000 cubic yards. We looked at placing it in the summer and the winter. Different size footprints, does that matter? Does that help you get more sediment moving and different sediment sources. So, this is going to be sediment taking from federal dredging action and placed in one of these offshore environments. So, through that process, the Whale's Tail Eden Landing site, which is part of the South Bay salt ponds project, came out of this large process as the best one to test in this moment.

This is a very colorful slide that I am going to talk you through. This is what the modeling results look like for the Eden Landing scenario. This is the one that we are proposing and trying to move forward with. I will direct your attention to the right. The right image in black outline shows this large placement grid that was evaluated. In the place where you see the red right in the middle, that is the area that is going to be used for actually placing material and it is 138 acres. In that placement area, that is where the 100,000 cubic yards will be deposited with a scow going back and forth from either Redwood City or Oakland Harbor. That will take about 25 days, maybe a little bit more, and about 1,000 cubic yards will be placed at a time. At the end of that placement time, what you see in red there, is what is left after two months, and so that is 10 centimeters of sediment on top of the Bay floor. In yellow you can see how that material starts to move out from that placement area and that is on the order of a 1 centimeter, that is what the yellow is showing. And then in blue, the outline of Eden Landing Marsh is there in two polygons in black. That is showing about a millimeter of deposition on Eden Landing on Whale's Tail Marsh. And then the areas that you see further to the east in blue, that is part of the South Bay Salt Ponds Project that is currently breached and open to the tides. And there you can see about 1 to 2 millimeters of deposition in those areas and that is after about two months.

So that may not seem like a lot, 1 millimeter, it is very hard to measure that. But in actuality, that is the rate that marshes are currently accreting sediment right now and so it is actually, I think of it as a good thing. We are not trying to swamp the system. We are not trying to directly place material on top of Whale's Tail Marsh. Instead, we are trying to mimic the natural process of sediment accretion over time. If you go to the next slide, the bottom just

compares all the different types of scenarios that we tested and how we landed at 100,000 cubic yards, the most east, the closest to the shoreline as possible. If you look at the line that is outlined in green, and then the three numbers that are circled, about 26 percent of that material gets deposited on the mudflat in front of the marsh and then less of it gets to the actual marsh. But again, this was only a two month modeling run.

So, we are working very closely with USGS on how to monitor both the environmental impacts of this project and, also, over time how much more material winds up getting to those placement areas. While we are really focused on the beneficial part of this project it is very important to understand the potential environmental impacts. In the area of blue on the left side of your screen, that was that yellow area that I showed you before and those are areas with over one millimeter of deposition.

Now, it is important to understand that this part of the Bay is super windy. Sediment is being re-suspended all the time. It is a very turbid Bay. And yet, we really need to understand the impacts to the benthic environment in this area. On the right you can see a graphic showing all of the organisms, different types of fish species, water quality issues. When you are placing material that does increase suspended sediment concentrations in the water column at that time it inhibits light. All the modeling is showing us how long does that last and when do we expect that to dissipate and go back to normal and that is all part of the assessment that we are going through right now.

Eelgrass is another resource that is really important in San Francisco Bay. This area does not have a large eelgrass bed, as I mentioned before, but it does have individual clones of plants that may or may not be there. Eelgrass comes and goes so we will be doing a survey before and after, to see what type of impact does this have on individual eelgrass plants, or a larger bed in this case. This is a really quick snapshot of this very extensive monitoring plan that we have developed with the USGS and Merkel & Associates for eelgrass monitoring.

Before the project occurs we will be doing elevation surveys and also understanding oceanographic conditions in this area. Water levels, waves, suspended sediment concentrations of existing conditions, along with eelgrass surveys. We are very lucky that the USGS has been doing elevation surveys in this area for a while so we understand the background rates of accretion on the mudflat and marsh. We will also be doing surveys of the benthic environment beforehand just to see what types of critters live there.

After the project, at intervals going out over time for at least a year if not more, we will be looking at the change in elevation, what happens to the aquatic species in the mud, actual sediment transport rates between that placement site and the mudflat and marsh. We will be using a Particle Tracking Study. So that is a tracer study, so that we can actually see where that material goes. We are talking millimeters here, which surprisingly, is very hard to measure and for a lot of our equipment across all types of scientific institutes, this amount of change is often below the margin or error. So we are throwing a lot of different tools at this to try to see what is the change in elevation on the Bay floor? Where does that sediment go? Can we find it later?

We are preparing a NEPA and a CEQA document with the Water Board. It is an EA and a Mitigated Negative Declaration. We are going through full compliance for all this through all the Acts on the left. Every type of submittal will go out with our Environmental Assessment and Mitigated Neg Dec. We were aiming for September 15; that is today. It is likely going to go out next week for a 30-day public review period.

I just want to say, I think I have mentioned a bit of this before, but we have had a number of stakeholder meetings, resource agency working group meetings and also public meetings. We have done a lot of outreach with the local stakeholders in the Hayward/Union City area including CDFW, the South Bay Salt Ponds, State Lands Commission, Alameda County Flood Control and Water Conservation District, Union Sanitary District, EBDA, who all have infrastructure in that area so we wanted to make sure they were aware of what was going on.

Especially Union Sanitary District is also going through a sea level rise vulnerability assessment. So, they were really excited about different types of nature-based solutions that might help that area of the shoreline. We have been doing tribal consultations and have a site visit planned. We have also been working with the City of Hayward, Hayward Recreation and Park. And went to the Hayward Street Fair with the South Bay Salt Ponds to provide a lot of public information and had a really wonderful public engagement evening out in the streets of Hayward. This is a very difficult project to explain. It is all in the water. It is on the order of millimeters, and yet it has been really nice to see tribes and local community members be really excited about efforts toward their parts of the shoreline.

So there will be this week with NEPA/CEQA document going out for public review probably not 15 September, but 20th of September through the 20th of October. For the BCDC Commission, a draft consistency determination will be included in that release of the documents and then a formal consistency determination request will likely be submitted in November of 2022. The goal here is to pilot this project in June or July of next year tied with the dredging of Redwood City, that is the goal. So there are a lot of hurdles between now and then but that is what we are hoping for. Monitoring will likely begin in April of 2023.

So that is all I have for you. Happy to answer any questions. Thank you again so much for the opportunity. Thank you, BCDC, for the partnership on this project. Acting Chair Eisen acknowledged: Thank you so much. Brenda, did you have any wrap-up or ready for the public? Ms. Goeden stated: No. I just wanted to thank Julie and the Army Corps and the Water Board Team and the Coastal Conservancy. Of course, it has been quite the journey so far. We have been on it for a couple of years now, but it is looking positive to get this project in action. We are looking forward to the continued collaboration. Acting Chair Eisen continued: Thank you. Good to hear.

Are there any members of the public either here in the room or on the Zoom who wish to speak to this agenda item? Ms. Atwell noted: Commissioner, there are no hands raised. Acting Chair Eisen acknowledged: All right. Thank you. Now, are there any comments or questions from Commissioners regarding this item?

Commissioner Gunther chimed in: Dr. Beagle, thank you so much for this presentation. It is really exciting to see this work going forward. Just a couple of questions. As I understand how sediment moves around, it is small amounts of great erosive energy that move a lot of it. The river guys have a statement that 95 percent of the sediment moves in 5 percent of the flow of the river. So it is that the exponential increase in the erosive energy, right? So I have your same, I assume, concern about just doing this once. Who knows how windy it is actually going to be next July, right? So how do you approach that? If you anticipate that we could either have very quiescent conditions or we could have perfectly average conditions or not. And also, let's say we have average conditions for two years but then we have a very powerful wind event. It could be that over the five years we get five millimeters into the marsh, but three and a half of them come in two weeks. Am I getting it right? Is that possible? And how you do then interpret this over a couple of years to inform whether your agency and the rest of the dredging community thinks this is something that we can do on a regular basis going forward?

Ms. Beagle replied: Yes, thanks, this is a great question. We have really wrestled with this exact issue. We are lucky in this case because Jessie Lacy from the USGS has been studying shallow water sediment transport in this exact area and Dr. Karen Thorne has been studying marsh accretion in this exact area. So in a way we are very lucky because we have a little bit of understanding of baseline conditions. What was surprising to me, as you know as a river person; that is true in the riverine environment. In the Bay the windiness of June and July, which is pretty consistent, actually resuspends a lot more sediment than I think anyone really understood before they started doing that study. So on a normal day in June and July sediment is being resuspended in this area and transported. Now, they are just starting to connect the dots between how much is suspended and where it moves. My assumption was we should be placing this in the winter to take advantage of winter storms. But it turns out based on the modeling and on the empirical data that Jessie Lacy and her team have collected, that more sediment gets transported in those sort of normal windy events, and actually at big storm events, more material gets drawn out of the marsh because of the high velocities on the ebb tides. It is very counterintuitive because you would think that a bigger storm would move it on but the velocities and ebb tides moving off the marsh are actually much stronger and more erosive than I think we all thought. I wish we could test it in the summer and the winter. But based on the modeling it did look like the summer general windiness. Now, could the Bay not be windy in June and July? Maybe. But if you ask a person that paddleboards out there, they say it is very windy. And you can also see by the way that shoreline is eroding, how erosive forces are acting on that exact edge that we are talking about.

It is hard to only be able to do this once. And I think we are going to be really challenged to be able to interpret what happened. But what we are trying to do is an adaptive management approach. That is why I am so glad the USGS and the sediment tracing team is part of the study. So we are going to be monitoring as it goes. The model shows that most of the sediment does move in those first two months; however, there are some studies that show that it can be stored on the mudflat for three to six months and then move as you are suggesting. So that is why I am hoping that the particle tracing study will be really helpful and that we can extend that out if we need to. I hope that answers your question, it was a little long-winded.

Commissioner Gunther answered: I would just encourage you to think about your data interpretation plan, right? Imagine you are going to come back and talk to us in a year and give us the results. No work in the Estuary never goes just as you hope and so there will be some challenges. But it is so important, what you are doing is so important for us because a millimeter does not sound like a lot but a millimeter and a millimeter and a millimeter over 20 years or 30 years or 50 years is really what we are talking about and the Corps to begin to do this on a regular basis. Also, I assume that in the future, to think about, maybe just having a more general sediment deposition site in that region and we will just let the estuary handle it. The tracing study also, I had a note about that, I was glad to hear that. Are these tracers last for a while? Will you be able to demonstrate? When the Corps did its iridium tracing study in the 1970s, right?

Acting Chair Eisen interjected: Commissioner Gunther, we are so interested in what you are saying but we have a couple of other items and we are in a little bit of danger of losing our quorum if we do not get to them. Commissioner Gunther responded: Fine. Acting Chair Eisen continued: I am wondering if we can follow-up on some of these at a subsequent meeting? Commissioner Gunther stated: I can follow up with Dr. Beagle on my own. Dr. Beagle replied: I would love to follow-up, thank you.

Acting Chair Eisen acknowledged: Thank you. Thank you. Commissioner Showalter commented: Well, this is something I could talk about for hours but I won't. But I do want to say that I am just really, really delighted that we have gotten to this point. I think fundamentally what we are talking about here is ending the waste of dredged materials. Right now the standard practice is to barge those materials out and dump them by the Farallones. It does not really do anybody any good there. So what we are learning with this project is how can we utilize these locally to help us restore our marshes and just generally in our Sea Level Rise Protection Program, and it is very, very important. All the questions you came up with, they are great. I remember when I worked on the South Bay Salt Pond Project in 2014 to 2016 we were working on some modeling and looking at these and it is just a fascinating idea; so keep going. But the other thing that I would like to just urge is that this is one pilot project. It sounds like by the time you get all the science finished it will be three years. Sea level rise is progressing. I hope staff will have their eye on the ball of other funding sources that can accelerate the follow-up from this because this is one of the tools in our toolkit, as you have mentioned, for the next century. We need to get that functioning in our toolkit as soon as possible. So that is just something I would like to urge staff to work on. I know this is not a new thought but how can we keep this going? Like you said in your presentation, Julie, we really would have liked to have done all those sites, right? But you do not have the money. So let's see what we can do to work on getting all that money because this is really so important for building up the marsh plain elevation, which is the level that we need for the plants to grow, which is the level that really makes it a marsh. And that is when we get all the benefits.

So kudos, I am so glad this is going forward. Keep us posted and we need to look for more money. We are sort of the political people. I hope that maybe we can have some discussion of how we can go after some more of that money. Thank you. Acting Chair Eisen acknowledged: Thank you, Pat. Ms. Goeden chimed in: Commissioner Showalter, you are right

on task as usual regarding the need for additional funding. I think that this is an opportune time for organizations to go after additional funding for projects like this. Part of our conference yesterday, we learned of the billions of dollars that are coming to NOAA, coming to Coastal Conservancy, coming to US Fish and Wildlife Service, coming to any federal agency you can possibly imagine for climate adaptation, infrastructure protection, et cetera; so BCDC staff will continue to work on where funding is available. But we are not a grantor agency so we can partner with others to help get the funding together, which is what we did here. So I just want to let you know, we will be happy to continue to do that but we need to work with partners to make these sorts of things happen. Thank you.

Acting Chair Eisen stated: Thanks, Brenda. Believe me; every birder is looking for success in this area. Lots and lots of birds in the marshlands. Commissioner Beach. Commissioner Beach commented: Thanks so much, thanks for the presentation. I just, on behalf of the Army Corps, also want to thank BCDC staff for their support on this effort as well. I heard both Commissioner Showalter and Dr. Gunther talk about the long-term nature of this going forward and just wanted to highlight that this is also intended to inform the Corps' longer term Regional Dredged Material Management Plan for San Francisco Bay. So encourage everybody to continue to be involved in that. We will be looking at the next 20 years of placement for the San Francisco Bay and where we can accomplish that and looking for more are opportunities to do beneficial reuse within our constraints. Thank you. Acting Chair Eisen acknowledged: That is fantastic. Thank you so much.

10. Briefing on Enforcement Program. Item 10 was postponed to a future meeting.

Acting Chair Eisen gave the instructions for Commissioners' participation in the closed session.

She also asked for a motion and second to adjourn into a committee in case the quorum was lost before the meeting was officially adjourned.

MOTION: Commissioner Arreguin moved to adjourn into a committee, seconded by Commissioner Beach. The motion carried by a voice vote with no abstentions or objections.

(Closed session from 3:42 p.m. to 4:24 p.m.)

11. Closed Session on Possible Litigation: Commission Cease and Desist and Civil Penalty Order CCD2022.001, PSG Mortgage Lending Corp. & PSG Capital Partners, Inc., Respondents.

Acting Chair Eisen stated: We have completed the Closed Session and taken one reportable action. We have referred Item 11 to the Attorney General's Office to file a lawsuit regarding PSG Mortgage Lending Corp. & PSG Capital Partners, Inc.

12. Closed Session on Pending Litigation: East Oakland Stadium Alliance, et al. v. Bay Conservation and Development Commission, Alameda County Superior Court Case No. 22CV015323. No reportable action was reported for Item 12.

13. Closed Session on Pending Litigation: The State of California, ex rel. The San Francisco Bay Conservation and Development Commission v. John D. Sweeny, as an individual and Principal of Point Buckler Club, LLC, a California Limited Liability Company, Solano County Superior Court Case No. FCS057728. No reportable action was reported for Item 13.

14. **Adjournment.** Upon motion by Commissioner Burt, seconded by Commissioner Beach, the Commission meeting was adjourned at 4:24 p.m.

Respectfully submitted,

LAWRENCE J. GOLDZBAND
Executive Director

Approved, with no corrections, at the
San Francisco Bay Conservation and
Development Commission Meeting
of October 6, 2022.

R. ZACHARY WASSERMAN, Chair