The Saving of San Francisco Bay

A Report on Citizen Action and Regional Planning

By Rice Odell

The Conservation Foundation
Washington, D.C.

Rice Odell, the author of this book, is editor of *CF Letter*, a monthly publication of the Conservation Foundation. His acquaintance with San Francisco Bay and its environment began during his student days at Stanford University, from which he was graduated in 1950. The idea for this book grew out of research for a *CF Letter* on Bay problems and the Bay Conservation and Development Commission.

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Foreword

by Russell E. Train
Chairman, Council on Environmental Quality

There is a long tradition in the United States of regarding the way in which a man uses his property as his own business and no one else's. This tradition has come naturally to a people who ventured forth from a narrow foothold on the East Coast to take gradual dominion over a seemingly limitless expanse. Much of American history is concerned with the events of that movement, of exploring, trailblazing, clearing, planting, settling and defending. "The land was ours before we were the land's," Robert Frost has observed, and our pride of conquest and possession runs deep. For as a people we have had to win the land—it was not prepared for us or passed down to us. Consequently, we have tried to understand the land, made a romance of it, and taken great sustenance from it. The plains and the forests, the mountains and the marshlands, the rivers and the lakes are in all of us.

Although we have a strong feeling for the land we have yet to make our peace with it. At a time when we have expanded to its continental limits we are still busily subduing it, altering streams, draining and filling wetlands, and developing it beyond its capacity. Our ethic is still one of pursuing mastery—but the times call for harmony.

Slowly, we have begun to perceive that the way in which each of us uses his land can affect all of us, and all of our children. The story of the struggle to save San Francisco Bay from a process of piecemeal filling is an encouraging milestone in a very slow but definite progress toward full recognition for public interests in the uses of private lands. These public interests have been decisively asserted by the San Francisco Bay Conservation and Development Commission, and they have been upheld by the courts. Much of the success of the conservation movement has depended upon persuading people that resources considered limitless were finite, and that their unfettered private

appropriation was to the public's disadvantage. No less than the air or the water can the land be abused.

However, the BCDC story has another important theme in addition to the broadening of the community's power over critically valuable lands. And that is the theme of regionalism, of adjusting the new public powers to a community large and inclusive enough to have both the perspective and the incentive to see the bay as it really is. This theme is perhaps less stirring and exciting than the first, but it is no less important. For aesthetic or natural resources vital to a regional population cannot be adequately planned for and controlled solely by governments who see only their small share of them, and who are under heavy pressure to capture the property tax revenues intense development could bring.

The Council on Environmental Quality seeks reform of the regulatory structure over land-use decisions that have greater than local impact. We believe that the states, as a condition of federal assistance, should be called upon to control their areas of critical environmental concern, such as coastal and estuarine areas and scenic shorelands, among others.

Some have purported to see in this approach a dire threat to cherished values of municipal home rule and local autonomy. And so it is, if one regards the power of a relatively small community to make the major decisions affecting the interests of regional populations as a proper adjunct of home rule. But such an approach does leave inherently local land-use issues with local governments.

However, like the 19th century pioneer ethic towards the land, unthinking obeisance to notions such as home rule can be an obsolete reflex in a more complicated time. The acceptance of a legitimate state and regional interest in the uses of San Francisco Bay and its shorelands by the local governments in whose jurisdiction they lie is evidence of a growing maturity in both intergovernmental relations and governmental policy.

The BCDC experience is a very hopeful one. Concerned citizens demonstrated a vigor of purpose and a tenacity that outlasted setbacks, and persisted year after year and session after session until the legislature responded. It is as though, having come to the end of a long westward journey of conquering the land, Californians contemplated the bay and resolved to let it live.

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Introduction

One of the nation's most dramatic environmental struggles has been waged over the future use and protection of a magnificently scenic estuary, San Francisco Bay. This book is the story of that decade-long struggle.

It is a story of public determination and action to protect a prized natural resource from ugly and damaging encroachment. It is a story of environmental politics. And it is also a story of regional planning, and of some highly successful techniques used to achieve it.

The Conservation Foundation has long been interested in the problem of reconciling needs for development and for conservation. This case history is one in a series of studies—supported by the Ford Foundation—to determine how such conflicts have been, and can be, resolved.

The San Francisco Bay struggle reached a climax in 1969, and thus was part of the nationwide crescendo of concern over all environmental problems. In many ways, it symbolizes that concern. At the same time, the resource involved is of such unforgettable beauty as to be of national significance. San Francisco is, as Alistair Cooke observed (in Robert Cameron's book *Above San Francisco*) "a fortuitous mating of marine grandeur and terrestrial snugness."

The bay area also contains a fortuitous assemblage of citizens with a special culture and style of life, a special environmental awareness and appreciation. There is a heady mixture of international cosmopolitanism, of varied shorelines with the flavor of ships and water, of the free spirit of the frontier, and of youthful and harmonious living. In this setting, the story of San Francisco Bay takes on special coloring and verve.

The experience recounted here is noteworthy because a positive approach to planning was taken—rather than a simple, negative attempt to halt all change or development. It is also noteworthy because the bay commission made what was probably, up to its time, the most impressive effort to design a comprehensive environmental management system—and one to fit a natural ecosystem rather than a man-made political framework.

This recognition of the interrelated natural processes of the bay demonstrates on a new scale that ecological concepts can provide a useful guide to planning and management for environmental resources. No one pretends, of course, that the solution is perfect, that the battle is over, or that the public and the commission can relax. The pressures, problems and controversies persist, and will continue to do so. Dealing with them will require patience and persistence.

But it is an appropriate time to take stock of the remarkable political and planning accomplishments achieved so far, and to weigh their relevance elsewhere. This book, like the accomplishments it portrays, is a tribute to a legion of citizens in and out of office.

Sydney Howe, President
The Conservation Foundation

The Saving of San Francisco Bay

Industrial property, Point Pinole, Contra Costa County.

I: Genesis and Action

Three elements combine to create an environmental conflict such as the dramatic one that has taken place on the shores of San Francisco Bay:

A. The existence of a valuable natural resource.

B. The threatened despoliation of that resource.

C. A recognition of the resource's value, and of the threat to it, by the right person or persons.

The Resource

San Francisco Bay is an estuary of awesome beauty and majesty. Including San Pablo and Suisun Bays to the north, it stretches about 50 miles from north to south and varies in width from 12 miles down to about one mile. Much of it is framed by softly rolling hills, or by the low mountains of the coastal range. Through a narrow gap in these mountains, the spectacular Golden Gate, the bay opens to the Pacific Ocean. In 1824, Otto von Kotzebue, a Russian explorer and naval officer, wrote that it was a "great pity" that the Spaniards had established themselves first in the San Francisco area, rather than the Russians who had a settlement to the north at Fort Ross. "The advantages of possessing this beautiful bay are incalculable," he wrote.

The bay is a large and refreshing open space for millions of area residents and visitors; it presents a constant series of beautiful scenes. Harold Gilliam, who has chronicled a long love affair with the bay, wrote in his book *San Francisco Bay*: "One morning the rains are gone; the mists are washed away;

Indians lived by the shores of San Francisco Bay, apparently for several thousand years, before the white man finally arrived in the mid-18th century. The first white men to find the bay were Spanish discoverers. In 1769 a land party led by Captain Gaspar de Portolá came upon the harbor. In the next six years several other land parties explored parts of the bay, but it wasn't until August 1775 that the true significance of San Francisco Bay began to come into focus to the outside world. It was during that month that Captain Juan Manuel de Ayala, sailing the small ship San Carlos, *finally discovered the narrow Golden Gate—an entrance to the bay that had apparently escaped the view of other navigators sailing along the California coast—and negotiated the tricky passage into the bay itself. (Another less widely credited theory is that Sir Francis Drake sailed into San Francisco Bay aboard the* Golden Hinde *in 1579—some two centuries before.)*

and with a sudden crescendo the bay is brilliant with new life. The wind is sharp and cold; the air sparkles like burnished glass; the bay radiates with an intensity of light not seen since winter. The cliffs and rocks of the Golden Gate are fringed with white breakers, and the light glitters and dances across the cobalt surface, flecked with whitecaps like coconut on a cake.

"You always remember the first time you saw San Francisco Bay," wrote Gilliam. ". . . a thing of beauty and power that had somehow become part of you . . . No matter what your age, you were young, and the bay around you and the city beyond it were the future, full of great and glowing promise . . . You felt a sudden blaze of exhilaration."

In addition to the immeasurable esthetic and psychological values of the bay, as a place of recreation it is said to provide 30 million "participant days" each year—for boating, swimming, fishing, hunting, picnicking and hiking. The bay's economic value is likewise tremendous. It provides many tourist attractions, and it is, of course, one of the world's great harbors. Its rim is dotted with ports and water-oriented industries. And it produces important yields of commercial fish, oyster shells, sand and salt. Including its many square miles of marshes and mud flats, the bay supports an extensive and valuable marine life; and it is an important haven and feeding ground for

countless waterfowl on the Pacific Flyway between Canada and Mexico. Then too, the great flushing action of the tides, sweeping in from the ocean and out again, is important in breaking down and disposing of man's wastes and reducing water pollution. Similarly, the bay's large surface—and the winds that ventilate it—exert a moderating influence on both the weather and air pollution.

The Sierra Club summed it up in October 1966: "San Francisco Bay is one of the world's great bays and the most significant open space within any major metropolitan area in the United States or abroad. As such, it is an amenity which must be guarded and restored. Its beauty enriches the lives of those who live around it and visit it. Its spaciousness keeps congesting cities at arm's length. It tempers the climate, provides a setting for recreation, and nourishes a rich marine life. All its values depend in some way on its size and natural character, as well as the quality and transparency of the air mass above it."

In short, San Francisco Bay in its natural state is a resource of incalculable value.

The Threat

Slowly and steadily, man encroached on the shores and waters of the bay. So deceptive and gradual was the process—and so much was the splendid environment taken for granted—that few noticed what was happening. Man was preoccupied with other things—survival, housing, commerce, making a living, making a killing.

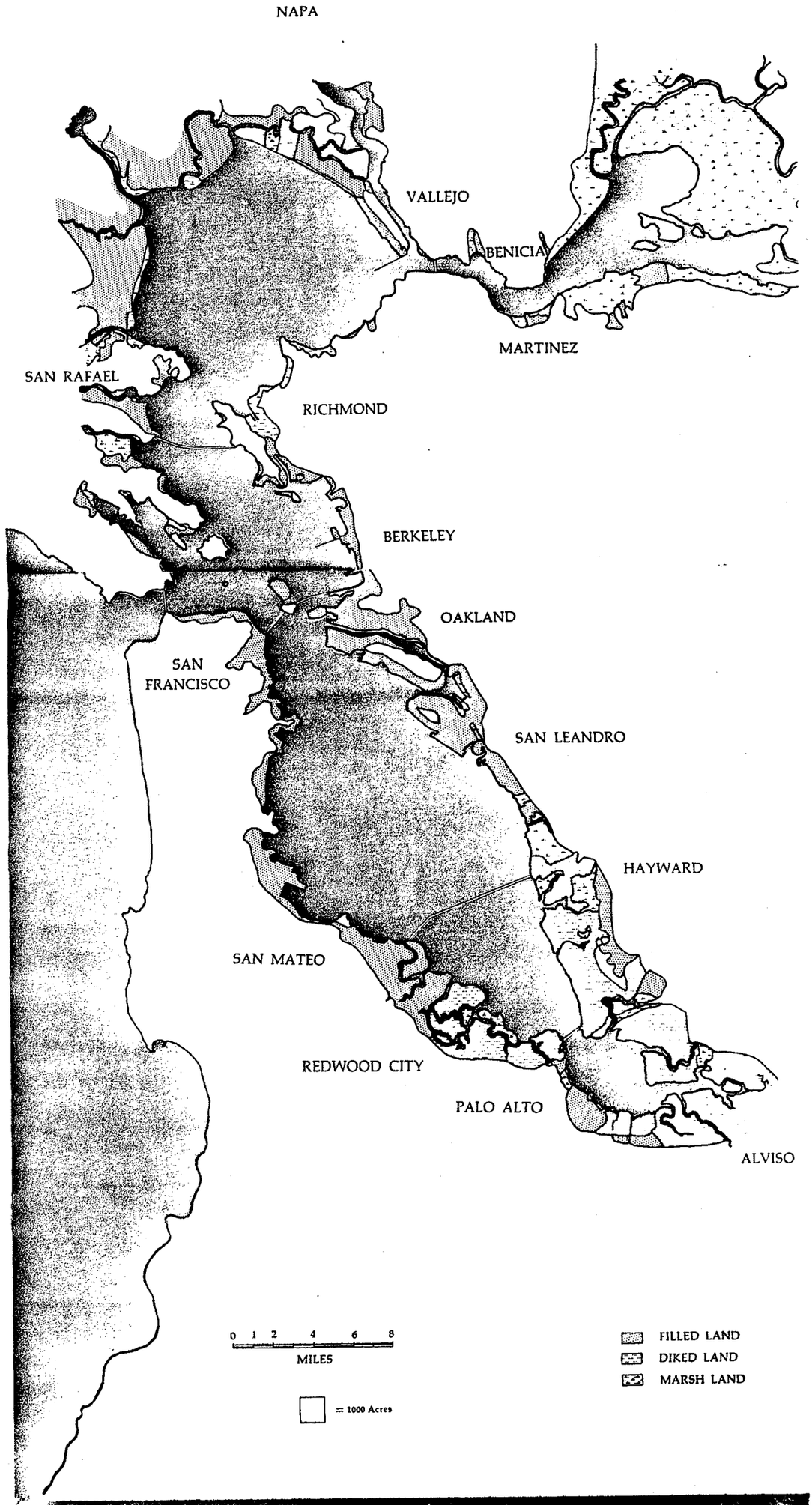
The bay has always been a great temptress to fillers, not only because of its beauty and recreation potential, but also because so much of it is shallow enough to be filled economically. As planner Mel Scott said: "To attorneys, developers, title insurance companies, manufacturers of salt and cement, innumerable government officials, members of the state legislature and many others it is some of the most valuable real estate in California."

And so it was treated by the state itself for decades. Much of the bay—including marshlands, tidelands and submerged lands—was sold by the state to private interests, sometimes for as little as a dollar an acre, and sometimes

Original* Shoreline of San Francisco Bay Before Filling and Diking

San Francisco Bay Conservation and Development Commission

* Approximate Shoreline Confirmation based upon information obtained from U.S. Army Corps of Engineers, U.S. Geological Survey topographic maps, and aerial photographs.



under shady circumstances. The sales were not stopped until 1879 with adoption of a new state constitution. Some of the lands were filled and built upon; large areas were diked off and used as "salt ponds," for production of salt from sea water by evaporation, or as wildlife preserves, or for farming.

In later years, still other parts of the bay were granted by the state to cities and counties, which found bay lands most convenient for adding tax revenues and as a means to expand port facilities, lay on more highways, extend airport runways, and dump garbage and other wastes. Compounding the dispersion was the fragmented political jurisdiction over the bay. Nine counties and more than 30 cities border the water, and the absence of regional government or control left local governments free to act in their own economic self-interest, without the constraints of any broader responsibility for the bay environment. Said the Interior Department's 1969 National Estuarine Pollution Study: "Regarding mutually agreed upon policy and objectives, very little, if any, existed on the state level . . . In fact, the state of California, in essence, had surrendered control; there was no areawide political authority guiding the destiny of San Francisco Bay."

Private interests came to claim ownership of about 22% of the bay—though title in many areas was disputed. Much of this 22% is in the most critical and valuable areas adjacent to the shoreline. Cities and counties hold about 23% of the bay, much of it also adjacent to the shore. The state owns about 50%, and the federal government the remaining 5%.

With gradual shrinkage, the bay changed substantially. In 1850, when California was admitted to the Union, the surface of the bay at mean high tide was about 680 square miles. Little more than a century later, this had been reduced to some 430 square miles.

(This dramatic comparison, suggesting a shocking disregard for the natural bay, became of tremendous propaganda value for conservationists. The figures can be considered somewhat misleading in one respect, however, since much of the surface reduction was not due to filling, but to areas being diked off from the bay proper. "Since those early days," said the National Estuarine Pollution Study, "more than 240 square miles of the salt marshes have been reclaimed, chiefly for agriculture and salt ponds. In addition, approximately

In describing what had already happened to the bay's shores by 1959, an Army Corps of Engineers study gave these figures in square miles:

	Land area originally available for reclamation	*Lands reclaimed up to 1957*	*Lands still susceptible of reclamation in 1957*
Marshland	*303*	*226*	*77*
Tide and submerged lands	*265*	*17*	*248*
Total	*568*	*243*	*325*

17 square miles of tidal and submerged lands have been filled, mostly along the waterfronts of San Francisco, Oakland and Richmond; in Richardson and San Rafael Bays in Marin County; and along the northern bayshore of San Mateo County." Though not filled or built upon, the diked-off areas were removed from the influence of the tides. This reduced the tides' flushing action, which has many important effects on the bay's environment and ecology. Presumably, some of these areas could later be reopened to the tides.)

Proposals by both public and private interests for further filling and development—including complexes of high-rise apartment buildings, convention centers, industries—presented a continuing threat to the bay. A graphic indication of this threat, and the intentions of developers, was provided in early 1963, when the Construction Aggregates Corp. supported the introduction of legislation that would allow it to dredge massive amounts of sand from a shoal outside the Golden Gate, because it was needed for San Francisco Bay projects. "The development of the shoreline properties . . . is dependent upon the availability of reasonably priced fill material in almost unlimited quantities," said the Chicago firm. It estimated the fill required for projects "under active consideration" or "contemplated" at 1,330,000,000 cubic yards. Planned projects would involve dozens of square miles of filling, the company said.

The proposal, said Charles A. Gulick, professor of economics emeritus at

the University of California, demonstrated the "brutal callousness of so-called developers . . . In a document of nearly six typed pages there is not one syllable that indicates any appreciation of or interest in the cataclysmic effect of fill on such a scale." (The company's proposal died.)

Yet even as late as 1969, pending proposals alone would have filled another 59 square miles or so (not counting expressed intentions to fill and develop large salt-pond areas). Encroachment on the edge of the bay could be expected to continue, even accelerate.

Moreover, of the 276 miles of San Francisco Bay shoreline, less than an estimated 10 miles was open to the public. Only 5,000 acres were in parks on the shoreline. Norman B. Livermore, Jr., head of the California Resources Agency, spoke in 1968 of the "appalling lack of bay access and recreational facilities adjacent to some of our most heavily populated areas where large numbers of our less affluent citizens reside . . . Unless we make every effort to provide truly low-cost access to recreational opportunities along the edge of the bay, we will be locking up a great resource from a whole generation of youngsters who desperately need it."

Recognition

No environmental problem such as the slow degradation of San Francisco Bay is ever confronted until someone realizes the significance of the resource and the threats to it, and determines to do something about it.

San Francisco Bay was taken for granted, and so were the things being done to it. "It just didn't occur to anybody that something was wrong," said one citizen. Columnist Herb Caen wrote in the *San Francisco Chronicle* on May 23, 1965: "The great public is apathetic: 'How can they say our bay is disappearing when I can look out of my window and see it?' "

The seeds of concern must be firmly lodged in someone's mind—someone with certain key qualities. This is apt to be a single citizen without portfolio, a citizen whose alarm is somehow triggered sufficiently, and whose motivation is stirred enough to make the effort to do something about the problem. For San Francisco Bay, that citizen was Mrs. Catherine Kerr.

Mrs. Kerr's alarm was triggered by three things which roughly coincided

Mrs. Clark Kerr

in her mind. As the wife of Clark Kerr, then president of the University of California, Mrs. Kerr was accustomed to greeting and entertaining distinguished visitors. She would meet them at San Francisco Airport and drive them across the Bay Bridge to the Kerr home in the Berkeley hills. These dignitaries often commented on the beauty of the bay and the view of it from the Kerrs' house. They made Mrs. Kerr particularly aware of the value—as well as the unattractive places and vulnerability—of the bay.

The second factor that influenced Mrs. Kerr was the release in December 1959 of a U.S. Corps of Engineers report on the bay area. Called *Future Development of the San Francisco Bay Area, 1960–2020,* the report was done for the Corps by the Department of Commerce. It included a discussion of land-use and reclamation possibilities. Dr. Roger Prior, of Commerce, said that the Corps' primary concern was "the extent to which there was a need for filling and developing of more land to keep up with the demand for industrial and commercial sites."

The study described what had already happened to the bay area, and in an "extrapolation of trends," what could be expected to happen in the future. What did it conclude? That by 1990 much of the bay's remaining marshland would probably be reclaimed; that by 2020 there would be "almost contiguous development throughout the nine bay counties"; that urban development would be "approaching the limit of available land in the South Bay area, and the stage set for the accelerated expansion" to the north; and that efforts would be made to bring into use more and more marginal and steeply sloped land.

Most strikingly, figures in the Corps report showed that more than 42% of the bay lands which *could* be reclaimed had already *been* reclaimed; and that 325 square miles were still "susceptible of reclamation"—that is, shallow enough to make filling economically feasible. The figures indicated that, if the rate of reclamation (3.6 square miles a year in the period 1940–57) were allowed to continue, San Francisco Bay would be reduced to a channel in less than 100 years. Lieut. Col. Robert H. Allan, the Corps' District Engineer in San Francisco at the time, wrote in January 1966 that "the increased costs of fill for tide and submerged lands, about $30,000 per acre compared to per-

haps $8,000 for marshlands, might have had a further inhibiting effect, but that effect is not apparent at present. As costs increase, so does the available money, apparently."

The Corps study was reported in the press, and the implications were not lost on Mrs. Kerr. She was particularly struck by a map from the study which was printed in the *Oakland Tribune*. With reclaimed and reclaimable areas shaded, it provided graphic illustration of the threats to the bay. (The map would be used many times in the battle ahead, as would the phrase "susceptible of reclamation." Joseph E. Bodovitz, executive director of the San Francisco Bay Conservation and Development Commission, has noted that the word "reclamation" itself was significant, "implying as it does that marshlands and tidelands must be 'reclaimed'—filled with dirt or debris—to be worth anything . . . when in reality the lands are vital parts of the chain of life in a tidal estuary such as San Francisco Bay.")

The third factor which conditioned Mrs. Kerr's thinking was the shaping of a grandiose master plan for the waterfront in her own Berkeley area—a plan which called for filling 2,000 acres of tidelands. "In effect," said one Berkeley resident, "a second city of Berkeley would have been created out in the bay." The plan was amended frequently, but it inevitably included a good deal of industrial, commercial, residential and school, as well as recreational development. It also called for a second freeway along the shoreline.

"By eliminating the water," wrote Harold Gilliam, the city of Berkeley would be able to double its size—"a supreme civic achievement in this era of municipal imperialism."

This, however, was not Mrs. Kerr's idea of civic achievement. She also wondered how many other cities around the bay's 276-mile shoreline were making similar plans.

Rallying Support

As a rather special citizen, Mrs. Kerr was very capable of getting action. She had civic concern, and she was influential—both as a personality and as the wife of a prestigious university president. Despite her quiet charm, Mrs. Kerr was unrelenting in pursuit of purpose. She was politely indomitable, a

formidable foe, as many were to discover. Said one state legislator, in grudging admiration: "She's tough."

The first thing Mrs. Kerr did was to round up some allies. One day in the fall of 1960, during tea with Mrs. Sylvia McLaughlin, wife of a university regent, she expressed her concern over the Berkeley waterfront plan and the future of the bay. She was pleasantly surprised to find that Mrs. McLaughlin was also worried. And she wanted to do something too.

"Someone told me that you should have three people before you start anything like this," Mrs. Kerr recalled not long ago. So in a few days she enlisted the help of another friend, Mrs. Esther Gulick, wife of Professor Gulick. The three faculty wives—with the help of Leonard Crum, a retired Harvard University economist—made a careful study of the Berkeley plan and the problems it posed. "We became convinced that the threats to the bay were real, and not in the public interest," Mrs. Kerr said. The three invited a dozen or so conservationists and others to a meeting in the Gulick home to discuss the problem. That was the germ of the Save San Francisco Bay Association. Shortly afterwards, the group sent out about 700 letters, mostly to conservationists. "We got 600 replies," said Mrs. Kerr. "It struck a chord apparently."

(One of the early supporters, Jan Koneckny, became the first president. A chemist newly arrived from Czechoslovakia, he had expected San Francisco Bay to resemble the beautiful lakes of Europe.)

"The association had an immediate appeal in the area," said William E. Siri, a past president of the Sierra Club who also became a president of the Save San Francisco Bay Association. "There was a strong latent feeling about San Francisco Bay that became immediately apparent, and the association grew very rapidly as a result." (At the height of the battle to save the bay, in 1969, membership of the Save San Francisco Bay Association had grown to some 18,000.) The new organization drew both members and significant support from various conservation and other groups. Dwight Steele, chairman of the Sierra Club's San Francisco Bay Committee, noted later that it was "the first time in the Sierra Club's 76-year history that the environment of a major urban area has been given the club's special attention."

One of the first tasks of the new group was to assemble the facts and expertise necessary to present a strong case in defense of the Berkeley shoreline, as well as that of the whole bay. "Unlike a good many conservationists who feel that indignation is enough," wrote Gilliam, "the Save-the-Bay people did their homework. They consulted economists about the feasibility of the proposed fill; they talked to engineers, city planners, sociologists; and they confronted the Berkeley City Council with an impressive array of hard facts."

The city's Planning Department later recalled that "opposition to the concept of substantial fill and balanced development began to appear. When the City Council held a public hearing on March 28, 1961, the Council chambers were filled with citizens who were deeply concerned over the proposal." Two City Council study sessions were devoted to a review of the recommended plan and discussion of the objections.

"At first," said Mrs. McLaughlin, "the City Council was merely courteous to the conservationists. But then as we came to represent more and more people, they sat up and took notice." Experts put forth by the Save-the-Bay people were difficult to refute. Alternative waterfront recommendations were made, calling for minimum filling and maximum park areas and recreation. The conservationists not only badgered Berkeley city officials, but also invited members of the Council, individually or several at a time, to their homes to discuss the waterfront proposals.

The master plan became a tense political issue. By the end of 1963, the City Council had made a fundamental change in policy. Plans for what had been called Berkeley's "dream waterfront" had been scrapped. They were replaced by an interim waterfront plan which would sharply limit fill and development.

Pinpointing the Problems

Meanwhile, the conservationists had the rest of the bay to think about. To assemble the facts, Mrs. Kerr went to the University of California's Institute of Governmental Studies to see if it could make a comprehensive review of the bay and its problems. The result was *The Future of San Francisco Bay*, written by planner Mel Scott and published by the Institute. The report was

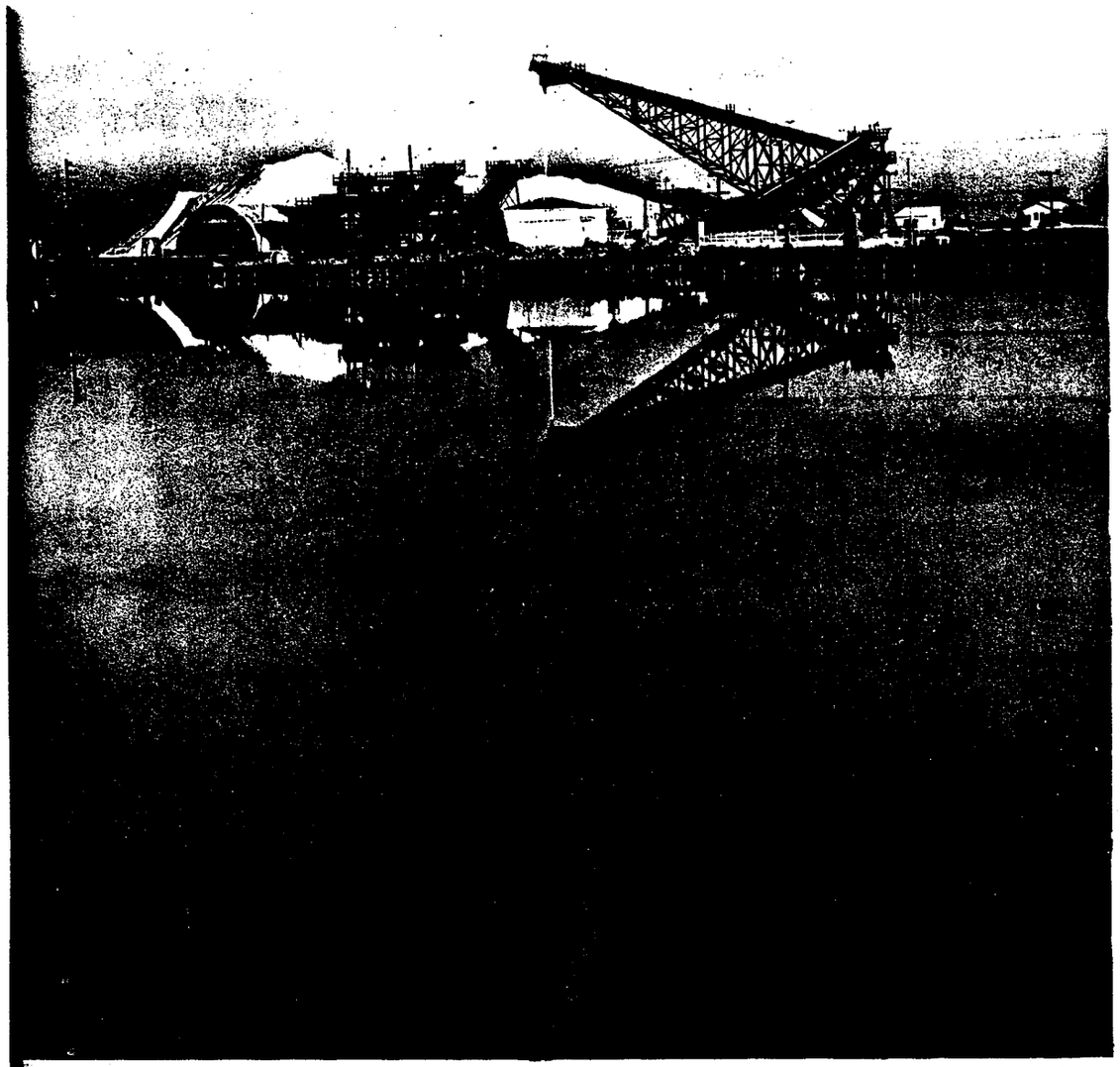
published in October 1963, and it dealt at length with ownership, resource values, pressures on the bay, and the like. It also discussed various land use and political choices for the future. It was a landmark report, filled with ammunition, and it provided a solid base of information—and a beacon—for conservationists, planners, and government officials during the crucial years of conflict over the bay. Author William Bronson said it would some day be looked upon as "one of the great pieces of conservation literature."

The Scott study and subsequent events clearly revealed a host of problems around the circumference of the bay—particularly from proposed dredge-and-fill projects.

Much of the bay lands in private ownership had filtered into the hands of several large owners. Some of the projects they proposed then and later, involving major physical changes, drew great attention and criticism. Perhaps the public became most incensed by the project called Westbay. (Its sponsor, Westbay Community Associates, is a blue-chip partnership consisting of New York banker David Rockefeller, the investment banking firm Lazard Freres & Co., and subsidiaries of the Crocker Land Co. and Ideal Basic Industries.)

The Westbay project was to involve filling and development along 27 miles of San Mateo County shoreline, with apartment buildings, hotels, port facilities, light industry, restaurants, and convention, education and commercial centers—as well as park and recreation areas. The Westbay plan encompassed 10,179 acres—including 3,274 acres to be filled and 6,905 acres "to be made available for public acquisition" for parks and open spaces. Westbay sponsors stated that their plan, involving an investment of some $3 billion, emphasized the "amenities, recreational and visual." But conservationists and others violently disagreed, charging Westbay interests with blatant disregard for appropriate use of the area. (At one point the Westbay sponsors considered plans to bulldoze the tops of the low San Bruno Mountains two miles south of San Francisco, creating flat land for real estate development and providing material for bay fill.)

Elsewhere, the Leslie Salt Co. claimed ownership of about 46,000 acres of salt ponds, of which about 4,200 acres had already been filled to create the



Leslie Salt Company operations, Redwood City.

Redwood Shores community in Redwood City. On the east side of the bay, the Atchison, Topeka and Santa Fe Railway put forth an elaborate plan for waterfront developments of its 3,400 acres, including some 1,000 acres of fill. In Alameda, the Utah Construction and Mining Co. had plans for a development of up to 890 acres on Bay Farm Island, including a community with 5,670 housing units and commercial facilities.

There were others. And there were varied municipal projects, among them the Port of Oakland's proposal to fill about 2,500 acres, mostly to expand its airport. At least two other bridges—in addition to the seven already crossing the bay—were contemplated, with plans well advanced for a "Southern Crossing" just south of the Bay Bridge that connects San Francisco and Oakland. In addition, the State Division of Highways had programmed three major shoreline freeways to supplement the already wide expanses of concrete. Much of the mileage would be built upon fill, bayward of existing roadways.

Deciding Where to Turn

The bay dilemma was clearly *regional* in nature—a question of regional planning and control of shoreline development. With 32 cities and nine counties on the water, one obvious place for the conservationists to go was the newly organized Association of Bay Area Governments (ABAG). ABAG could have appealed to member governments to suspend filling voluntarily, pending area-wide planning; or the members could have agreed formally to do so. But like so many such regional groupings, ABAG was, in Scott's words, a "loose alliance of cities and counties." It was not clothed with much power. Nor did it have the cohesiveness and thrust necessary for such a politically ambitious concept.

ABAG recognized problems in bay development, but had limited resources and dealt with the bay as part of an overall regional plan. Its staff prepared and recommended a model fill moratorium for its members—on a voluntary basis. But this proved ineffective, because nobody would sign without reserving the right to fill.

By 1963, conservationists felt that the time had come to turn to the state

"Many residents of the bay area feel frustration over the lack of an effective forum in which to express their interest in unified development of the bay," wrote Mel Scott. "ABAG is designed to be such a forum, but as yet the regional outlook has not found strong, unmistakable expression among its members. Unilateral action, whether private or public, local, state, or federal, dominates the decision-making process. The local elected officials of the bay area publicly proclaim agreement that an overall plan of the bay and shoreline areas is needed. But most local councilmen and county supervisors have demonstrated little recognition of the need to deter public and private filling projects that might be unrelated to or possibly in conflict with a comprehensive plan . . ."

legislature. Logically enough—or so it seemed—they sought out a man they knew to be interested in the kind of legislation needed to protect the bay. He was Assemblyman (later State Senator) Nicholas C. Petris, of Oakland. On April 23, 1963, Petris was principal sponsor of a bill to prohibit most filling of San Francisco Bay until a commission could study the situation and report its recommendations for an overall shoreline plan to the legislature at the start of the 1967 session.

But Petris lacked the political clout to push it through. Politicians and municipalities insisted that their pet projects be exempted from any moratorium on filling. The bill became a catalogue of exceptions. Committee members attached so many exemptions that the legislation was "gutted to death," said Mrs. Kerr.

The following year, 1964, Petris tried several far more modest proposals, also without success.

The choice of Petris to carry the ball thus turned out to be politically unwise. "Instead of picking out a powerful man to get their bill through, conservationists will go to some nice guy who can't get the bill out of the first committee," said a legislative observer. "And then, you know, they all become martyrs together. You just have to get someone with muscle who can do something . . . Petris is a great guy. He fights like hell, but he's just not powerful. It's just the realities of political power."

The late "J" Eugene McAteer, State Senator from San Francisco.

Mrs. Kerr then approached State Senator "J" Eugene McAteer of San Francisco, an effective, influential legislator with a reputation for getting things done. She knew him from social gatherings, and early one morning in January 1964, she went to his office in the restaurant he operated on Fisherman's Wharf. She urged him to take over the leadership on bay problems. "I felt that he had a love for the bay," Mrs. Kerr said, "and could take on this most difficult project at the legislative level. The opposition was such that no one else could have been successful." In many ways, McAteer seemed the prototype of a political leader. He was an orphan, and he came all the way up the hard way. He was a former University of California football star, a war hero, and a successful businessman. And he was tough and imposing.

At the time, the California Senate was run by an "Old Guard"—a bipartisan, basically rural, conservative club, dominated by lobbyists for special interests. McAteer, on the other hand, was moderate to liberal in his political views, but nonetheless forceful. Said one observer: "He was one of those tough guys who get along with power, and who therefore become members of the club, and who therefore. on the basis of personal friendship, are able to get good bills through."

McAteer was not a conservationist. But he listened to Mrs. Kerr, and he seemed at least mildly interested. "He saw the need to regulate filling," recalled Robert Mendelsohn, an aide to McAteer who later became a San Francisco supervisor. "But he didn't dive into it." Several organizations worked to convince McAteer of the "political mileage" in the issue, said John E. Hirten, who at the time was executive director of the San Francisco Planning and Urban Renewal Association (SPUR). "In fact," he said, "only a year earlier, Senator McAteer had been identified with a proposal for a North Bay Bridge Crossing which would have anchored on Angel and Alcatraz Islands, and literally wiped out Telegraph Hill in San Francisco, a major affront to both San Francisco and the bay."

McAteer's interest in the bay, perhaps stirred by newspaper articles, was gradually increasing. It was believed that he also had ambitions to become mayor of San Francisco, though the next election would not be held until 1967, almost four years away. Said one observer: "McAteer saw the political

merit in the issue. I think he realized that this was a good new issue in an area that nobody was in." It would be another legislative area in which to stake out a "territorial" claim. He had already done this with alcoholism and several other fields, thereby exerting control over whatever bills were introduced on those subjects. As things turned out, McAteer may well have been the first politician, at any level of government, to recognize the political force that the conservation movement was going to have.

Involving the State

McAteer was not sure exactly what tack to pursue. But he did know that the legislature was not going to accept much control of bay development. For one thing, there wasn't enough public or legislative recognition of the problem. So McAteer did what legislators commonly do when they don't know what to do about something. He got a little money for a study.

That presented no difficulty. On February 4, 1964, he introduced a bill to appropriate $75,000 to set up a nine-member, temporary San Francisco Bay Conservation Study Commission. On May 19 it was signed into law by Governor Edmund G. (Pat) Brown. The act stated: "It is imperative to define the public interest in San Francisco Bay . . . and determine what effects the further filling of San Francisco Bay will have upon navigation, fish and wildlife, air and water pollution, and all of the regional needs of the future population of the bay region." Most significantly, the act called for the commission to "recommend legislation for protecting such public interest" and to report back to the legislature by the start of the following year's session—little more than seven months later.

McAteer probably had no intention of becoming deeply involved with the commission. But with the legislature in recess, the governor named him chairman. This greatly strengthened his interest in the bay's problems and his commitment to solving them—a commitment which was to become crucial the following year. "He then decided to really move it," Mendelsohn said.

Joseph E. Bodovitz, a former *San Francisco Examiner* reporter, then with SPUR, was appointed director of the study commission. Mendelsohn became deputy director. In September, with only four months to perform its task,

Joseph E. Bodovitz, executive director, San Francisco Bay Conservation and Development Commission.

the "McAteer commission" began a whirlwind series of 12 weekly public hearings all around the bay area. Members listened to a wide variety of testimony from experts and citizens, some warning of the dangers in unrestricted filling, others stressing the economic benefits of further development.

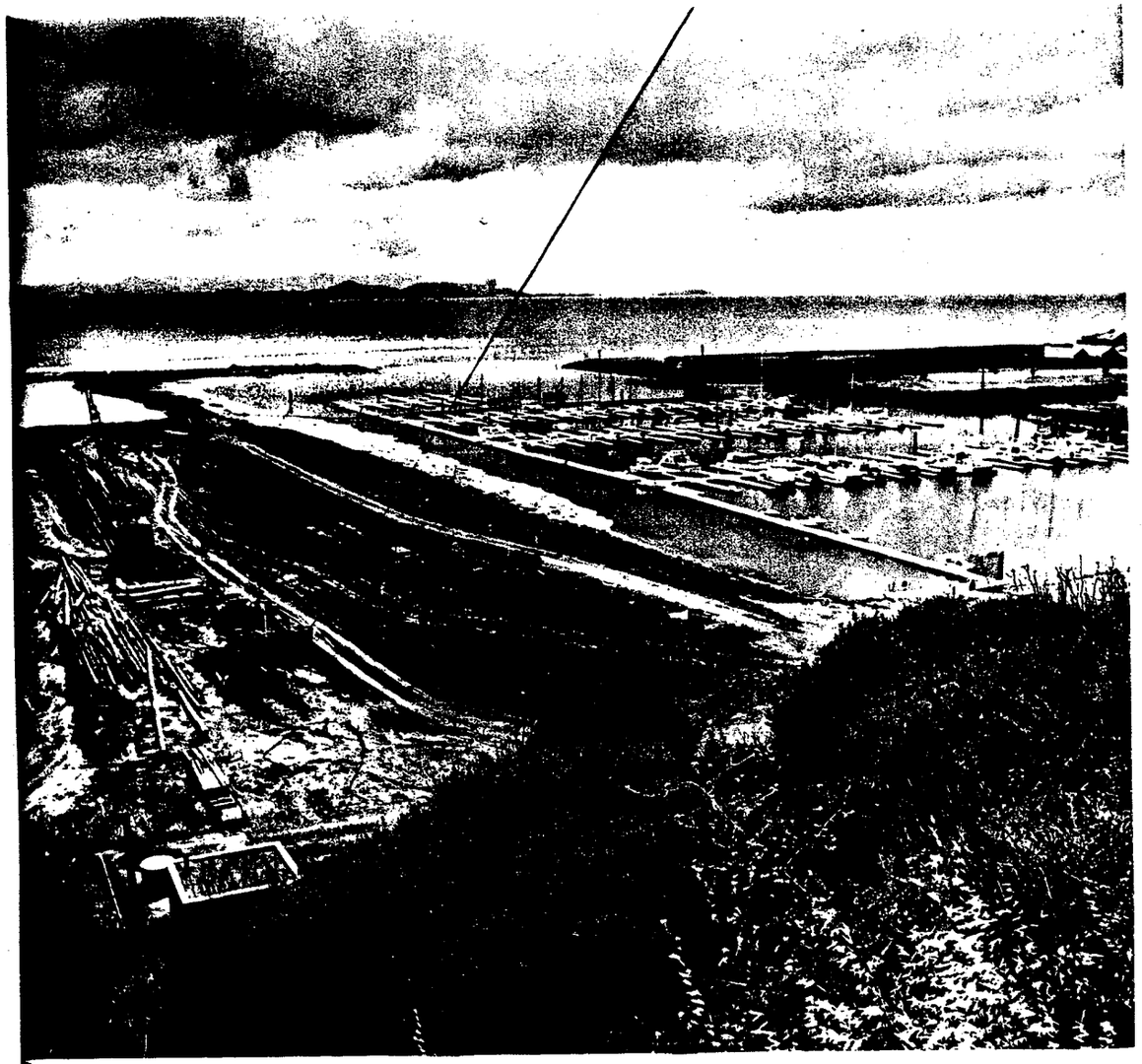
The hearings, covered extensively by the press and television, generated great public interest. Some of this interest evolved later into support for the commission's recommendations. Thus the commission not only met its mandate to "define the public interest"; it stimulated that interest as well. And, of course, it focused on the type of mechanism which could effectively protect the bay from overdevelopment.

After conducting hearings and getting the benefit of a consultant's study, the commission published a 64-page report. The report included the commission's findings; a set of legislative recommendations; a summary of the testimony of every witness; and a map and consultant's report on 34 major development projects either planned or in progress. ("There is a frenzy of planning involving the tidelands," said the report. It found that the 34 proposed projects represented a total of 16,261 acres, with some overlapping, and presumed that many undisclosed fill plans were also under consideration.)

"It seems sort of amazing now, the amount that could be done in four months," said Bodovitz. "But there was a great advantage in compressing something with an intensive appeal like that, where stringing it out wouldn't work. This generated an enthusiasm for the job and gave it momentum."

Other elements in the study commission's success were the presence of McAteer, an attractive and forceful chairman; the groundwork of the Mel Scott study; media coverage and editorial support; public support, particularly that provided by the ladies of Berkeley and their conservationist colleagues; and the administrative and writing talents of Bodovitz.

On the latter point, Mendelsohn said: "The acquisition of Joe Bodovitz was an absolute key. He's a good writer with a very good feel for the things to which the public can respond." The result, he said, was a report that was "attractive, easily digested by legislators, with lots of pictures, very graphic, well put together, clean and rational. Bodovitz provided a channel for all the people to put their feelings about the bay into a tight, economically conceived entity."



Paradise Bay, near Tiburon, Marin County.

The core of the 64-page study was just seven pages of findings and recommendations. But these were unmistakably clear and to the point.

Making Recommendations

At the start of the 1965 session, many legislators were apparently surprised to find the study commission back on time with a thoughtful report and succinct, unequivocal recommendations (and having spent less than $45,000 of the $75,000 appropriated).

The report stated:

- "San Francisco Bay is the greatest single natural asset in a region that now has almost 4 million residents and, by the year 2020, is expected to have more than 14 million . . . The public interest in the bay is in its beneficial use for a variety of purposes.
- ". . . the present uncoordinated, haphazard manner in which the bay is being filled threatens the bay itself and is therefore inimical to the welfare of both present and future residents of the area.
- "No governmental mechanism exists for evaluating individual projects as to their effects on the entire bay . . . It is in the public interest to create a politically responsible, democratic process by which the bay and its shoreline can be analyzed, planned and regulated as a unit . . . The public interest requires creation of a governmental mechanism to balance competing interests in the bay, to weigh all the alternatives in making choices relative to the bay, and to guide the conservation and development of the bay and its shoreline."

The McAteer commission thus recommended legislation to establish a San Francisco Bay Conservation and Development Commission (BCDC) to follow up the work of the study commission, with the following duties and powers:

1. Make a detailed study of the characteristics of the bay, the economic interests in it, and the present and proposed uses of the bay and its shoreline.
2. Prepare a "comprehensive and enforceable plan for the conservation of the water of the bay and the development of its shoreline."
3. Protect the bay from further piecemeal filling while the plan is being completed. "The BCDC should be empowered to issue or deny permits, after

public hearings, for any proposed project that involves placing fill in the bay or extracting submerged materials from the bay."

The report was particularly significant because of the detail and specificity of its recommendations. (For example, it said there should be 29 members on the BCDC and spelled out exactly what organizations and interests they should represent. "McAteer said that people with the power of decision must be involved in the planning process," Mrs. Kerr recalled.) This specificity gave the public and the legislature something concrete to stand on and endorse.

By the same token, it facilitated the enactment of legislation.

Passing Legislation

The next step was crucial—getting a meaningful bill through a legislature that had shown only sporadic interest in planning and conservation and that could be expected to balk at clothing a new regional body with the power to veto fill projects.

First, a bill based on the commission's recommendations was drafted by the Legislative Counsel's office, which prepares bills at members' requests.

In several respects the draft was regarded as a realistic and sensible compromise. For one thing, the more ardent conservationists insisted on a moratorium on all filling pending completion of a comprehensive plan. McAteer, no doubt sensing a difficult political fight ahead, opted for strong BCDC power to regulate filling by permit.

Also, there had been extensive debate on the pros and cons of creating a multipurpose regional government to deal comprehensively with interrelated bay region land and water planning problems. But it was obvious that many legislators, as well as county and local governments, would adamantly resist such an agency as a threat to their authority. That battle might be won at too high a price. The urgent need to protect the bay might have been sidetracked by efforts to deal with other regional goals. The result was a bill recommending a *single-purpose* regional agency for the bay.

McAteer and Petris co-sponsored implementing legislation in the 1965 legislative session. Those companies and local governments with their hearts set on particular development projects opposed the bill outright or sought

Third Street Terminal, Oakland.

exceptions. But there were three major factors favoring passage, which Bodovitz felt might have been "indispensable ingredients":

1. **A practical, well-drafted bill.** "It's important to have good legislation to start with," said Bodovitz. "Something that's reasonably immune to sensible attack. In other words, you don't have a bill with such manifest flaws in it that the lobbyists can pick it to pieces and thereby obscure the real issues."

2. **The sponsorship of a strong individual like McAteer, who was committed to seeing the bay problem through.** "Everything he did he did full bore," said Hans A. Feibusch, a consulting engineer and later a BCDC member. "He did everything to win." With McAteer's personality, prestige, and influence brought to bear, the conservationists had more than the usual chance of success. "It didn't just happen," Bodovitz recalled, "McAteer worked like hell. He twisted arms and lined up votes." In the words of Feibusch: "He stood up to every lobbyist in Sacramento."

There was so much opposition to the legislation that Governor Brown at one point began to waver in his support. But, said Mendelsohn, "McAteer convinced the governor that if any exemptions were allowed it would invalidate the whole bill." He said McAteer told people that "if anyone forced an exemption to be accepted he'd drop the bill and blame it on him. Of course, he had seen what happened to the earlier Petris bill." Actually, McAteer did finally accept—or was forced to accept—one key amendment: any lands "not subject to tidal action" were excluded from the BCDC's jurisdiction. This left the door open for filling the many square miles of salt ponds behind dikes.

Under a "grandfather clause," the law also excluded projects that were underway before BCDC came into existence. Several projects were pushed forward under local government approval to beat the legislative deadline. Most notable of these was the multi-million dollar Bay Farm Island subdivision development on the mudflats of Alameda, which involved filling of nearly 1,000 acres. In another move, the City of Oakland, under a plan it had drawn up, began filling and diking a 30-acre site in San Leandro Bay, to be used for parking, storage and other municipal purposes. The commission objected and eventually began legal proceedings. Oakland insisted, among

Angel Island State Park, looking toward Marin County.

other things, that a substantial start on the project had been made before the BCDC took jurisdiction. The final result was a compromise under which Oakland went forward but agreed to include a six-acre park in its plans.

3. Extensive public and media support. A solid base of citizen support, much of it stimulated and coordinated by the growing Save San Francisco Bay Association, was supplemented by organizations such as the League of Women Voters. But still the political prognosis did not appear good to McAteer, and he was worried.

So he approached Don Sherwood, a very popular San Francisco disc jockey. At lunch one day, said Sherwood, McAteer told him: "You've got to help me. This thing is in committee, and they're going to keep it there. You've just got to do it, that's all there is to it."

Sherwood said that as far as the bay and its problems were concerned, "I didn't even know it was happening." But because he knew and liked McAteer, he went to bat for him. He talked about the bay and the pending bill for about a month on his 6 to 9 a.m. radio show. One morning on the air, he phoned Governor Brown to talk about the bill, getting him out of bed. He repeatedly urged his myriad listeners, many of them driving to work, to "write your legislators and tell them what the bay means to you."

Write they did, by the thousands. Telegrams and letters arrived in Sacramento by the sackful, piling up in capitol hallways. To the surprise of many legislators in that pre-environment era, the mail was heavier than for any other issue in the 1965 session. Many citizens joined a campaign to send members sackfuls of sand and dirt with notes that said:

> You'll wonder where the water went
> If you fill the bay with sediment.

The hearings in Sacramento were packed. One conservationist chartered buses at his own expense.

Many people give Sherwood considerable credit for the extent of the citizen pressure. Said one conservation leader: "I think he got more letters written and more telegrams sent than all the organizations put together. And although

On the value of conservationist and other citizen support, one follower of the BCDC experiment said: "You have to have their letter-writing, and busloads of people at hearings, and anything they can do. You've got to have the bumper strips, the buttons, everything, just as in any political campaign." He said the only counter to special interests and the money they spend is to create an impression of great public support and enthusiasm for the particular cause, and to throw a "scare" into a legislator that he may not be back the next time. "That's all you've got."

some people may be reluctant to accept a disc jockey as an ally in a campaign of this sort, I think his help was tremendously effective."

Mrs. McLaughlin agrees that Sherwood's contribution was great, and adds: "Perhaps the wise use of our natural resources can be 'sold' to the public with advertising techniques, on the radio, TV and in the press; with folk songs, slogans, photographs, records and placards for buses and trains."

The main legislative battlefield was the Senate's conservative Governmental Efficiency Committee, of which McAteer was a member but not chairman. The 11-member committee, widely viewed as a burial ground for legislation opposed by various lobbyists, held several hearings. At one point an opponent of the bill walked out in anger; there was a bitter exchange and accusations of "arrogance." But in the end, McAteer had six votes, and the bill cleared committee by a 6-5 vote.

In the Assembly, Petris carried the fight—also to a successful conclusion. The McAteer-Petris Act became law in June 1965, and the BCDC it created came into existence on September 17. The commission was given until the start of the 1969 legislative session—or a little over three years—to complete its job and report back.

Tragically, McAteer died of a heart attack in 1967, before he could taste the full fruits of his efforts—and before he could apply his considerable prestige and skills to other bay measures.

The BCDC in action.

II: Planning and Protection

The new San Francisco Bay Conservation and Development Commission held its first meeting on September 23, 1965. Its basic responsibilities were to decide the following questions:

- For what purposes, if any, should further filling of the bay be allowed?
- To what purposes should the bay be put and what benefits should it provide?
- How can a plan for the bay be implemented?

In the words of Bodovitz, who was named executive director of the BCDC: "The goal was a plan for the bay similar to a charter for a city or a constitution for a nation." Equally important, during its planning and deliberations the BCDC had power to control filling—to lock the barn door before more horses could be stolen.

Commission Membership

The BCDC was uncommonly large for such a body: 27 members. But it represented a thorough cross-section of the bay region, including representatives of federal agencies, state agencies, counties, cities, and the general public, as follows:

One representative of the Army Corps of Engineers, appointed by the Division Engineer

One representative of the Department of Health, Education and Welfare, appointed by the Secretary of HEW

The state's administrator of highway transportation
The state planning officer
The administrator of the state's Resources Agency
One member of the State Lands Commission, appointed by the Commission
One member of the San Francisco Bay Regional Water Pollution Control Board, appointed by the Board
One member of the Bay Area Transportation Study Commission, appointed by the Commission
Nine county representatives, each a resident of one of the nine area counties, appointed by the board of supervisors of each county
Three representatives of cities, appointed by the Association of Bay Area Governments
Seven representatives of the general public, five of them to be appointed by the governor, one by the Senate Rules Committee, and one by the Speaker of the Assembly; all to be area residents and all to be subject to confirmation by the Senate.

(In addition, a member of both the Senate and the Assembly, appointed by the Senate Rules Committee and the Speaker respectively, were to meet with and participate in the BCDC's activities, to an extent compatible with their legislative duties.)

The members were to serve without compensation, except for expenses. Each member could select one proxy to attend meetings and vote for him. The governor was to appoint a chairman and a vice chairman from among the public representatives. Counting turnover, 13 public representatives were chosen to serve during the three-year planning life of the commission—three attorneys, one publisher, an architect, a home builder, two businessmen, an educator, a public relations consultant, two women civic leaders, and a member of the Berkeley City Council, who was also a woman.

"They all came in largely ignorant of what they were supposed to do," said one observer of the commission, "but there were none of the personality conflicts and grandstanding that is so typical of public bodies."

Melvin B. Lane, chairman, San Francisco Bay Conservation and Development Commission.

Many were convinced that such a large and diverse group, with so many conflicting opinions, would be unwieldly and might break into blocs, never able to reach a consensus on the future of the bay and the means to assure it. But McAteer believed that wide representation in planning was more important than the presumed greater efficiency of a smaller agency. This reflected his conviction that the plan could be ultimately successful only if the many diverse interests in the bay were incorporated in the planning process.

"There were no outright wreckers on the BCDC," said Melvin B. Lane, a publishing executive who was named chairman of the commission. "Some members were pretty tough at the beginning, but they lost interest. They got embarrassed and just gave up."

Alvin H. Baum, Jr., deputy director of the commission, noted that "human nature acts so that if one is consulted, one does not oppose a decision one doesn't like as strongly as if one is ignored in the formulation of that decision." So the broad composition of the commission had the effect of "muting" whatever passions might develop; of providing a flow of information and liaison with different interests; and of modifying the viewpoints of individuals who faced issues with others of differing views.

"Each county has its petty interests and is self-centered," said BCDC member Emanuel P. Razeto, a supervisor of Alameda County, which was eager to expand bayward. "But we got to know our neighbors and our common interests. It was sort of a U.N. around the bay. It knitted the whole bay together."

Although BCDC membership was appointive, most of the county and city representatives who served on it were elected officials. "If you're appointed you can be independent," said Razeto. "But if you're elected you have to bend and twist to the wishes of the people. I'm a perfect example. I represent Alameda County and Emeryville. If I voted against them, I'd be killed." A commission like the BCDC, said Razeto, is "like a ship in a storm—it's got to be built strong."

Actually, not *everyone* was represented on the commission. It was the philosophy of the McAteer-Petris Act that "special interests"—such as particular landowners, developers, port agencies and the like—*not* be directly represented on the BCDC. "It was felt that the policy-setting commission

should be all laymen, in the sense that they represented public agencies and the general public," Bodovitz explained.

This was an important decision. If commercial interests had been admitted to membership, they might have sabotaged the work of the BCDC or rendered some of its work ineffectual. "But you wanted to give the people with special knowledge and special points of view some kind of formal participation in the planning," Bodovitz said. So the act directed the BCDC to appoint a "citizens' advisory committee" of up to 20 members.

Advisory Committee

The law specified that BCDC's citizens' advisory committee be composed of representatives of conservation and recreation organizations, and at least one each of the following: a representative of a public agency with jurisdiction over harbor facilities, another for airport facilities, a biologist, a sociologist, a geologist, an architect, a landscape architect, a representative of an industrial development board, and a private landowner.

The advisory committee gave many potential opponents an opportunity to be recognized and heard. If it had been used as a committee, and had voted on policy matters before the commission voted on them, the undesirable situation could have arisen in which the commission sometimes would overrule its advisors; this could look to the public as though laymen were refusing to take the advice of obviously better qualified technicians. The advisory committee was not set up to have any kind of political balance, so this could have been a considerable danger.

So the advisory committee was really used as an advisory *panel* rather than a committee. It did not meet as a committee, and it did not vote. All BCDC planning reports were sent in draft stage to the advisory committee members, as individuals, and they wrote back or called in their suggestions, both specific and general.

The staff agreed with most of the suggested changes and made them. Another virtue of this committee or panel was that the commission got a lot of free help in preparing the plan. These committee members were all recognized experts in their field, and the commission benefited tremendously from their advice.

They lived all over the bay area, and were all busy people. But they didn't have to go to a lot of meetings, they didn't have to spend any time in travel, and they could do their work in the evenings if they wanted—all of which made service on the committee attractive to its members.

In addition to modifying the drafts of the reports along the lines of the suggestions received, the staff duplicated all of the critiques from the advisory panel members and sent them directly to the BCDC members. There was no effort on the staff's part to censor anything that the advisory panel said. And because the advisory panel was purposely set up to have people of opposing points of view, it was very common, on the controversial issues, to have some members say the drafts were being too tough on some things and others say they were not tough enough; or some would say a statement was correct and others would violently disagree. The commission itself then had to decide. But the process worked very well, in large measure because of the caliber of the people on the advisory committee.

Leadership

With such a large and diverse group, and such controversial issues, it was obviously crucial for the BCDC to have an effective chairman. It could have been saddled with a chairman who was weak, or not respected, or unable to control the members and defuse conflicts, or overly partial to one side or the other, or unable to get things done, or tedious. On the other hand, the chairman could have been too strong, domineering, antagonistic or abrasive, causing enmity among the members and fragmenting the commission's work.

It is widely agreed that the man chosen for the job—Melvin Lane—was eminently successful as BCDC chairman largely because he avoided the pitfalls listed above. Quiet, diplomatic, and personable, his style was low-key—and he apparently had the respect of all the BCDC members. His chairmanship is generally regarded as a key element in guiding the commission to its goal. "He did an outstanding job," said Feibusch. "He ran a fairly taut ship, yet he was never arrogant, never cut anyone off without giving him a pretty

fair chance to talk. If he'd pushed harder, he probably couldn't have been as effective."

"He let people talk things out," said Baum, "so there was no one challenging him on that. He was informal—he did not insist on rigid parliamentary procedures."

Said Bodovitz: "He presided at meetings in a fair-minded manner that prevented polarization of BCDC into factions; and he quietly but firmly kept BCDC on schedule so that decisions were made on time and the plan was completed before its deadline."

Razeto called Lane "the whole key to success." He said the chairman was "intelligent, thoughtful, and diplomatic. He was not a politician. Some of us in public office use such a position as a stepping-stone. But Lane was sincerely concerned and had no political axe to grind. He presided well. He gave everyone a chance to speak. But he didn't let it get out of control. He put you in your place in a tactful way."

Lane had another important advantage. As a well-to-do publisher (*Sunset* magazine and Sunset Books), he was able to devote a great deal of time to his unsalaried BCDC job. In addition to regular commission work, he spoke at many meetings, explaining and publicizing the commission to the public, lobbying for its cause in Sacramento and elsewhere. He said he tried particularly to "develop an understanding in the business community," in some cases through organizations of which he was a member.

Staff

It was also important for the commission to have the right kind of staff. It was a small staff—only 13. It was therefore manageable, and its members could communicate easily with each other. It included an executive director, a deputy director (a lawyer), four planners, an engineer, and a graphic artist. (A deputy state attorney general, E. Clement Shute, acted as legal advisor to the BCDC and his services were of great value. Also, Baum was a lawyer.)

The size of the staff had the additional advantage of conserving appropriations. Said Bodovitz: "I believe strongly that a much larger staff, unless its members had been exceptionally able, might have presented administrative

problems and would not necessarily have produced a better plan or been more effective. In other words, there are some virtues to having a poverty-level budget that *requires* a small staff."

All things considered, the BCDC operated on something of a shoestring—about $240,000 per year during the planning stage. In retrospect, Bodovitz said, "The budget appears to me now to have been quite adequate. I'm not sure that if we had had twice as much money we would have spent it as effectively or produced a better plan." BCDC sought no federal funds to aid its planning. "The paperwork and time involved would have been too great to make it worthwhile," said Baum.

Members of the staff were relatively young. They were bright, energetic, hardworking and, above all, practical. And they obviously had a keen interest in the task. "The staff skills that were most sought," said Bodovitz, "were the ability to analyze considerable volumes of information rapidly, to write clear reports that could be the basis for planning, and to work under considerable pressure."

These were certainly among the attributes of Bodovitz himself who—in view of his success with the McAteer study commission—was the natural choice to become BCDC's executive director. Fortunately—in view of his constant sensitive dealings with commission members, the press, the public, and the politicians—Bodovitz also was widely regarded as sincere, personable, and diplomatic. And as a former journalist, he insisted that all reports and policy drafts going to the commission members and to the public be models of conciseness and clarity.

The BCDC did have difficulty finding a good chief planner. This caused a delay in the commission's schedule, although it was made up later. "We thought that rather than just take someone who happened to be available here, we ought to search for somebody who's really good," said Bodovitz. "We really looked all over the country. Lots of planners weren't attracted to this kind of job because of the intense time and political pressures that went with it. Most planners who looked at it said, 'It'll take you five years to do that'."

Planners were also in great demand at the time, but after some advertising

Salt ponds seen from Coyote Hills State Park, Alameda County.

and nationwide recruiting, the commission located E. Jack Schoop, a former newspaperman and then chief planner in Anchorage, Alaska, who fit all its prerequisites.

Timetable

To carry out a three-year planning program, the BCDC established a firm timetable at the start. Perhaps more surprisingly, it adhered to it. This was the timetable:

Step 1. Inventory and evaluation of existing information about the bay. (Four months)

Step 2. Development of policies. (15 months)

a. Further analysis of existing information about the bay.

b. Additional studies on aspects of the bay for which adequate information is not presently available.

c. Establishing policies and criteria for future uses of the bay.

d. Evaluation of the existing plans of cities, counties, other governmental agencies, and private property owners in light of these policies.

Step 3. Using the policy decisions arrived at under Step 2, the preparation of a tentative, detailed preliminary plan for specific parts of the bay and shoreline. (Seven months)

Step 4. Public hearings, review, and amendment of preliminary plan. (Six months)

Step 5. *Adoption of final plan.* (Three months)

Step 6. Preparation and printing of commission's final report to the governor and legislature. (Four months)

The commission held regular afternoon meetings twice a month. It was always under considerable pressure, since the final report had to be submitted to the legislature in January 1969. On top of that, the commission itself was slated by law to go out of existence 90 days after the adjournment of the legislature's 1969 regular session.

A BCDC meeting.

"The deadline pressure was great," said Bodovitz. "We set ourselves an impossible schedule and just made everybody stay on it. You've got to keep making decisions, even if they are only tentative. The chairman was very good at this, saying that 'before we go home today we're going to vote on these policies, because we can't put it over for two weeks.' Or if we put them over for two weeks, on that date it was clear that we'd stay there all night if we had to but we were going to decide. This pressure is terribly important because if people spent two months considering what they had two weeks to consider, I don't think the vote would be any different.

"There's great pressure on the people who don't want to vote to say 'Why don't we decide something else first, then we'll come back and decide that.' So you have to really be firm, as the chairman was with this kind of thing. He could say, 'No, we've got to stay on our schedule, and at the end there'll be a period of public hearings and then we'll have a final review of all this, so if you're really unhappy, you'll get another shot at it'."

It can also be an asset having a temporary commission. "A permanent agency may feel that it can lapse into bureaucratic procedures and a kind of laxity," said Bodovitz. "Any legislative or deliberative body having to make difficult decisions tends naturally to postpone them as long as possible. However, a temporary agency, knowing that it will turn into a pumpkin at midnight, has a strong incentive to meet its deadlines and to achieve the public support that is obviously going to be required to carry out its plan."

Colonel F. C. Boerger, the Corps of Engineers' District Engineer in San Francisco at the time and a member of the BCDC in its first years, was not entirely enthusiastic about the pressure of time, though he has praised the job done by the commission. "We were almost always in a terrible bind for time," he said. "We were trying to do too much in too little time. We tended to rationalize and rush to conclusions. We had to accept things at face value. In some cases basic research needed to be done, but there was no time for it. We had to accept the prevailing opinion of some experts. Of course, in some organizations the idea is to plan forever and never come up with anything."

In addition to the timetable, the BCDC established and evolved a specific set of operating procedures under which its plan for the bay would be developed:

Procedures

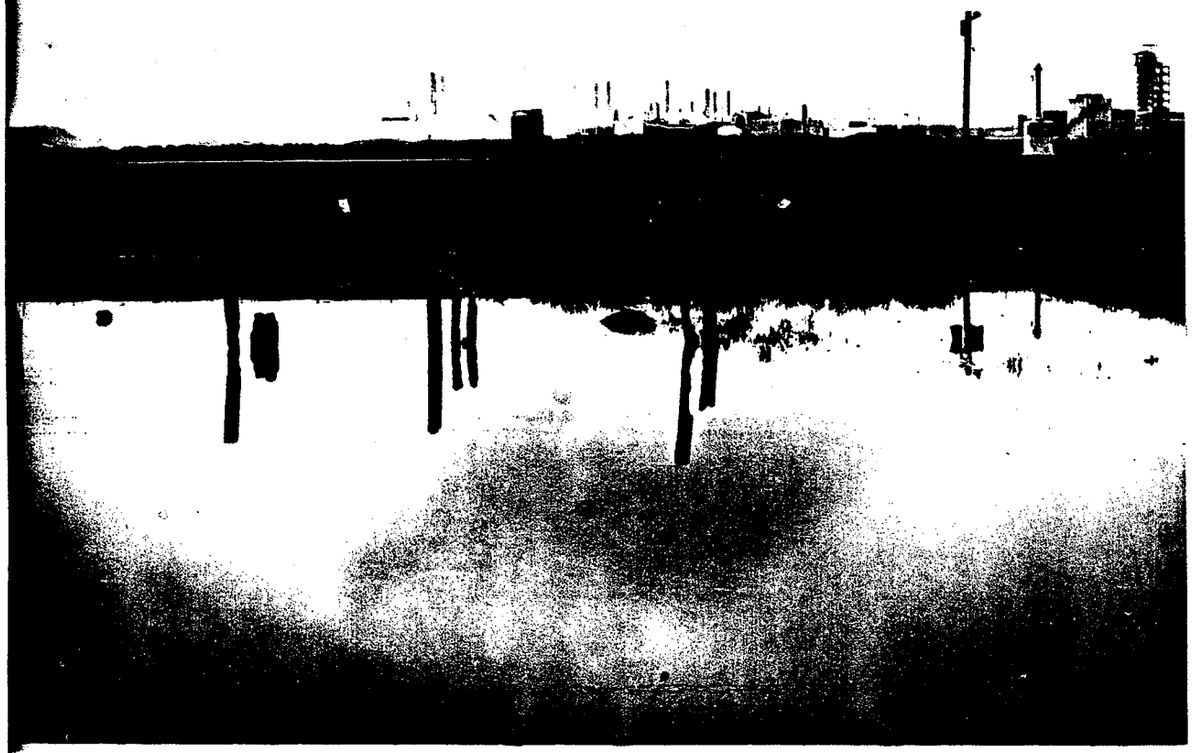
1. Do-it-yourself Planning.

The commission capitalized on its broad base by deciding to do its own spadework and forge its own policies in the crucible of general membership meetings—rather than dumping the job in the lap of a private planning consultant, or even in the lap of its own staff.

"Initially," said Bodovitz, "some large planning firms asked to be selected as 'master consultant.' This meant, in effect, that they were asking the commission to turn the entire planning responsibility over to them. They would simply take most of your money and most of your time, and then come back toward the end of the allotted time and provide you with information and recommendations. I would say that in the bay area alone, there have been millions of dollars wasted by public agencies on this kind of study. And usually it was some federal agency supplying the money."

Bodovitz said that "the whole planning philosophy of the commission was for the commissioners themselves to become as familiar as they could with all of the issues involved in planning for the bay and then to make the difficult decisions themselves. I am convinced that if we had hired even the most talented imaginable outside planning firm to do the job the result would have been zero in terms of accomplishment. There might have been a splendid plan or report from the consultant, but in terms of building any public support for what needed to be done, it just can't be done by turning the whole workload over to an outside consultant . . . or at least I've never seen it work successfully anywhere.

"The idea is not simply to come up with a plan. A big fallacy in this kind of thing is that the goal is the plan, but the goal is not the plan at all. The goal in our case—and I suspect in most cases involving this sort of planning—is action by a legislative body, not the preparation of a beautiful document with lots of multi-colored drawings . . . We wanted some pretty pictures in ours, too, as long as we arrived at some kind of consensus that would be the basis



Phillips refinery in Avon, Contra Costa County.

"The tendency in this kind of planning program, nationwide," said Joseph Bodovitz, "and one reason why planning has had so little impact on the American scene, is that the typical plan is prepared in an ivory tower. By this I mean it is prepared in isolation from the public, and then unveiled after a year or two . . . This may result in good technical work, and the research may turn up some interesting facts. But it doesn't educate the public. And therefore, when the final report is submitted, nobody understands it and nobody is willing to take action. There are plenty of these studies around that nobody understands and therefore nothing happens as a result. But the great problem in planning right now is the need to make hard decisions. Consultants simply can't—and shouldn't—make decisions for other people."

for legislation in Sacramento, because that was the whole idea . . . No plan by itself could be more than a means to the end.

"The way we did it is much harder on everybody. But the commission, with a strong recommendation from the staff, decided in the early days that it would be a tragic and great mistake to turn this over to an outside consulting firm."

By the same token, the commission did not abdicate its planning and policy functions to its own staff. "Typically," said Bodovitz, "a commission would hire a staff. The staff would say, 'We need $100,000 because we've got this great computer and we've got this great architect. Don't bother us for two years and then we'll come back and tell you what our plans are.' Then, at the end of two years, they come back. The commissioners are all confronted with a 1,000-page summary and a 10,000-page plan. And they say: 'Gee, that's not what we thought we were going to get at all. That's terrible. Take that away.' This happens all over, everywhere."

Although the BCDC did not hire a master consultant, it did ask a number of consultants to provide expertise in particular fields.

The commission further decided not to split its membership into committees where they might polarize, but to keep them together in general meetings. This had the virtue of putting everyone into the same arena where every point of view could be heard. Said Bodovitz:

"BCDC decided not to divide into committees because they could too easily turn into groups of specialists fighting for particular causes. Instead, BCDC needed to meet as a whole to hammer out policy decisions. Commission members concerned with development needed to hear the arguments of biologists, and conservation-minded commissioners needed to hear the needs of port development, so that each side might decide the other wasn't pure ogre. In short, the commission could learn about the bay and debate about it . . . The goal of our planning method was to make everybody understand the total problem.

"It seems to me that the commission's experience shows that if you take a large group of people—particularly chosen so as to represent conflicting opinions—and have them all sit around a table to consider a common problem, they will all be surprised, if they are people of general intelligence and good will, that they agree about many more things than they disagree about."

2. Parts of a Comprehensive Whole.

The BCDC decided to deal with the entire bay and the full range of its development-related problems. And it recognized, in true ecological fashion, that every aspect of the bay affected virtually every other. But because of the overall complexity, it divided the bay and its problems down into "manageable chunks," as Bodovitz put it. There were 21 such chunks, and they covered the bay as a resource, the pressures on that resource, various aspects of planning, and the means to carry out the plan. The 21 subjects were:

Tidal movement
Sedimentation
Water pollution
Fish and wildlife
Marshes and mudflats
Flood control
Effects of bay fill on smog and weather
Appearance and design
Economic and population growth
Maritime commerce and ports
Airports
Surface transportation
Recreational needs
Public facilities and utilities
Refuse disposal
Ownership of bay lands
Regulation of land development

Geology
Stability of filled land
Resources (salt, sand, shells and water)
Governmental machinery necessary to carry out bay plans.

In each of these areas, the commission unearthed knowledge upon which to base its later discussions and decision-making.

"The level of detail, as well as the geographical area involved, was manageable in terms of time and the volume of paper," said Baum. "We survived because the volume of paper coming in was relatively small. We were seeking to control a relatively short list of things. For example, in port areas, we were concerned with use, safety, and public access—not the size of buildings and so forth."

3. Reports and Consultants.

The commission's staff, assisted by special consultants as necessary, prepared a technical, detailed report on each of the 21 aspects of the bay. Consultants were used, within the BCDC's budget, to provide expertise on subjects beyond the competence of the staff. The consultants were experts in commerce, planning, architecture, engineering, and cartography. They included real property appraisers; attorneys; university professors of law, biology, meteorology, political science and engineering; and state experts in the Attorney General's office, the Department of Fish and Game, the Department of Parks and Recreation, the Division of Mines and Geology, and the State Lands Commission.

All reports presented facts as well as a discussion of alternative uses of the bay. They did not avoid controversial opinions. "The consultants were given great freedom in the recommendations they made, a great deal of latitude to say what they wanted," said Bodovitz. "You really want fresh ideas and fresh thinking."

In fact, the BCDC took great pains to prevent the submission of reports which were so bland and indecisive that they might put the commission in a planning limbo. A June 17, 1966, memo from Schoop stated:

Every report being produced by each of you is intended to be a basis for *decisions* and *action* by the commission. So it is important that your report provide an adequate conclusion or recommendation for decision and action. Question arises how one couches a recommendation or conclusion for which there is as-yet insufficient supporting data.

1. Every conclusion or recommendation should be based on hard fact, suitably stated, if such facts are available.
2. In the absence of sufficient facts, but in the face of the need for action despite the lack of facts, each of you, as a professional, is urged to:

   a. state your own conclusion, or opinion, about the issue—*qualifying* it as an "opinion" or "tentative conclusion" or whatever it proves to be.

   b. state what additional research is being done, or which *ought to be done,* to provide the data needed to verify or disprove your conclusions. This is highly important, as we feel this will help stimulate the additional study needed.

   c. If you possibly can, we would like your opinion as to the *outcome* of such additional research. We are planning long into the future. We need the best "guesses" about future developments which we can muster from the many specialists involved in this study.

"There was an ongoing relationship with the staff," said Ira Michael Heyman, professor of law and planning at the University of California, Berkeley, and himself one of the consultants. "They kept talking to the consultants—and argued them into some positions." So it wasn't simply a matter of asking for something and then paying for a finished product.

This process was feasible because the reports were intended to aid and advise the commission; they were not meant to be endorsed, voted on, or adopted, either in whole or in part. It was always made clear that the reports did not represent commission policy and that the commission would make its own policy statements based on its own review of the reports. "The commission didn't get bogged down in trying to decide whether it wanted to agree with a consultant that there are four million or five million such-and-such going past a given point at a given time," said Bodovitz. "That is the kind of thing that doesn't really make any difference—and that is the kind of thing that you can spend hours on if you get some counter-expert who wants to object."

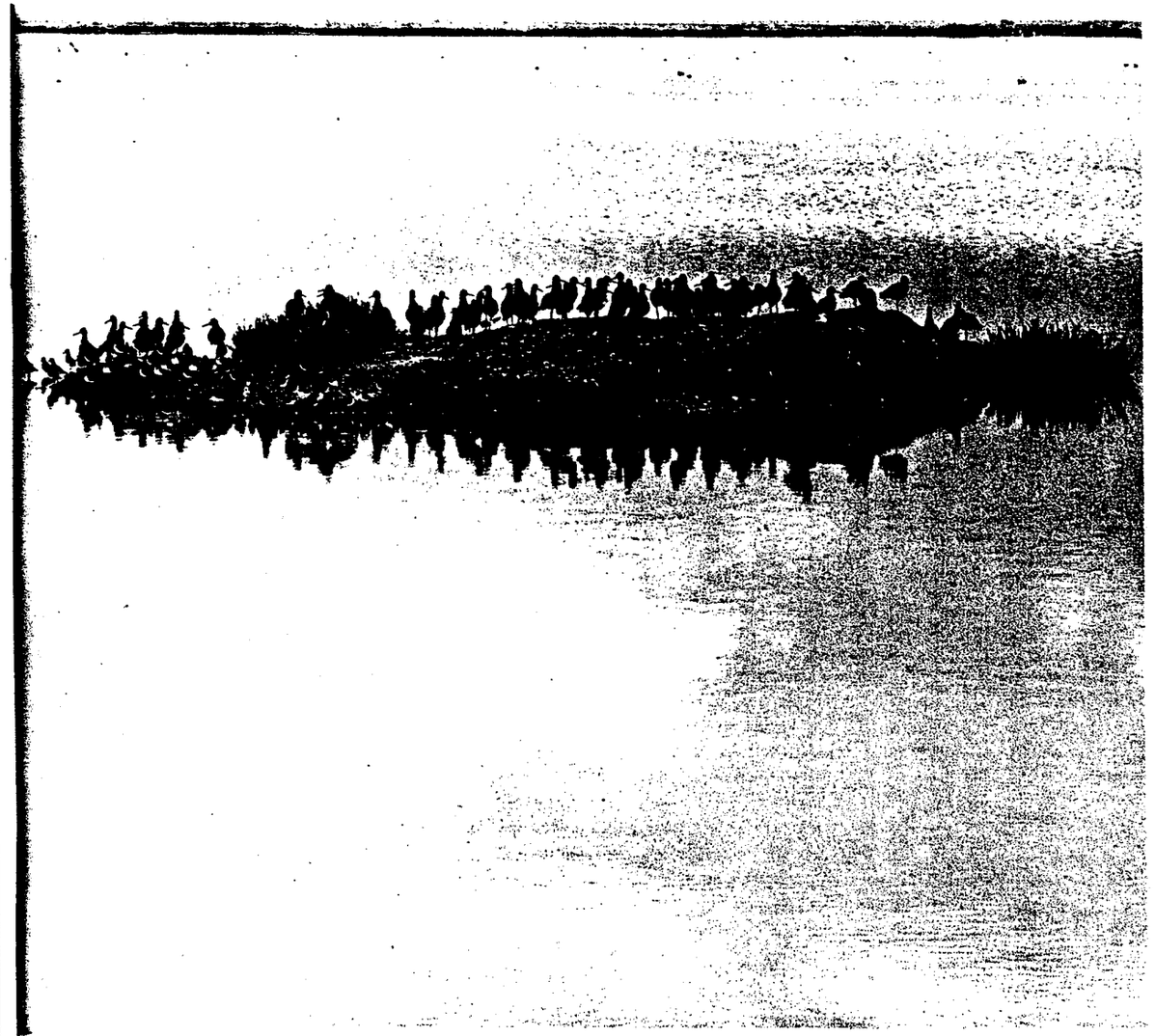
No consultant was paid more than $10,000—which is peanuts in the consulting business—and many were paid much less. "We got a lot of work done at absolute rock-bottom rates," said Bodovitz. "We just didn't have any more money. It wasn't a question of our trying to take advantage of consultants; in our budget $10,000 was a lot of money."

4. Making Things Clear.

In addition to the selection of staffers with an appreciation of clear writing, several administrative steps were taken to facilitate commission, public, and media understanding of the BCDC's work.

The commission insisted that staff and consultants write clear reports, easily understood by laymen. On August 1, 1966, Schoop sent out this memo: "With 28 technical reports (and 23 summary reports) everybody is in danger of getting snowed under. From the points of view of (1) the typists' workload, (2) the printer's workload, (3) the advisory committee's review, and (4) the commission's ability to absorb, it is imperative that reports be as brief as possible." Schoop suggested certain lengths for major and minor subjects, then added: "So please, by all means, don't be redundant. Avoid side issues. Be brief and to the point. (But do cover what we've asked for.) A great many people will be grateful to you. And we'll get all the messages across a lot better."

"We required some of our consultants to rewrite their reports three or four times before they were acceptable to us, because we couldn't understand what they said and were afraid nobody else would either," said Bodovitz. "I don't think they loved us greatly as a result. But I think on the balance they would agree with us that we were all better off to have required a high level in these reports rather than to have accepted something unclear."



Salt ponds, north bay, Napa County.

The staff also prepared a short summary of each report. For example, a consultant's relatively lengthy technical report on bay area refuse disposal was boiled down to a clear and concise six-page summation. A 115-page study of waterfront industry was condensed to 18 pages plus maps. And a seven-volume study of the regulatory powers and money needed to carry out the bay plan was reduced to 45 pages.

There were several advantages to the summary reports. From the staff's point of view, said Bodovitz, "it was very easy, we discovered, to read the technical report and think you knew what the author had said. But when you try to write a summary of what somebody else has said, you find that you spot the holes pretty quickly. You are trying to say what Mr. So-and-So said, and then you go back and dig into his report and find out that he really didn't say it very clearly and you're not too sure what he meant." It was on such occasions that reports were "bounced" back to consultants. "This was very helpful. I think it was a good discipline for everybody because it made us really nail down what was being told. It was a great education for the staff."

The condensed reports were reviewed by the consultants to be sure their views were fairly summarized.

The other principal advantage of summary reports was the way they facilitated commission deliberations. "You have to go on the assumption that everyone won't read the detailed reports," said Bodovitz. "We worked hard to make the summary reports quite clear and to boil down the main issues so that even a busy commissioner would find them readable, something he could manage to get done before the commission meeting."

In case the commissioners didn't even read the briefer versions, *they* were summarized orally at meetings.

The staff also prepared and distributed to the commissioners a series of memos reporting news and other developments relevant to bay planning—such as the activities of other governmental agencies affecting the bay, scientific news, meetings, reports on what other regions were doing, and the like.

For example, a two-page staff memo in July 1966 consisted of a sort of biology lesson: "To most of the motorists who speed by it every day, the shoreline of the Bay between Emeryville and the Bay Bridge toll plaza is only

an expanse of mudflat, greenery, and driftwood. But to a biologist, this area —known as the Emeryville Crescent—is rich in plants and birds and is one of the last remaining shoreline areas in the East Bay suitable for biological study and research." The memo went on to explain in great detail the habitat and its ecology.

5. Suggested Policies.

The commission staff, working with each report separately, prepared one or two mimeographed pages of "possible planning conclusions." These were discussed and in some cases revised or augmented. The commissioners then voted on these conclusions, and they became the blocks with which the overall plan was built.

Some of the possible planning conclusions were relatively straightforward. On refuse disposal, for example, it was suggested that sufficient inland sites for disposal were available and should be used pending the development of new waste disposal systems.

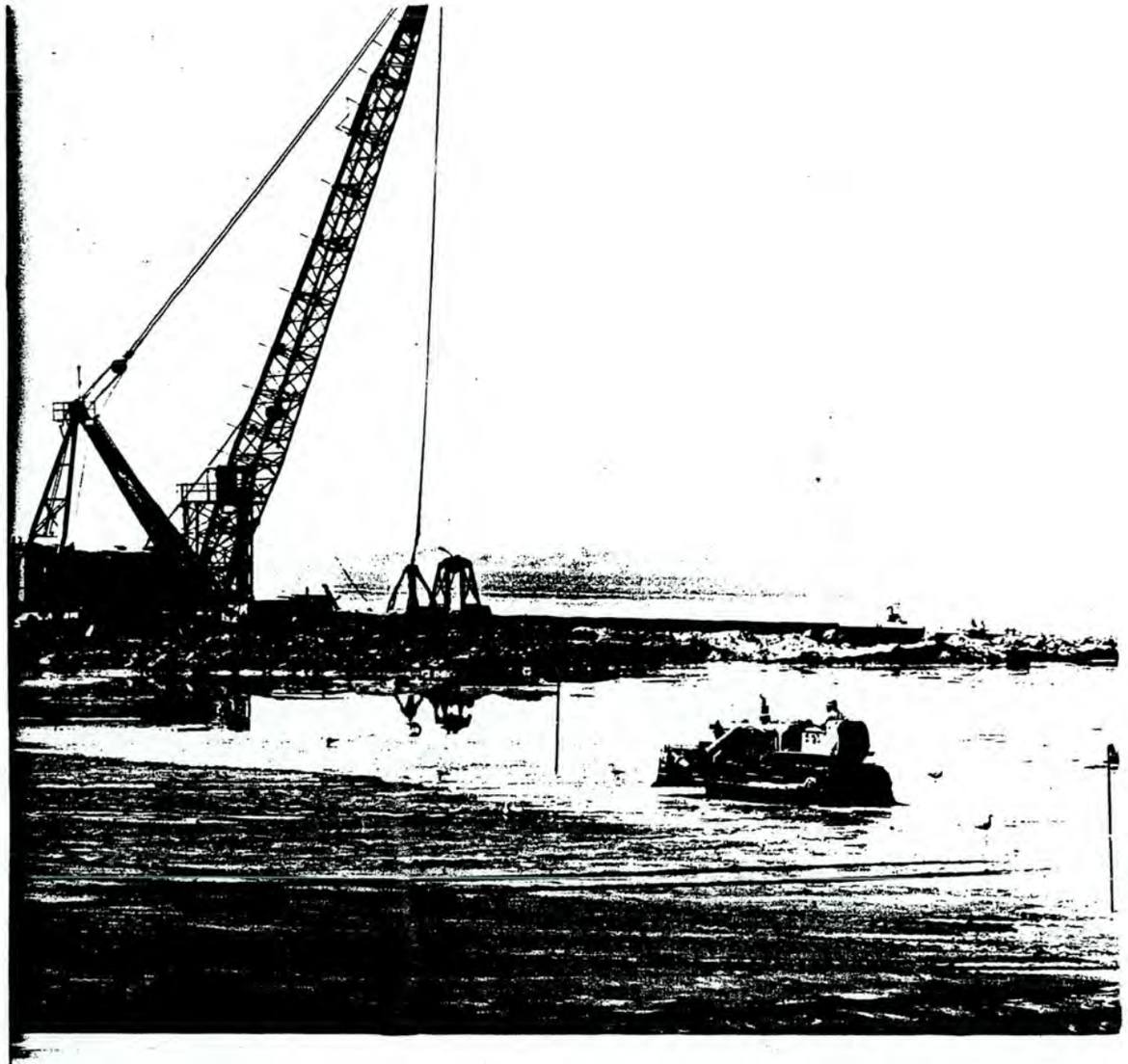
As a result of the fish and wildlife report, one suggested conclusion went as follows: "In preparing the commission's plan for the bay, it will be assumed that all parts of San Francisco Bay are important for the perpetuation of fish and other marine life because any reduction of habitat reduces the marine population in some measure. If, however, assignment of priorities becomes imperative in developing a balanced plan, the highest priority for maintaining fish will be given to (a) those parts of the bay that are identified as spawning areas for any kind of fish, and (b) those parts of the bay used as migration routes by anadromous fish. In addition, full consideration will be given to any opportunity for enhancement or improvement of the habitat anywhere in the bay. Special attention will be given to the habitat needs of those species of fish and other marine life threatened with extinction and any species whose increase would provide substantial public benefits."

Other planning conclusions were more complex. For example, the staff proposed that in adopting conclusions on what powers should be given the BCDC, the commissioners choose one of these three alternatives:

1. Prevent *all* filling not in accordance with the plan by regulating tidelands without compensation to landowners.
2. Prevent *all* filling not in accordance with the plan by massive public purchase of tidelands.
3. Prevent *most* filling not in accordance with the plan by (a) some public purchase of tidelands, and (b) in cases where tidelands are not purchased, permitting only enough fill to allow each property owner some economic return on his lands.

Using a series of maps, the staff presented a variety of planning conclusions on recreation. These were studied, revised, supplemented, and adopted on February 1, 1968. Some samples:

- "Water-oriented commercial-recreational establishments should be encouraged in intensively urban areas adjacent to the bay."
- "In shoreside parks: (1) Where possible, parks should provide some camp facilities accessible only by boat. Up to 2,200 such campsites will be needed by the year 2020. In addition, docking and picnic facilities should be provided for boaters. (2) To capitalize on the attractiveness of their bayfront location, parks should emphasize hiking, bicycling, riding trails, picnic facilities, viewpoints, beaches and fishing facilities. Recreational facilities that do not need a waterfront location, e.g., golf courses and playing fields, should be planned for inland areas."
- "The BCDC plan should attempt to reserve all the waterfront land needed for recreation by the year 2020, because delays may mean that needed shoreline will otherwise be preempted for other uses. However, recreational facilities need not be built all at once, but their development can proceed in accordance with recreational demands over the years."
- "In addition to the public access to the bay provided by the recreational facilities to be included in the commission's plan, every possible opportunity should be taken to provide public access in all other developments along the shoreline."
- "The commission's plan should recommend that the agency carrying out the plan encourage a linking of the entire series of shoreline parks and public access points to the extent feasible without additional bay filling.



Expansion of Third Street Terminal, Oakland.

Many types of connection can be employed, such as scenic drives, hiking paths, and a system of inland waterways."

6. Review and Evaluation.

Confidential drafts of the staff reports and the possible planning conclusions were submitted to members of the citizens' advisory committee for full review and comment. They were returned to the staff, which made revisions as it felt appropriate.

The reports and possible planning conclusions, along with the advisory committee comments, were then presented to the commission. In case of disagreement within the advisory committee, or among staff or consultants, written procedures stipulated that "all points of view will be presented to the commission, so the commission can have the widest possible range of information and opinion in reaching its decisions."

In addition, members of the public could and did testify and write letters expressing their opinions of the suggested policies. "Dozens of suggested revisions in the conclusions were made from the floor by the public," said Baum.

The "possible planning conclusions" were debated, revised and voted on. They then became part of the tentative overall bay plan. "The idea was not to have a plan prepared by staff and consultants," said Bodovitz, "but a plan actually prepared and adopted by the commissioners themselves, with the hope, which I think has been proved correct, that in this manner the commissioners would be committed to the final plan." This commitment would be important in generating public and political support.

The BCDC, in a very important move, altered the normal procedure for obtaining agency concurrence in a plan. Usually, a large, detailed package of research and recommendations is presented to a commission after a year or two of work. "The trouble with such plans," said Bodovitz, "is that at the end you take one big vote to adopt it or reject it, and everybody's against it because there's something in it they don't like." This would have been particularly difficult with the BCDC, because of its comparatively large membership.

Instead, the commission took up its 23 subject reports *one at a time*—one manageable subject per meeting.

At the BCDC meeting on August 4, 1966, Schoop told the commissioners that reports were starting to come in regularly and that, in line with procedures suggested earlier, the commission should reach a position on each report so that policies could be derived from it. He said the commission must consider definite action on each report so that the staff would know if it is proceeding in the right direction.

One commissioner asked if the reports were to be considered finished studies, since judgment on some would be affected by conclusions on others; he said they should be considered as a comprehensive whole. But Lane said conclusions could be altered; and Bodovitz said reports should be adopted with the recognition that some findings might be in conflict. He said there would be ample time for resolving conflicts.

By taking up reports individually, the BCDC members came to understand the problems of the bay in small, comprehensible installments. They reached conclusions about them and voted on the conclusions, endorsing a series of policies, building a plan as they went along. Bodovitz said it was "like a builder constructing a house, sometimes slowly, sometimes painfully, but from the foundation up, one step at a time." More importantly, the commissioners were gradually committing themselves to a series of positions.

"In presenting the various planning reports," said Bodovitz, "we tried to present first the ones that were the least controversial, so the commission would have some experience in finding agreement on issues before having to vote on things where division was inevitable. I think this was very important. If the commission had had to have knock-down fights before it had the experience of being able to work cohesively, we might have had a very early disaster."

One early subject was fish and wildlife. "It's pretty hard for anyone to say that fish and wildlife aren't important," said Bodovitz. He said some of the commissioners were bothered about voting on subjects requiring expertise. They would ask: "How can I vote intelligently on the fish and game report? I don't know anything about fish and game." But they were not actually

voting on technical matters, said Bodovitz. "They could vote that fish and game ought to have a high priority, that we ought to maintain them. And that we shouldn't foul up any species of fish by allowing fill. And we should worry about endangered species. Half a dozen logical and sensible things like that flow out of that report."

"You unconsciously get a commitment to these facts," said Lane, "even from an all-out developer, if you take him through what happens to the tides, and the fish and the fill, and so forth. So it's hard for him to say there's no harm done, if all these experts have just laid this out in front of him."

Lane said the commission was "always looking at the facts, and any effort to rig anything was knocked down fast."

Bodovitz said that once the tentative conclusions had been voted on—even though they were tentative and could be reopened for discussion later—they gained a "kind of momentum." He said it's "very hard for someone to go back and say, a year later, 'Well, I really had some second thoughts and I don't think fish are very important.' Then all his colleagues will say, 'Well, you said that before and you were voted down. We can't just keep going back and re-voting on everything'."

The BCDC wound up its 21 subjects with the report on governmental powers and money necessary to carry out a plan. Although this report helped to crystallize thinking, it engendered more dispute than any of the others. But by this time the step-by-step process was nearly finished, the various segments had been agreed to, and the commission already had what almost amounted to a preliminary plan for the bay. There could be no turning back, and no getting hung up on a final piece in the puzzle.

"All during this," said Bodovitz, "some people thought we were heading for disaster . . . that they were adopting perfectly sensible policies at each step of the way, but when they got down to the end, they would have policies in diametric conflict with each other. And then how in the hell would they ever resolve the conflict? But we thought there really won't be all that many conflicts—you'll be surprised how much of this will work out. And secondly, if there are conflicts, the commission will be in a better position to vote intelligently to resolve them after it's gone through this process anyhow. If we've

San Mateo County, adjacent to San Francisco International Airport.

got some hard things to settle at the end, then we'll settle them. When you finish, you plug the few gaps you can't precisely foresee."

7. Hammering Out a Plan.

The same sequence was followed in the next step of the BCDC program, development of a preliminary plan. Using policy decisions adopted by the commission, the staff—again with consulting help as needed—prepared a tentative plan. This, too, was submitted to the advisory committee for comments and then presented to the commission for public hearings, debate and voting. Hearings were held at various points around the bay. A number of amendments and changes were made—and thus the final BCDC plan evolved.

The staff drafted a report on the final plan and prepared a series of maps. The report, like the temporary study commission's report before it, was a model in many respects. It was short—the main body of the report, including some photographs and sketches, was 42 pages long. It was concise, clearly laid out, and lucidly written. It began with a four-page summary. Then came more detailed descriptions of the findings and policies of the BCDC—with respect to the bay as a resource, to development of the bay and shoreline, and to carrying out the plan.

At the end were 19 double-page maps, two of the full bay area and 17 covering each subsection of bay and shoreline. The latter were in three colors, detailed and large scale (approximately one mile per inch). Printed on them in bold face type were brief summaries of BCDC policies. For example, at the San Francisco Airport was written: "Further expansion into bay only if clear need is shown by regional airport system study. Keep runway approach and takeoff areas free from tall structures and incompatible uses." The maps also had, in italics, short "suggestions" by the BCDC. Thus: "San Mateo—Prepare precise plan and development program for waterfront, emphasizing water-oriented recreation. Some fill may be needed."

The maps retained their clarity by being simply drawn and uncluttered. The plan was accompanied by a supporting 572-page technical supplement.

The end result of these procedures was a remarkable plan and virtual unanimity in approving it. In the final, dramatic, 19-1 vote on September 20,

1968, only one county representative dissented. He did so because he thought more industry or fill should be allowed. Another man, a state official, abstained because he considered the plan in conflict with his position; a third member said he was unhappy, but voted yes anyway. "Three years before," said Bodovitz, "anybody in his right mind would have predicted that we'd have 16 minority reports and nothing but dissension."

Permit Control

In a key provision, the McAteer-Petris legislation provided that, while the BCDC was working up its plan, it should also control use of the bay. "During the period necessary to complete the detailed study of the bay and to prepare the comprehensive plan for its conservation and for the development of its shoreline," said the law, "any person or governmental agency wishing to place fill in the bay or to extract submerged materials from the bay shall secure a permit from the commission."

The law specified that, with the exception of minor repairs or improvements which could be approved by the BCDC's executive director, a permit could be granted for only two reasons: (1) if a project is "necessary to the health, safety or welfare of the public in the entire bay area," or (2) if it is "of such a nature that it will not adversely affect the comprehensive plan being prepared."

The BCDC's police power was crucial, said John Hirten. "One wonders," he said, "why similar conditions could not be used as the framework for city and county planning bodies to control decisions on new subdivisions and on amendments to approved general plans."

The regulatory provision was designed to prevent casual granting of permits because an affirmative vote of 13 commissioners was required to approve one. This was of key importance, said Feibusch, because the conservationists were in a minority. Since neither of the two federal representatives could vote on permits, there were 25 voting members. And if 21 or 22—a typical turnout—showed up at a meeting, it would take more than a majority to approve a permit. Conversely, it would take only 9 or 10 votes to block one.

The law could have allowed permit approval by a simple majority of a

quorum of 13 members—or as few as seven votes. "I thought the lobbyists missed the boat on that one," Feibusch said. "They could have gotten that amended and it might have been all they needed." As it turned out, there was seldom a vote so close as to make a difference; the consensus on conservation and the denial of permits generally had votes to spare. Only one meeting was so sparsely attended that a developer requested a postponement in hopes of getting more votes for a permit approval the next time.

With its strong permit authority, the BCDC was able to go about its planning work and at the same time effectively protect the bay from an onslaught of environmentally destructive projects before a plan or other central authority could be enacted. Though some permits were granted against the judgment of many conservationists, on balance the BCDC was chary. A number of major would-be developers probably didn't even file applications for permits, in the sure knowledge that they would be denied or would stir up unpalatable opposition. As of the spring of 1969, there had been 77 applications, of which 56 were granted. But the 56 permits allowed only 370 acres of fill. This included 265 acres for airports, mostly San Francisco Airport runway expansion, considered a pressing need. Most of the rest was for waterfront parks, marinas, beaches and other recreation facilities.

In addition to protection of the bay, the permit authority had several concomitant advantages.

"Since fill control was seen by the public as a desirable end-objective," said Schoop, "BCDC was immediately popular as an effective bay 'watchdog'." It wasn't just another planning group.

The BCDC usually scheduled permit application decisions and planning decisions at the same meeting. The permits were apt to be more timely and controversial, said Bodovitz, so the planning issues were placed at the top of the agenda. As a result, those commissioners who really had come to vote on a permit matter became involved in the planning decisions.

"If it's just a planning meeting," said Bodovitz, "some are likely to decide 'To hell with it, I'll stay home.' Some of the commissioners came from a good distance away and it was a long drive in traffic to get there. But if a commissioner is being lobbied for his vote on a particular permit application, this

Alameda Beach State Park.

"The press really isn't terribly interested in a debate over a planning document," said Bodovitz. "You get three paragraphs past a city editor on a busy day. But if it's a vote on a permit, there's a much livelier interest because somehow to a city editor it really sounds like they're doing something. They either told this guy he could fill it or they told him he couldn't—by such-and-such a vote, with such-and-such figures and arguments one way or the other."

is important to him. The controversy is covered in the press, and he's got to be there. And therefore we had great attendance at our meetings."

A more important advantage of wielding permit authority was the effect it had on the planning itself. "It kept everybody out of the ivory tower," said Bodovitz "because a good part of the time was spent dealing with real problems—real conflicts and real political pressures. And this in turn reinforced the validity of the planning." Thus, the BCDC could be considering a long-range policy on use of bay lands for airport expansion at the same time it was faced with an application for a specific expansion project. "So you're kept down to earth."

"Every day of their existence they had a real test of their planning concepts," said William T. Davoren, who was regional coordinator for the Interior Department. "It was a confrontation to see if their plan was workable and acceptable. It was all pretty pragmatic." Furthermore, this dual role served to intensify the commissioners' interest in and commitment to planning policies.

The permit authority gave the commission a "built-in conflict of interest" that was essential to its success, said Mrs. Kerr. She said this helped prevent the atrophy and special interest orientation to which regulatory commissions typically succumb.

Finally, periodic controversies over projects that need permits sharpened the interest of both press and public.

Said Bodovitz: "I think it's fair to say that the public does not take plan-

ning terribly seriously, and only when it is related to everyday difficult decisions is it likely to receive much attention by the press or the public . . .

"A planning agency such as this thrives on controversy. If its discussions are academic and uninteresting and nobody comes, the planning may appear easier, but it's very unlikely that anybody will understand it or support it. What we were trying to achieve was a strong commitment to the policies."

Public Involvement

Other factors also spurred public interest and support. It was extremely important that the BCDC was dedicated to open planning, openly arrived at. The law creating the commission made public hearings on permit applications mandatory, and under California law the commission was also required to open all its planning meetings to the public. As noted, testimony from members of the public was welcomed, and citizens were otherwise involved in the process. The BCDC's public visibility was also enhanced by:

- The issuance of numerous press releases on consultants' findings, reports, planning policies, permit applications, and decisions. There was considerable press coverage of BCDC meetings.
- The clarity and succinctness of the summary reports themselves. "The reports were circulated widely as each was completed, and public reaction was vigorously sought," said Bodovitz.
- Speaking appearances by members of the commission and its staff at many meetings throughout the bay area, to explain commission activities and policies.
- At the end of the planning period, the BCDC produced a short film about its plan which was shown widely to groups. "Many of the film producers we talked to wanted more money than we could possibly find," said Bodovitz, "and so we wound up with a very low-budget film. It might not win any prizes for creativity and ingenuity in the film art or anything like that, but it was perfectly straightforward." It was narrated by disc jockey Sherwood, and partly because of his popularity the film came across as a reasoned and reasonable plea on behalf of the bay and the BCDC plan. The film was valuable, said Bodovitz, because "you just can't have enough speakers to go talk to every civic group and high school class, but you can circulate the film."

"There was a good deal of public education going on," said Bodovitz. The interest and attention thus achieved by the BCDC engendered, in turn, a broad base of support for its planning work and, eventually, for acceptance of the plan by the governor and the legislature. "The public support that had been so important to the creation of the commission had to be maintained," said Bodovitz. "The public had to be kept involved in the planning as it progressed, so that a consensus of public opinion could be achieved."

Local Government Involvement

BCDC's relationships with local governments, some of whose powers it was diluting, were obviously important—particularly when one considers the difficulty regional planning organizations have encountered elsewhere because of local government reluctance to surrender authority. Although there was some local government skepticism and hostility at first, relations were generally good. There were a number of reasons:

- Of the 27 BCDC members, 12 were county or city officials.
- The law directed the BCDC to "give consideration to the master plans of cities and counties around the bay" and "to the fullest extent possible, coordinate its planning for the bay with planning for the land area surrounding the bay by local agencies, which shall retain the responsibility for land use planning."

As the commission began refining its plan, and considering particular areas of the bay, it held meetings with local planners, public works directors, recreation officials and others. "Of course," said Bodovitz, "you get a great amount of invaluable advice this way, because they say, 'Don't do it that way, do it this way.' And they can alert you to local problems."

- Meetings with local officials were candid and open. Said Bodovitz: "We told them all everything we were proposing." (Nevertheless, said Lane, "I wish there had been a way to keep the city and county people a little better informed about what we were doing." He said there was some misunderstanding, and a basic prejudice against regional government of any

kind. "Many of them were instinctively against any added government. They worked as an informal club, passing each others' bum information around—and believing it.")

• Most importantly, local governments still retained some jurisdiction over proposed projects. If a project required a local permit as well as one from the BCDC, the applicant was required by law to obtain the local permit from the appropriate city council or county board of supervisors before going to the BCDC. (If no local permit was required, application could be made directly to the BCDC.) A local agency, after investigation, could deny the application, putting an end to the project, or approve it and file a report with the BCDC within 90 days. The BCDC, in ruling on an application, was directed to give "full consideration" to the report of the city council or county board.

"BCDC was not usurping any powers of local governments," said Bodovitz. "It was providing a regional evaluation of projects in addition to the local evaluation. We couldn't force a project on an unwilling local government." On the other hand, of course, BCDC could block a project desired by a local government. Thus there was a "double veto" system. The state, had it wished, probably could have preempted local jurisdiction on grounds it was necessary to achieve regional goals. But it chose not to do so for obvious political reasons.

Federal and State Government Involvement

By and large, the relationship of the BCDC to state and federal government was surprisingly harmonious, considering the jurisdictional and political problems with which overlapping authorities are so often plagued. Said Bodovitz: "We made strong efforts at the beginning to streamline our permit processing so as to tie in efficiently with the State Lands Commission, the Bay Regional Water Quality Control Board, and the permit functions of the Army Corps of Engineers . . . We simply didn't have any serious conflicts."

Of course, the Corps had a representative on the commission (its San Francisco District Engineer), and the Corps staff worked closely with that of the BCDC. According to Colonel Boerger, the Corps relied on the BCDC's

position as "primary evidence of the general public interest of the state and has generally been guided by what they decided." Thus, the Corps and the BCDC worked out an arrangement whereby all permit applications were referred to the BCDC before the Corps took any action on them. (Under the 1899 Refuse Act designed to protect navigable waters, the Corps is authorized to establish lines beyond which harbor structures, piers and bulkheads cannot be built.)

Mrs. Kerr says she feels the Corps had developed a reluctance to get embroiled in such controversies. "They were getting too much flak from us because of the Scott study," she said. A number of people felt that the Corps was, as one expressed it, "happy to have another agency take the hot potatoes that some of the permit applications involved."

One answer to potential conflicts between the BCDC and the Corps might have been passage of federal legislation requiring Corps-permitted projects to conform to BCDC policies; or turning Corps authority on permits over to the BCDC. Problems could arise in connection with property owned by federal agencies—such as the many military bases which ring the bay—because they are legally exempt from BCDC jurisdiction. Boerger said in May 1969: "I think that most of the federal agencies in the San Francisco Bay area that I know about have agreed to accept the kinds of restrictions on filling that the BCDC has applied to non-federal agencies and to do it as a matter of cooperation with the local authorities." (A year later, the Navy produced a plan to expand Alameda Naval Air Station with 95 acres of fill. It said it was presenting the plan to the BCDC as a courtesy, since it was not legally bound by BCDC regulations. The BCDC then voted unanimously to request the Navy to go through the BCDC's regular review channels. Conservationists threatened to sue the Navy under new federal environmental legislation if it went ahead with the project. Shortly afterward, the Navy backed off. It cited "excessive costs" of filling, but as one state legislator put it, "I think they were talking about the cost in prestige, not the cost in money.")

Confluence of Sacramento River and San Francisco Bay; Antioch bridge in distance.

III: Resolution

"San Francisco Bay is an irreplaceable gift of nature that man can either abuse and ultimately destroy—or improve and protect for future generations."

So began the BCDC's proposed plan for management and control of the bay—a plan which Gilliam called "a Magna Carta for the bay—a declaration of the bay's right to live."

The Plan

The 42-page plan was widely acclaimed not only for the content of its recommendations but for their clarity and specificity. It was a far cry from run-of-the-mill planning documents, couched as those often are in obscure, idealistic and platitudinous generalities. These were the general recommendations and policies proposed by BCDC:

- The most important uses of the bay are those providing substantial public benefits and treating the bay as a body of water, not as real estate.
- There are certain high-priority uses of the bay and its shoreline—for ports, water-related industry, airports, wildlife refuges, and water-related recreation. All these desirable uses, said the plan, "can be fully accommodated without substantial bay filling, and without loss of large natural resource areas. But shoreline areas suitable for priority uses . . . exist only in limited amount, and should be reserved for these purposes."
- The plan proposed minimal filling, a maximum water surface area, and maintenance of high water quality and adequate fresh water inflow. Pur-

Point Richmond and Standard Oil refinery.

poses: to benefit recreation and scenic enjoyment, to maintain fish and wildlife resources, to lessen water pollution, and to moderate the weather. To this end, the plan also called for maintaining and restoring marshes and mudflats and recommended that the diked salt ponds and managed marshlands (mostly used as duck hunting preserves) not be converted into urban developments. This could be done via property tax policy, public purchase of the lands ("man's last substantial opportunity to enlarge the bay rather than shrink it"), or possibly by purchase of "development rights."

• The plan proposed the reservation of some 19,000 acres of additional land for industries, at locations specified in a series of maps. It said that "land reserved for water-related industries should ultimately be used only by industries specifically requiring waterfront sites for extensive shipping by water. Water-using industries and linked industries should be located outside of the area . . ."

• The plan proposed expansion of some port facilities, "to keep San Francisco Bay in the forefront of the world's great harbors." But, it said, any dredging or filling "should be in accord with an overall regional port development plan."

• The plan proposed a regional airport system. Pending its completion and the building of "reliever" airports in the region, new general airports should be built away from the bay, and expansion of existing airports into the bay should be permitted "only if no feasible alternative is available."

• The plan offered detailed recommendations for providing recreation—marinas, boat launching ramps, fishing piers, hiking and biking paths, beaches and commercial recreation facilities oriented to the water. It included about 5,000 acres of existing shoreline parks and 5,800 acres of new parks on the waterfront. Recreation needs were projected 50 years ahead. But BCDC noted that even if all these marinas, parks, beaches and the like were established, "there would still be only a small part of the shoreline open to the public." Therefore it recommended that "maximum feasible opportunity for pedestrian access to the waterfront should be included in every new development in the bay or on the shoreline, whether it be for housing, industry, port, airport, public facility, or other use." The plan

included guidelines for attractive development of the bay shorelines. Similarly, it called for drives and "vista points" to take maximum advantage of scenery.

• The BCDC called for creation of a regional agency with power to "analyze, plan and regulate the entire bay and shoreline as a unit." Thus, it should have at least limited jurisdiction over the *shoreline* as well as the bay itself. This jurisdiction, which would range from 100 to 1,000 feet landward from the bay, should include enough shoreline land "to make an effective use of each prime site." In some cases the regional agency would "designate and reserve the shoreline areas needed for each priority use, in a manner analogous to zoning." In general, shoreline development would have to be consistent with the bay plan, i.e., attractive in design, considerate of public access, etc. The agency would have detailed permit procedures for restricting filling and dredging to conform with agency policies. As its first choice for managing the bay, the BCDC recommended a limited regional government agency, *multi-purpose* in nature. Barring that politically doubtful solution, the BCDC called for a *single-purpose* agency concerned only with the bay.

• The plan noted that providing parks, beaches and other recreation would require "substantial public financing," even if there were a good deal of private investment in recreation. The BCDC estimated that the present purchase price of all 5,800 acres of recreational land and 1,600 acres of proposed wildlife refuges would be $30 million to $50 million. It said the first order of business for recreation funds should be to "build fishing piers, beaches and other shoreline recreational facilities in urban areas where large concentrations of persons live near the bay but are presently unable to use or enjoy it."

• The BCDC's estimates of the total "full market value" of all 57,000 acres of privately-claimed lands wholly or partly in the bay ranged up to a maximum of $285 million. But the BCDC plan did not provide for compensation of all private owners whose claimed "rights" to fill would be limited by the plan. BCDC's reasoning: many owners would be able to

Tanker heading out the Golden Gate.

make some economic use of their holdings under the plan; some owners apparently hold their property subject to a "public trust" entitling the public to use the waters for commerce, navigation and fishing; and the BCDC's legal experts anticipated that the courts would uphold a limitation of use on grounds of "overwhelming" public interest, the low cost and speculative nature of the original purchases, zoning precedents, and on other grounds. (Summarizing the thrust of his consulting report to the commission, Heyman said: "It would not be unreasonable to predict that California courts would uphold a regulation which prohibited substantially all further fill of the bay without payment of compensation to private owners of bay lands, so long as the prohibitions were based on a comprehensive, even-handed plan which demonstrated how the welfare of the entire region would be promoted.") The commission estimated that the actual total needed for compensation might be as low as $28.5 million.

The policies or major elements of the plan, said Bodovitz, were designed to be changed "only infrequently and only when considerable new information is available. The policies are meant to stick." On the other hand, the specific recommendations on the 17 maps could be changed "with relative ease," he said. Thus an overall policy for providing more recreation would not be subject to change, but there would be flexibility on such items as this notation for Point San Pablo: "As not needed for marine terminals, redevelop for recreational uses."

Some developers, whose projects would be inconsistent with the plan, criticized it in unmistakable terms. On the other hand, some conservationists charged that the plan embodied several unfortunate compromises.

Richard Archer, attorney for the Westbay project, speaking at a committee hearing in Sacramento, said the BCDC plan would "permanently foreclose enlightened public development"; prevent the creation of thousands of new jobs and homes for an expanding population; and prevent private funds from creating new tax bases that would yield millions of dollars in state, county and municipal revenues. A plan that "stifles economic growth," he said, "may

U. S. 1, north of Sausalito.

in a very narrow sense 'save the bay' as it now is, but it may well drown other human aspirations and needs that require equal if not greater priority."

Numerous private landowners rebuked the BCDC for not designating greater acreage for industry, charging that the commission's own independent study had recommended reserving at least twice as much as was contained in the plan. "The plan should have teeth," said Archer. "But this one has fangs." Archer called the plan "basically unrealistic because of the vast amount of public tax money it requires" for land acquisition and compensation. He said it would not sufficiently protect the property rights of private owners. (A Leslie Salt Co. representative, referring to the plan's theory that compensation would not be required, called it "Fabian socialism.")

Also widely criticized was the recommended extension of public jurisdiction over some shoreline areas and the inclusion in the plan of salt ponds and managed wetlands, which the owners said they did not consider part of the bay.

Quite different arguments came from another quarter. "We think the plan provides for much too much development," said the Sierra Club's Dwight Steele. He said it would be a mistake to permit filling to accommodate privately owned "restaurants, specialty shops, and hotels," all of which would be allowed under certain conditions. "It's immoral—an open invitation to all kinds of development which has nothing to do with water, the bay, or conservation," said Peter Behr, a Marin County supervisor and later BCDC commissioner.

The plan also left the door open to more transmission lines, oil and gas drilling, and freeways. "We are much opposed to using the bay to bring more autos into the bay area," Steele said. He also criticized the plan's provision for a possible supertanker facility in the middle of the bay. (The commission had been led to believe there was no danger of ships colliding in the bay, a prognosis which turned out to be faulty in early 1971.)

"The total water surface of the bay should not be further reduced," said Steele. "Where permits are granted, other areas should be found to open up to tidal action." He said that, since "the ghettos are shut off from the bay,

partly by freeways, partly by other development, the plan does not go far enough toward maximizing public access to the water."

The Battle of 1969

On January 6, 1969, the BCDC submitted its plan to the governor and the state legislature, and a second major political battle was joined. It involved many of the same people, same issues and same strategies as the struggle to pass the law creating the BCDC in 1965. In 1969, the public was stirred to a new crescendo of concern for several reasons. The battle was waged heatedly on all fronts, and the stakes were higher. Conservationists and other citizens had evolved three major legislative goals:

1. To give the commission permanent status. There was a constant concern over the BCDC's being scheduled for automatic demise 90 days after the legislative session ended, with only positive action by the legislature able to keep it alive.
2. To keep the BCDC's permit power intact. Not only was the temporary veto authority over bay fill and development considered crucial, but many insisted that the BCDC must also have some control over *shoreline* development for a certain distance inland.
3. To endow the BCDC plan with the full force of law, by incorporating it into legislation.

At the same time, bay land owners and developers realized that the 1969 battle could be their last chance to forestall permanent regulation and salvage the opportunity to use their holdings with minimum restrictions.

Another important factor heating up the 1969 battle was the nationwide environmental anxiety then beginning to reach a peak. "The bay is a focal point for a much wider movement," said Gilliam. He added that, "more important than the bay itself is that people are getting involved." For Bodovitz, it was a question of people beginning to feel that "if you can't do something about a problem as relatively simple as this you'll never do anything."

The battle of 1969 had three foci: the public, the governor, and the legislature.

"There's a great ferment going on," said Harold Gilliam in 1969. He wrote in the March 16 San Francisco Chronicle *that the public emotion over San Francisco Bay is "symptomatic of a state of affairs extending far beyond the bay itself. It is rooted deep in the contemporary crisis . . . the ordinary citizen's growing feeling that his life and environment are increasingly at the mercy of forces over which he has no control. The symbols of these forces are bureaucracy and the bulldozer." Gilliam said the bay commission and its plan will "prove that Americans are not powerless in the face of rampant technology, that new institutions can be established to meet our deep need for an orderly, healthful, humane, beautiful environment. It will reaffirm the power of ordinary citizens working together to exert control over the forces shaping their lives."*

1. The Public.

As it did during its whole planning process, the commission took pains to see that the public was adequately informed. At its December 5, 1968 meeting, Lane encouraged all commissioners and proxies to take every opportunity to help inform the public about the bay plan, saying that speeches to community groups would be a great help. The BCDC staff prepared a leaflet summarizing the plan, for wider distribution than the plan itself.

In any case, the public was already keyed up to a feverish environmental pitch. Again the letters and telegrams poured forth; the telephone networks swung into action; buttons appeared on lapels; bright blue-and-green stickers saying "Save Our Bay" turned up on car bumpers throughout the area. Don Sherwood again exhorted his radio listeners to write their legislators. Citizens again trooped to Sacramento to attend hearings. (Do things like bumper stickers really do any good? "They help show the legislators that people are interested, a fact about which they may otherwise be skeptical," said Bodovitz.)

2. The Governor.

At first Governor Ronald Reagan was noncommittal. It was widely felt that if he took a position against the BCDC and its plan, this might be a lethal

blow. Or that if he came out in favor, it might be the decisive factor in passage. And the governor's position had added importance for another reason:

Senator McAteer had died in 1967, robbing bay supporters of their strongest political hand. In an effort to fill the legislative breach, conservationists had enlisted another powerful senator, a Democrat from Martinez, George Miller, Jr., and were relying on his aid in securing passage of the legislation they wanted. But Miller also died of a heart attack—on January 1, 1969, just five days before the BCDC report went to the legislature.

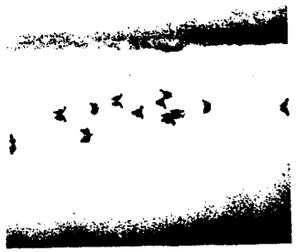
"His death stilled the rasping voice of the Senate's most powerful northern California conservationist," wrote *San Jose Mercury* reporter Lou Cannon.

"Our strategy died with him," said one conservationist at the time. "And that's the root of our present political problem."

Conservationists were not optimistic about Reagan. A conservative Republican, he and most of his financial support were from southern California, far from the bay. A short time before, he was reported to have commented that if you've seen one redwood, you've seen them all. Conservationists were irate, and they feared the worst.

But some of them, and others in key places, were busy working for a gubernatorial endorsement. Said one: "We just got everybody we could from the bay area to lean on his staff, and say, 'the governor looks like a jerk down here. He's going to run for reelection next year. This is a big issue. The people want the bay saved. It doesn't cost him anything. It doesn't cost all his rich friends in Los Angeles anything. And this is what he ought to say. It will get him a lot of votes. Make a lot of people happy. And besides, it's the right thing to do'."

Meanwhile, a battle was being waged within the governor's circle. Some cabinet members and others were adamantly against the BCDC and its plan, while others were strongly in favor. But Reagan had made three significant appointments to his cabinet, and they apparently played a key role in persuading him to support the BCDC. They were Norman B. Livermore, Jr., head of the California Resources Agency; William Penn Mott, Jr., director of state parks; and Caspar Weinberger, state finance director.



East Bay Wildlife Refuge

Whatever the causes and reasons, Reagan evoked great surprise on January 7 when he amended the prepared text of his State of the State message and called for a continuation of the BCDC. Regarding the bay, he said: "We cannot permit a lapse, no matter how short, in the protection of this priceless natural resource."

"It took an incredible amount of work to get the governor just to tiptoe into the thing, and say he's in favor of saving the bay," said one bay supporter. "And I'm sure it must have dazzled all his contributors." In several later press conferences, Reagan reiterated his support of the commission, gradually increasing his commitment until at one point he threatened to call the legislature into special session to pass bay legislation. However, he made it clear that he would not necessarily support all of the provisions some conservationists desired.

Meanwhile, a serious split developed within the conservation community. A major cause was disagreement over whether the best strategy was to push for legislation that would give the commission a policy framework and certain powers or legislation that would enact the BCDC plan itself into law. Some argued that such a plan does not lend itself to legislative enactment—and that therefore it would be more appropriate to enact the plan's major policies and recommendations as legislative guidelines, leaving it to the administrative agency to carry them out with its own regulations. On the other hand, there would be more security in giving the plan's provisions the force of law; this would make them more difficult to overturn than administrative regulations and leave less flexibility in the hands of a commission which might change its colors. Siri told a packed, mass strategy meeting of conservationists on May 7, 1969, that the plan "must have the force of law. A mere continuance of the BCDC is not a guarantee against fill. There has been a slow but certain erosion of the BCDC." With the plan under legislative jurisdiction, said Mrs. McLaughlin, "it would take an awful lot of hostility to change it in the legislature."

It was also believed that enactment of the plan would put the commission on sounder legal ground in the courts if owners of bay lands were to chal-

lenge the restriction of their land use rights without compensation. In one significant legal decision (Consolidated Rock Products Co. v. City of Los Angeles, 57 Cal. 2d 515, 1962), the California Supreme Court had upheld zoning which precluded virtually any economic use of a piece of land, partly on grounds that the restriction was based on a comprehensive zoning plan. If implemented, the BCDC plan would be tantamount to zoning, some of its supporters believed.

On the other hand, Deputy Attorney General Shute argued that legislative approval of a particular plan would not be necessary to validate regulatory control by the BCDC, "since the general test under the police power for determining the validity of regulatory provisions is merely whether there is a reasonable basis for the legislative action. In the case of San Francisco Bay there can be little doubt of the reasonable basis for control over filling and dredging."

Gilliam noted at the time that the BCDC compromised to some extent, but that it "wanted to go to the legislature with something that had a chance." He said there was a danger of losing the "momentum they've got going for it now." On the other hand, many conservationists were adamant that the bill not be weakened. Those who worked to get a bill with some compromises felt it would contain all the essentials. They feared that attacking and alienating Reagan for not backing them all the way could doom chances of getting anything at all. Said one: "The conservationists are insane to not give a lot of support to the bill the governor's working on. The minute he thinks the conservationists don't want it, he's going to drop it like a hot potato, which it is. You know, there's not that much in it for him if he isn't making friends. If the bill he was supporting were really atrocious, and if another bill were infinitely better, then I think as a matter of principle we could say 'We're going to go with the better bill even if we get nowhere.' But the difference is not all that great, and in terms of what's essential, both bills do the essential things . . . If you get a permanent regulatory agency this year, then you can come back next year and fight about what additional powers it ought to have."

One observer of the political struggle warned that conservation groups can

Salt ponds at sunset, from Coyote Hills State Park, Alameda County.

"I have a lot of reservations about the political effectiveness of conservationists," said a conservationist involved in the San Francisco Bay case. "Especially when we have to fight off all our friends because we've got a bunch of nutty people, with great intentions, wanting to commit public suicide and political suicide." He warned against conservationists trying to act as "sophisticated politicians, at which they are notably inept, and not doing the very thing they can do so well, which is to mount strenuous letter-writing campaigns and telegram campaigns, in other words to encourage citizens to make their voices heard as loudly as possible. In my experience, it's virtually impossible for lay groups to outsmart the lobbyists and the legislators in the capitol. The thing they can do best is to raise hell so that what they want is very clearly understood."

be their own worst enemies when they back the strongest possible legislation at the expense of political realism.

On the other hand, many conservationists argued against any compromise suggested by the BCDC or the politicians on grounds that it would be possible to achieve all their goals and that they did not want to dissipate the tremendous public momentum they had generated.

3. The Legislature.

Once Reagan came out for protection of the bay, the issue in the legislature became bipartisan, with Democrats and Republicans on both sides. "After Senator Miller's death," said one participant, "several legislators in both the Senate and Assembly sought to be the heroes of the conservationists. This competition had some virtues, obviously, but it also had some problems in preventing personality disagreements and pride of authorship from hobbling the ultimate legislation." Because a number of bills were introduced, it became a problem for conservation organizations and the public to decide which bills—or which provisions of them—to support.

Perhaps the most important sponsors were Senator Petris and Assemblyman John T. Knox, a liberal Democrat from Richmond.

In girding for legislative battle, the conservationists made three significant moves:

• They enlisted the full support of the Planning and Conservation League and its full-time lobbyist in Sacramento, John Zierold. (The PCL had been formed in 1965 under the leadership of William D. Evers, a San Francisco attorney who became vice chairman of the BCDC. It represents a large number of conservation organizations pooling their resources for legislative action.) Zierold labored untiringly in the halls of the capitol on behalf of strong bay legislation.

• A broad group of conservation and other organizations, led by the Save the Bay Association, formed a temporary coalition—the Citizens Alliance to Save San Francisco Bay—for the sole purpose of pushing for passage of bay legislation in the 1969 session. (As a non-profit organization, the Association could not engage in direct political activity.)

The Alliance dispensed information, coordinated activities, and permittted members to "speak essentially with one voice on policy," said Siri. It was designed to "respond quickly to undesirable amendments" as the legislation progressed and to achieve a bill without serious emasculation, he said.

"These alliances don't work unless they're centered on a specific task, with everyone hauling together toward a common goal," Siri said. "Under these special circumstances, it works. Conservation organizations don't like to relinquish any of their sovereignty. Maybe it's territorial imperative, or human nature anyway."

• In February 1969, two active housewives—Claire Dedrick and Janet Adams—who had a public relations business called Conservation Coordinators, formed still another group, the Save Our Bay Action Committee, in San Mateo County. The county was a key locale for two reasons: the Westbay project was to be located there, and it was the seat of power of Senator Richard J. Dolwig. Not only had Dolwig been a strong opponent of bay protection legislation (having voted against the original BCDC bill), but he was also chairman of the Senate Governmental Efficiency Committee, to which the bay legislation was first referred.

The Save Our Bay Action Committee mounted a vigorous campaign against Dolwig, including full-page newspaper advertisements and blunt but effective bumper stickers reading "Fill the Bay with Dolwig." It printed

leaflets supporting a strong bill and enlisted organizations and student groups to distribute them at train stations, on sidewalks, at shopping centers. It collected more than 250,000 signatures on petitions to the governor favoring strong bay legislation. The Committee had volunteers stick them all together—until they were more than three miles long—and string them around the capitol grounds. It was a ploy of clear public relations value.

The conservationists' cause was aided by several developments within the legislature itself. "The legislation benefited greatly by being the only strong 'people's legislation' in Sacramento that year," said one observer. "That is, the legislation did not compete for support with other strong conservation bills. Therefore it became a kind of yardstick by which one registered his loyalty to conservation in general. To put it another way, a legislator who voted against the bay bill could not justify his vote by saying to his constituents that it didn't matter because he had voted for several other strong conservation measures."

Speaking in a similar vein the following year, Mrs. McLaughlin said, "One reason for our success, it seems to me, was that this issue was the focus of attention of the many concerned groups and individuals. I doubt if this same concentration of effort would be possible now, with so many other issues to struggle for, and with over 500 bills on the environment being considered by the legislature."

Coincidentally, a power struggle in the Senate came to a head during that same 1969 session. As mentioned earlier, the Senate had long been dominated by a strong, bipartisan, largely rural alliance of men identified with lobbyists and special interests. A leader of this alliance, Hugh M. Burns, a Fresno Democrat, had for many years been president pro-tem of the Senate, a position of considerable power in organizing committees, naming committee chairmen and assigning bills to committees.

Republicans, by winning the March 25 special election after George Miller's death, obtained a bare 21 to 19 edge in the 40-member Senate, and with it a chance to pick a new president pro-tem. But the Republicans couldn't agree on a candidate (some wouldn't vote against Burns), so the Republican majority

Industrial property near Hunters Point, San Francisco.

was unable to install its own man. The press had linked Burns to a conflict-of-interest involving another matter. But an attempt to oust him earlier in the year had failed, at some cost to the insurgents in political retribution. Gradually there formed an unusual alliance of conservative Republicans and liberal Democrats, united in their opposition to the lobbyist domination of the Senate. Part of this group consisted of what Robert Connolly, a former legislative aide to Senator Petris, called a "strong coalition of young Turks," some of whom came to the legislature in 1966 after a reapportionment and some of whom had moved up from the Assembly to the Senate. "They were tired of having this place being run like a private club," Connolly said.

There was great jockeying over selection of a Senate president, and any issue that came along was caught in the crunch. To a great extent, in fact, the battle lines were drawn over the issue of San Francisco Bay. "The grounds for change were there," said Siri. "But this tipped the scales. It was the sinful issue at the time." And some Senators felt that Burns had not given a fair shake to the various bills affecting the bay.

Thus, toward the end of the session on May 13, the 67-year-old Burns was finally ousted. ("This is an unofficial day of mourning for the free-spending lobbyists of Sacramento," wrote Ed Salzman of the *Oakland Tribune*.) Burns was replaced by Howard Way, one of his leading critics. Way, a conservative on many issues, had a reputation for scrupulous honesty and for great interest in conservation. At that point, prospects for a strong bay bill improved considerably.

Meanwhile, the press covered all the news of the battle with relish. Reporting was extensive, partly because there were so many bills and hearings. One packed Assembly committee hearing was televised live by the San Francisco educational TV station. (An observer commented that the legislation was probably aided that night by the "rather cavalier attitude of some of the opponents of the bill.")

Among the many newspaper stories was one that various private landowners had hired some of the most influential lobbyists available. "Seasoned and well-financed," the *San Francisco Examiner* called them. (One of the lobbyists was E. Robert Stallings, who had retired on January 15 as San

Mateo County manager. He was hired by Westbay. On April 18, six senators from the bay area issued a statement warning that "well-planned, well-organized, and well-financed campaigns have been mounted in Sacramento to cripple the present program for controlling bay filling." One man close to the action also reported that $25,000 in "campaign contributions" had been offered to one or more key senators.

Meanwhile, Dolwig had introduced his own bill to create a *new* bay commission, giving it five years to come up with a new general plan for the bay area. His bill provided for weaker and somewhat ambiguous controls over filling during the interim. This legislation, combined with what was interpreted as Dolwig's stalling on the issue, his earlier hostility to the BCDC, and the long association of his name with commercial interests, led to a barrage of criticism in the press. "The people are angry," Georg Treichel, associate professor at San Francisco State College and director of its Center for Ecology and Environmental Studies, said at the time. "It's likely Dolwig would be defeated if he goes the wrong way." And a pointed editorial in the *San Francisco Chronicle* said: "It should not be necessary to warn legislators representing this region that the people of the bay area will be unforgiving to those who fail in their responsibility to save the bay from unwise exploitation, disfigurement and diminishment."

The upshot of this pressure was an extraordinary political about-face. Dolwig suddenly called a press conference on May 8 and announced that he was introducing "massive" amendments to his bill. When these were laid out, it appeared that the new Dolwig bill was as strong or stronger than anything else pending in the legislature. "A very surprising, remarkable development," said Bodovitz at the time. "This will very much encourage others." Dolwig, a Republican, added that he expected the support of the Reagan administration.

Did he change his mind so radically because of the adverse publicity and the thousands of ladies in buses who kept descending on Sacramento? the senator was asked. "I should say not," he replied, adding that for some time his committee staff and the BCDC staff had been working on amendments. But there were few who believed that his switch had not been prompted by intense political heat and his awareness that he was up for re-election the

following year. "I just think he was scared to death," said one observer. (Later, Dolwig, a 23-year veteran of the legislature, decided not to run again.)

"He had a really bad press down there (in San Mateo)," said Connolly. "That sort of thing wears pretty hard on a guy."

A number of legislators changed positions along with Dolwig. Said the *Chronicle:* "Since both Dolwig and [Senator John F.] McCarthy [of San Rafael] have come under intense heat from home for the early versions of their bay fill legislation, their critics will consider it the height of irony—as well as legislative legerdemain—if they emerge from this session as saviors of the bay."

How could such things happen? "This is the biggest issue we've had around here for five years," said Connolly at the time. "There's been more mail than on a tax bill." Usually, he said, the mail comes from certain areas and types of people. "But this time it's across the board. This issue has struck a raw nerve."

Siri agreed that "the most important element was the public pressure on the legislators. It sustained Knox and Petris and permitted them to take such a strong stand on legislation. Without it, they couldn't have withstood the attempts to emasculate it." (At one point, said Steele, Way requested that the telephone campaign be called off "because the phone lines were so tied up the legislators couldn't get their work done.")

Though the battle had taken a new, dramatic turn, it was by no means over. Many conservationists and members of the press were highly suspicious. They figured Dolwig had another card up his sleeve—that he would find a way for someone else to kill a strong bill while he rescued himself from the political quicksand, or that he would see that the BCDC's money was cut off. "It's hard for anyone to believe he's playing it straight," said one conservationist at the time. "It puts us in a tough position."

When Knox's strong bill passed the Assembly and was sent to the Senate, Way began using the considerable power of his post to maneuver the bill away from Dolwig's "graveyard" Governmental Efficiency Committee. The Knox bill was routed instead to the more receptive Local Government Committee. It emerged with most of what the conservationists wanted, then went

on to the Senate Finance Committee; but this in no way allayed fears that the bill might be scuttled, filibustered into oblivion, or greatly weakened.

Meanwhile, after Dolwig's switch, the Senate Governmental Efficiency Committee decided not to fight over the issue. It reported out to the Finance Committee five different bills of varying strength.

With all these bills to consider, the Finance Committee became the focal point of the battle. By threatening to reconstitute the committee, some observers said, Way pressured it into a favorable attitude. Still, as the Finance Committee merged the various bills into its own bill, several weakening provisions were incorporated. (BCDC Chairman Lane told his members on July 17 that events might move too fast to allow any chance to speak against damaging amendments before they were adopted.)

The Finance Committee stripped from its bill the important jurisdiction over bay shoreline. And projects planned by the cities of Albany and Emeryville were exempted from BCDC control. But a bill was reported to the Senate floor, as a result of pressure from the public and from Way.

There, as the battle continued, shoreline control was restored. Senator McCarthy introduced an amendment to allow the BCDC to change its bay plan by a simple majority vote rather than a two-thirds vote, but this weakening action was defeated.

Finally, in the waning hours of the session, a fairly strong bill was passed—in the Senate by a vote of 24-9, in the Assembly by 56-4. Its principal author was Knox. It was signed into law by Governor Reagan on August 7, 1969. "This bill will save the bay," Reagan said.

The Law

The law passed by the California legislature did several important things. It gave the BCDC a more or less permanent, rather than temporary, status. It gave the commission continued authority to regulate filling and dredging by permit. It extended this permit authority to cover development on a strip of land along the shoreline. It required a project to be consistent with both the plan and the law, which more or less complement each other. (In actions not requiring a permit, the plan is merely advisory.)

Since permits are required for filling, an example of how the plan is used to regulate filling is the provision under which it would allow fill for water-oriented commercial recreation *only* on privately-owned parts of the bay and *only* as part of a project that is built substantially on existing land.

The law embodied many of the provisions of the BCDC bay plan itself and designated it the interim plan of the commission until changed by the legislature or the commission. And it gave the BCDC authority to amend its own plans—a two-thirds vote of the membership being required to change a policy or standard, or to add to the list of approved water-oriented uses. Other changes can be made by majority vote. Neither type of change can be made without notice and a public hearing.

The legislature also declared that "further filling of San Francisco Bay should be authorized only when public benefits from fill clearly exceed public detriment from the loss of the water areas and should be limited to water-oriented uses (such as ports, water-related industry, airports, bridges, wildlife refuges, water-oriented recreation and public assembly, water intake and discharge lines for desalinization plants, and power generating plants requiring large amounts of water for cooling purposes) or minor fill for improving shoreline appearance or public access to the bay." The law expanded the definition of fill so that permits would be required for houseboats and floating docks moored for long periods of time. In addition, no fill is to be authorized if there is an alternative way of achieving the same end.

The law gave the BCDC permit authority over any "substantial" change or development within a 100-foot wide strip of shoreline. There were several purposes: to insure greater public access to the bay, and to see that land areas are used in such a way as to minimize pressures for filling. Aesthetics, or attractive design of shoreline development, was another factor. (The BCDC plan had suggested shoreline jurisdiction of up to 1,000 feet inland if necessary to make effective use of a site.)

All existing uses within the 100-foot shoreline strip, including salt ponds and managed wetlands, could be continued "provided that no substantial change shall be made in such uses except in accordance with" the act. However, owners could apply to the commission "to determine the nature of such

Emeryville mudflats.

existing use or uses, the extent of territory then devoted to such use or uses, and such additional territory adjacent thereto as may be expected to be reasonably necessary for the expansion of such use or uses" for the next 15 years. Once the BCDC made such a determination, no permit would be needed for existing uses or expansion of them.

"Whether the 100-foot shoreline band will adequately enable the BCDC to accomplish the purposes of the San Francisco Bay Plan remains to be seen," said an August 19, 1970 report from the House Government Operations subcommittee on conservation and natural resources. (House Report No. 1433.) "This deficiency may become acute in places designated for 'water-oriented priority land use.' For example, San Francisco Airport has considerable unused land beyond the 100-foot line. If such land is sold or otherwise devoted to non-airport use, and subsequently additional land is needed for the airport, there will undoubtedly be great pressure to permit more bay fill. If the BCDC had control over a larger shoreline band, it could prevent such sales or non-airport use."

The legislature endorsed "water-oriented land uses" for the shoreline which essentially conform with the priority purposes for which filling is authorized. The law added that "within any portion or portions of the shoreline band which shall be located outside the boundaries of water-oriented priority land uses . . . the commission may deny an application for a permit for a proposed project only on the grounds that the project fails to provide maximum feasible public access, consistent with the proposed project, to the bay and its shoreline."

The law also gave the BCDC jurisdiction over the salt ponds and managed wetlands adjacent to the bay (areas diked off from the bay and used for salt production, duck-hunting preserves, game refuges and agriculture). These areas, although not subject to the bay's tides, provide wildlife habitat and water surface important to the climate of the area. If filling of these areas is proposed, the BCDC is to encourage dedication or public purchase to retain water area. And if development is to take place, the commission is to review the permit application to insure maximum public access and maximum preservation of water area consistent with the proposed development.

Houseboats, Sausalito.

The legislature noted, as did the plan, that many areas in and around the bay were claimed by private owners. The acquisition for public use of all or large portions of such areas, or the establishment of wildlife refuges, "may require a substantial public investment," it said.

The BCDC itself was given no funds for the purchase and protection of bay water or land areas. Rather, the new law directed the commission to make a "continuing review," in annual reports, each covering a three-year period in advance, of the properties under its jurisdiction which, in its opinion, "might be acquired by public agencies for public use." Reports are to set forth the "general location of such properties, the interest or interests proposed to be acquired therein, the public uses recommended therefor, the public agencies recommended to make the proposed acquisitions, the estimated cost of the proposed acquisitions, and recommendations for financing such cost."

If property so designated is not acquired, an owner can file an application for development. The BCDC can then grant or deny a permit in accordance with the law and the bay plan—but it cannot deny a permit on grounds that the property has been recommended for acquisition.

The new law also altered the membership of the commission, causing renewed fears that implementation of the plan might become more difficult. The total number remained at 27. One change required each of the nine county representatives to be a supervisor elected from a district including bay lands—instead of someone simply appointed by the board of supervisors, who might or might not be a supervisor himself. Also, each of the four ABAG appointees must be an elected city representative.

In November 1969, *Audubon* magazine commented that the commission is "now shorn of its broadly oriented, experienced members and made up instead of elected officials from each of the nine counties that border on the bay. Each of these men is under strong local pressure to allow development into the bay, and the realities of political expediency require that they be more sensitive to local demands than to regional needs."

"This change," said the February 1970 issue of *Fortune*, "reflected the behind-the-scenes battle between 'home rule' supporters and those who favored a truly regional government, responsible to the area rather than to

"Coordination on a wide scale is needed to protect the bay," says Mrs. Kerr. "Neither the region nor the state port or airport systems have effective planning. Not only do the Port of San Francisco and the Port of Oakland compete with each other, but now that Richmond wants to fill the bay to have a third major port, all will compete with each other. They also compete with the Los Angeles, Seattle and San Diego ports. There is no interest in such facts as who has the deepest natural channel, the least difficult turn-around space, the most to lose by dredging or filling. Instead, millions of dollars are spent to fill a few hundred acres of irreplaceable San Francisco Bay so that the business will come to San Francisco instead of going to Oakland or Los Angeles.

"And airports—Oakland wants more runways so it can compete with San Francisco Airport. Other cities on the Bay want new airports, new cargo centers, new freeways. Population, unemployment, and other such pressures are cited to support these needs. What loses? The bay loses, because the traditional place to expand is in the bay."

specific communities. It was a modest but significant victory for the developers, since it gave them some election-time leverage over commission members."

The new law also forbade members to send proxies to meetings (though a system of alternates was restored by legislation in 1970). Many of the proxies had been considered less development-oriented than the members they sat in and voted for.

While the BCDC was given broad authority over physical changes in the bay, it could not supervise other problems associated with an estuary, such as water and air pollution control and salinity. "There should be one agency of government that would be coordinating all these ecological problems and nobody is doing it," said BCDC vice chairman Evers in May 1969.

The BCDC's limitations were brought into focus during its debate over whether or not to approve a permit for a new east-west bridge spanning the bay—the highly controversial "Southern Crossing." The commissioners were told that the Bay Area Rapid Transit (BART) system under construction would alleviate traffic on the existing Bay Bridge, but that this alleviation

would disappear in four or five years, when the traffic load would return to present crowded conditions—unless the Southern Crossing was built.

Some commissioners pointed out that the new bridge would add more pressure for the proposed Bayfront Freeway to connect to it and that the entire freeway system should be studied. Feibusch said that there was talk in the legislature of a possible need to bar autos from San Francisco. He also noted that the city's board of supervisors had turned down proposed freeway extensions in the city.

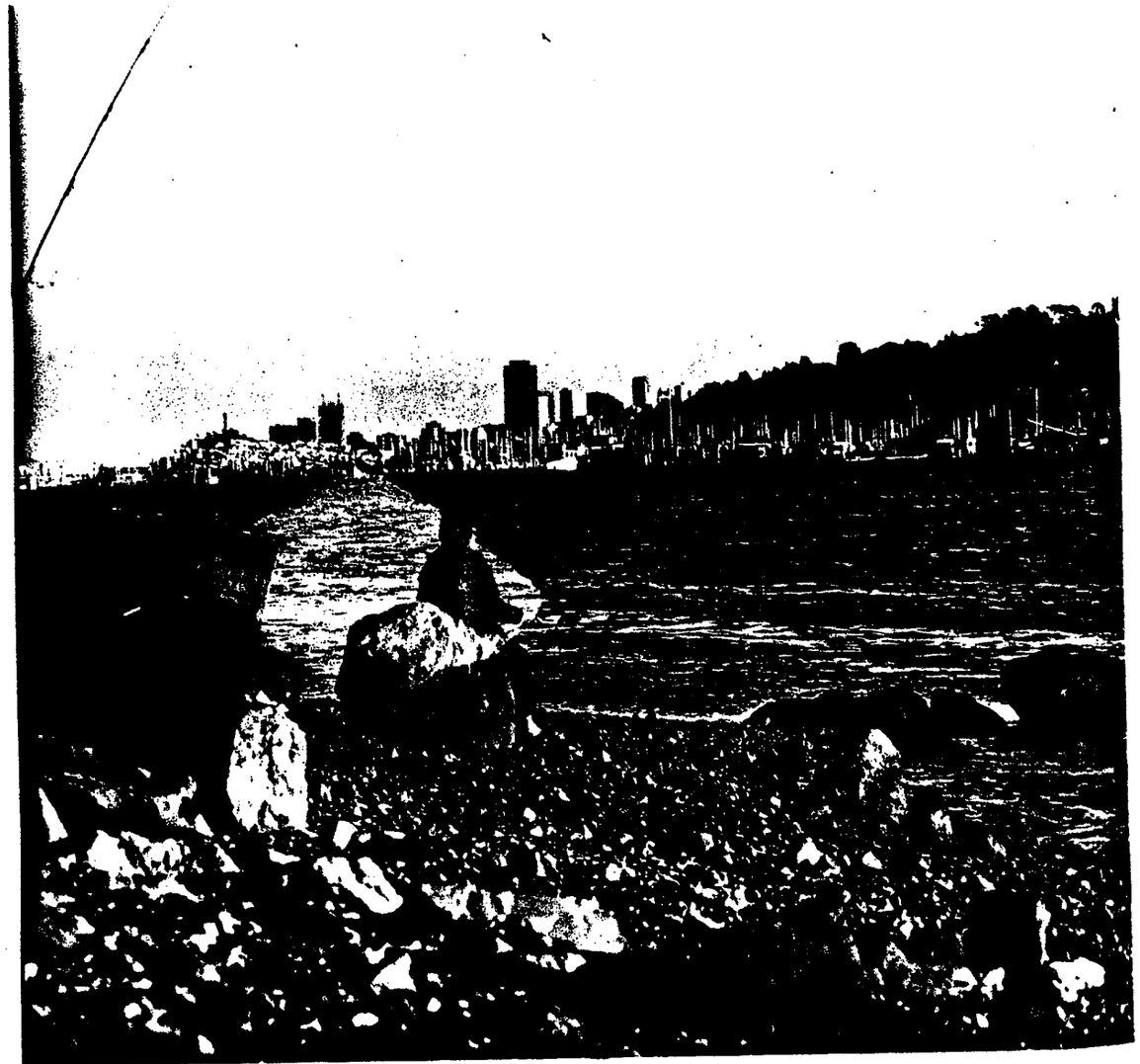
On November 6, 1969, the BCDC voted 17-6 to approve the Southern Crossing. In dissent, Commissioner Robert St. Clair said this showed the BCDC's inadequacy to cope with major problems of a regional nature. He said a multi-purpose regional agency is needed.

The BCDC could be used as a foundation for a multi-purpose regional planning agency, by grafting to it jurisdiction over other regional problems such as water pollution control, solid wastes, transportation, and open space. Alternatively, as proposed in legislation introduced in 1970 and 1971, a separate, elected, multi-purpose agency could be established, with the BCDC in it or to be brought in later. But many conservationists are concerned over the danger to the BCDC. "They have exacted a price for their support of new regional government legislation," said one observer. "They have insisted that the BCDC be left alone, so if anything goes wrong with the multi-purpose agency, it doesn't pull the BCDC down with it."

Other Approaches

By no means did the conservationists focus *all* their attention on the passage of legislation. There were frequent city and county actions involving the bay, and the conservationists sometimes worked hard to influence the decisions. A prime example was in the City of San Mateo, which had labored long over a master plan for its waterfront. The City Council held a public hearing on it on May 5, 1969, at the same time the legislative battle was being fought.

Conservationists turned out in force and, among other things, charged that the plan bore an unfortunate resemblance to the Westbay project. "It would appear that the city is fronting for Westbay," said Mrs. Marcella Jacobson,



From Tiburon, with San Francisco (left) and Sausalito (right).

speaking for the Council for Governmental Responsibility. She said the "current scheme to dike off over 1,500 acres of San Francisco Bay" is contrary to planning policies of San Mateo County and the BCDC. She wondered why no alternative plans had been presented in view of this and the "public outcry against further bay filling." Said a League of Women Voters witness: "We object to the use of fill for a golf course, a convention center, motels and hotels, shops and the Fiesta Gardens. These are not water-oriented developments, and consequently we can see no justification for filling the bay for such purposes."

When the hearing was over, the Council voted 3-2 to send the plan back to its Planning Department and to delete several elements not oriented to the water, including the convention center. It also voted to continue the matter for seven months.

Mrs. Jacobson was a prime leader in the San Mateo branch of the bay struggle. Like Mrs. Kerr, Mrs. McLaughlin, and others, she was forceful and unrelenting in pursuit of bay protection. Before entering the fray, she had organized the Council for Governmental Responsibility, a civic group seeking "a proper balance between development and conservation, enhancement of the county's distinctive attributes, and coordination between local and regional planning for the bay area." At one time Mrs. Jacobson was a BCDC proxy. "She has never paused," said one admiring colleague. "She writes countless strong, to-the-point letters and urges others to do the same. She attends all pertinent meetings, and does not hesitate to speak at public meetings. She was one of the most effective 'thorns' in the side of Westbay."

The conservationists played other cards to slow or halt bay development, including the filing of several lawsuits. Also, the BCDC, rather than putting all its eggs in one basket, had some legal research done and discovered that certain of its objectives might be achieved under existing law.

Specifically, it looked into use and ownership of marshlands, tidelands, and submerged lands which had been sold long ago to private interests. Did the private owners have unlimited rights to turn their holdings into dry land? If the public wished to prevent filling of privately held property, would it have

to buy the property back? Or did the public have a claim on use of the waters as they were?

Under English common law, there was a "public trust" in such lands, to protect the public's rights to commerce, navigation, and fishing. To resolve the legal questions, the BCDC requested and received help from the State Attorney General, the State Lands Commission, and the University of California. As a result, on April 2, 1969, the Attorney General, on behalf of the State Lands Commission, filed a lawsuit in California Superior Court, in order to clear the titles and determine the legitimate uses of the tidelands in San Mateo County. The suit was filed against the city and county and Westbay Community Associates, among others.

The outcome was still pending in 1972. However, in a similar case decided on December 9, 1971, the California Supreme Court affirmed the public's rights over the state's tidelands. In a decision that set a precedent in this area, the court said, "This case reaffirms the retained existence of a public easement for purposes of commerce, navigation and fisheries over granted tidelands despite the recent claims of private parties." Westbay and the BCDC had appeared as friends-of-the-court on opposite sides in the case (*Marks v. Whitney*, No. S.F. 22566).

The conservationists also could have lobbied for some action by the federal government—Congress or the executive agencies. On May 7, 1969, with state legislative action pending, Congressman Paul N. (Pete) McCloskey told a large dinner audience of conservationists that the bay was a "treasured national asset" and that Congress might not be satisfied with state efforts to protect it. "I think Governor Reagan might agree with me that the shorelines should be controlled by the state" in such a way as to "prevent federal intervention." This implied threat probably didn't carry any weight with Reagan, according to William L. C. Wheaton, dean of the University of California's College of Environmental Design. "Reagan has more power in Washington than any of his opponents, and he's not at all hesitant to use it." In Wheaton's view, the only road to action was to "lay on the maximum conservation pressure, so the liberals in both parties would realize it isn't going to go away and die."

In any case, one major federal effort had already been initiated: protection of a large part of the southern end of the bay by creating a San Francisco Bay National Wildlife Refuge, encompassing more than 21,000 acres of salt ponds, salt marsh, open water and upland. Bills were first introduced in Congress early in 1969, and feasibility studies were made by the Interior Department's Bureau of Sport Fisheries and Wildlife. But in early 1972, congressional action was still awaited.

Also, several important tideland areas have been purchased by the Nature Conservancy and a north bay wildlife refuge appears in the making.

Strawberry Cove, near Tiburon, Marin County.

Old San Francisco Dump in Brisbane, San Mateo County.

IV: Some Lessons—A Summary

The struggle to save San Francisco Bay from environmentally destructive filling and development was a pioneering effort. The experience provides many lessons to those who seek to protect other estuaries and other natural resources, even if there is no patterned, ideal way to achieve environmental protection that will work everywhere. "Much more important," observes Treichel, "are the personalities and the quality of local politics. It depends on how responsive and how corrupt they are. We're fairly free here of gross corruption, but there are all kinds of links between politicians and what you might call entrepreneurial interests."

In other areas, other political arrangements may be needed. Several states might be involved in a resource. A compact, or a full regional government might be desirable. But it is worth reviewing the major ingredients of the San Francisco Bay story—because each of them *may* have been indispensable there and could be crucial elsewhere:

- A resource that was highly valued, that excited the enthusiasm of citizens from all walks of life; a resource with romance, that touched the life of an entire region. As Gilliam put it, "The bay has charisma."
- An atmosphere of rising environmental concern. "In the last half of the '60's in California, the climate was right," said Treichel. Saving the bay was "an idea whose time had come." The area was "maybe a little bit ahead of the rest of the country"—possibly due to accelerated population pressure and visible threats to its special charms.

• A strong, factual basis (such as Mel Scott's research study) on which to conclude that a serious danger to the resource existed and on which strong public action for protection could be justified. This established the validity of citizen arguments and positions. (A particular built-in advantage of the San Francisco area was the presence of so many environmental specialists and experts, many of them at academic institutions, from whom support came.)

• A nucleus of concerned, hard-working citizens—many of them politically astute and able to arouse broad support from others, including the press, and who could foment political pressure, generate timely publicity, raise money, and react quickly and effectively to political developments. These successful citizens were, in Treichel's words, "a small group of people who persevered for 10 years . . . who felt their cause was right and who really did their homework." Gilliam said such accomplishments can result when the people are "not only zealous but hardheaded, methodical, and able to engage effectively in practical politics. They cannot rely on sentiment alone, but must learn the highly sophisticated techniques of political action that long ago were mastered by the exploiters."

• One or more effective, powerful legislators to take up the cause. Treichel said the BCDC story involved "a number of hard-nosed politicians, in many ways a cut above the average . . . they realized it was a good idea and would have to be dealt with, so why not now?"

• A strong campaign for legislation, including letter-writing, publicity, heavy attendance at hearings, back-room pressure and the like. All of this, said Siri, establishes the "credibility of the challenge" citizens are making to legislators. In other words, citizens must reveal sufficient political clout to make deviant legislators fear for their reelection.

• Backing, or at least extensive coverage, from the press. Television and the press did a generally first-class job, with the papers prominently displaying stories about the bay, in many cases on the first page, throughout the battle.

• An agency which provides a forum for all the interested governmental jurisdictions and other parties to work out their problems together, intelligently and without thrashing at cross-purposes. This means an agency with a membership broad enough to represent them all, allowing full participation and leaving little room for someone to come in afterwards to complain. "This clumsy, 27-member commission worked like a da Vinci machine," said Davoren. "It was a classic."

• An agency with an effective, efficient, no-nonsense staff, and a respected, diplomatic chairman capable of keeping the agency in an undeviating line toward realization of its objectives.

• An agency that operates openly, with public hearings and public debate, at every step of the way.

• An agency which—while it works on comprehensive planning—also has power to control uses of the resource it seeks to protect. These regulatory responsibilities forced the BCDC commissioners to analyze and deal with many of the difficult choices their plan would have to cover, thus sharpening the planning process.

• Finally, of course, a plan and law that will achieve the desired environmental results, that is enforceable, that is respected, and that draws wide support from the community.

Said Hirten: "Perhaps the lesson to be learned is that to make general planning effective it must have incorporated within it: police power for controls; a set of criteria under which new development will be permitted or rejected; and a direct relationship of professional planners with the local policy-making body, rather than with an advisory planning commission."

Similarly, BCDC planner Clifford W. Graves listed an important prerequisite: "Recognition of environmental protection as a political, not a technical, problem." He said it is true that the ecological and economic systems involved are very complex and that too little is known about them. "However, 'the need for more study is too often used as an excuse for inaction."

With all these ingredients present, the BCDC and its plan turned into a most successful and promising effort to create a strong new political institution, strong enough to withstand attack, and to design a comprehensive and ecologically attuned management system for a major, complex natural resource—a resource under the pressure of many conflicting demands. And the

San Francisco experience showed—as it had seldom, if ever, been shown before—that an aroused public can force the realization of these seemingly impossible things.

This is not to say that all of San Francisco Bay's problems have been solved, or that new threats, requiring new vigilance, are not being encountered. That vigilance, as usual, will have to be provided by the BCDC and, ultimately again, by the citizenry.

Marin County headlands, at the mouth of San Francisco Bay.

Appendix: The McAteer-Petris Act

(As Amended through the 1970 Legislative Session)

The McAteer-Petris Act, creating the San Francisco Bay Conservation and Development Commission, was enacted in 1965 and amended in 1968 and in 1970.

What follows is the composite text of the McAteer-Petris Act as of November 23, 1970, the effective date of the 1970 amendments:

Title 7.2. San Francisco Bay Conservation and Development Commission

Chapter 1. Findings and Declarations of Policy

66600. The Legislature hereby finds and declares that the public interest in the San Francisco Bay is in its beneficial use for a variety of purposes; that the public has an interest in the bay as the most valuable single natural resource of an entire region, a resource that gives special character to the bay area; that the bay is a single body of water that can be used for many purposes, from conservation to planned development; and that the bay operates as a delicate physical mechanism in which changes that affect one part of the bay may also affect all other parts. It is therefore declared to be in the public interest to create a politically-responsible, democratic process by which the San Francisco Bay and its shoreline can be analyzed, planned, and regulated as a unit.

66601. The Legislature further finds and declares that uncoordinated, haphazard filling in San Francisco Bay threatens the bay itself and is therefore inimical

to the welfare of both present and future residents of the area surrounding the bay; that while some individual fill projects may be necessary and desirable for the needs of the entire bay region, and while some cities and counties may have prepared detailed master plans for their own bay lands, a governmental mechanism must exist for evaluating individual projects as to their effect on the entire bay; and that further piecemeal filling of the bay may place serious restrictions on navigation in the bay, may destroy the irreplaceable feeding and breeding grounds of fish and wildlife in the bay, may adversely affect the quality of bay waters and even the quality of air in the bay area, and would therefore be harmful to the needs of the present and future population of the bay region.

66602. The Legislature further finds and declares that certain water-oriented land uses along the bay shoreline are essential to the public welfare of the bay area, and that such uses include ports, water-related industries, airports, wildlife refuges, water-oriented recreation and public assembly, desalinization plants and powerplants requiring large amounts of water for cooling purposes; that the San Francisco Bay Plan should make provision for adequate and suitable locations for all such uses thereby minimizing the necessity for future bay fill to create new sites for such uses; that existing public access to the shoreline and waters of the San Francisco Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided.

66602.1. The Legislature further finds and declares that areas diked off from the bay and used as salt ponds and managed wetlands are important to the bay area in that, among other things, such areas provide a wildlife habitat and a large water surface which, together with the surface of the bay, moderate the climate of the bay area and alleviate air pollution; that it is in the public interest to encourage continued maintenance and operation of the salt ponds and managed wetlands; that, if development is proposed for these areas, dedication or public purchase of some of these lands should be encouraged in order to preserve water areas; that, if any such areas are authorized to be developed and used for other purposes, the development should provide the maximum public access to the bay consistent with the proposed project and should retain the maximum amount of water surface area consistent with the proposed project.

66603. The Legislature further finds and declares that the San Francisco Bay Conservation and Development Commission, treating the entire bay as a unit, has made a detailed study of all the characteristics of the bay, including: the quality, quantity, and movement of bay waters, the ecological balance of the bay, the economic interests in the bay, including the needs of the bay area population for industry and for employment, the requirements of industries that would not pollute the

bay nor interfere with its use for recreation or other purposes, but would need sites near deepwater channels; that the study has examined all present and proposed uses of the bay and its shoreline, and the master plans of cities and counties around the bay; and that on the basis of the study the commission has prepared a comprehensive and enforceable plan for the conservation of the water of the bay and the development of its shoreline, entitled the San Francisco Bay Plan.

66604. The Legislature further finds and declares that in order to protect the present shoreline and body of the San Francisco Bay to the maximum extent possible, it is essential that the commission be empowered to issue or deny permits, after public hearings, for any proposed project that involves placing fill, extracting materials or making any substantial change in use of any water, land or structure within the area of the commission's jurisdiction.

66605. The Legislature further finds and declares:

(a) That further filling of San Francisco Bay should be authorized only when public benefits from fill clearly exceed public detriment from the loss of the water areas and should be limited to water-oriented uses (such as ports, water-related industry, airports, bridges, wildlife refuges, water-oriented recreation and public assembly, water intake and discharge lines for desalinization plants and power generating plants requiring large amounts of water for cooling purposes) or minor fill for improving shoreline appearance or public access to the bay;

(b) That fill in the bay for any purpose, should be authorized only when no alternative upland location is available for such purpose;

(c) That the water area authorized to be filled should be the minimum necessary to achieve the purpose of the fill;

(d) That the nature, location and extent of any fill should be such that it will minimize harmful effects to the bay area, such as, the reduction or impairment of the volume surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources;

(e) That public health, safety and welfare require that fill be constructed in accordance with sound safety standards which will afford reasonable protection to persons and property against the hazards of unstable geologic or soil conditions or of flood or storm waters;

(f) That fill should be authorized when the filling would, to the maximum extent feasible, establish a permanent shoreline;

(g) That fill should be authorized when the applicant has such valid title to the properties in question that he may fill them in the manner and for the uses to be approved.

66605.1. The Legislature finds that in order to make San Francisco Bay more

accessible for the use and enjoyment of people, the bay shoreline should be improved, developed and preserved. The Legislature further recognizes that private investment in shoreline development should be vigorously ecouraged and may be one of the principal means of achieving bay shoreline development, minimizing the resort to taxpayer funds; therefore, the Legislature declares that the commission should encourage both public and private development of the bay shoreline.

66606. The Legislature hereby finds and declares that this title is not intended, and shall not be construed, as authorizing the commission to exercise its power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefore. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

66606.5. The Legislature finds and declares that the San Francisco Bay Plan indicates that extensive areas in and around the bay are owned or held under claim of ownership by private persons and that the acquisition for public use of all or large portions of such areas or the establishment of wildlife refuges therein may require a substantial public investment. The Legislature further finds and declares that the commission should make a continuing review and prepare and submit periodic reports on the nature, extent, estimated cost and method of financing of any proposed acquisitions of private property for public use.

66606.6. Nothing in this title shall deny the right of private property owners and local governments to establish agricultural preserves and enter into contracts pursuant to the provisions of the California Land Conservation Act of 1965.

The commission, within six months after the effective date of this section, shall institute an affirmative action program to encourage local governments to enter into contracts under the California Land Conservation Act of 1965 with owners of property to which the provisions of that act may be applicable.

66607. If any provision of this title or the application thereof in any circumstance or to any person or public agency is held invalid, the remainder of this title or the application thereof in other circumstances or to other persons or public agencies shall not be affected thereby.

Chapter 2. Definition of San Francisco Bay

66610. For the purposes of this title, the area of jurisdiction of the San Francisco Bay Conservation and Development Commission includes:

(a) San Francisco Bay, being all areas that are subject to tidal action from the south end of the bay to the Golden Gate (Point Bonita-Point Lobos) and to the

Sacramento River line (a line between Stake Point and Simmons Point, extended northeasterly to the mouth of Marshall Cut), including all sloughs, and specifically, the marshlands lying between mean high tide and five feet above mean sea level; tidelands (land lying between mean high tide and mean low tide); and submerged lands (land lying below mean low tide).

(b) A shoreline band consisting of all territory located between the shoreline of San Francisco Bay as defined in subdivision (a) of this section and a line 100 feet landward of and parallel with that line, but excluding any portions of such territory which are included in subdivisions (a), (c) and (d) of this section; provided that the commission may, by resolution, exclude from its area of jurisdiction any area within the shoreline band that it finds and declares is of no regional importance to the bay.

(c) Salt ponds consisting of all areas which have been diked off from the bay and have been used during the three years immediately preceding the effective date of the amendment of this section during the 1969 Regular Session of the Legislature for the solar evaporation of bay water in the course of salt production.

(d) Managed wetlands consisting of all areas which have been diked off from the bay and have been maintained during the three years immediately preceding the effective date of the amendment of this section during the 1969 Regular Session of the Legislature as a duck hunting preserve, game refuge or for agriculture.

(e) Certain waterways (in addition to areas included within subdivision (a)), consisting of all areas that are subject to tidal action, including submerged lands, tidelands, and marshlands up to five feet above mean sea level, on, or tributary to, the listed portions of the following waterways:

(1) Plummer Creek in Alameda County, to the eastern limit of the salt ponds.

(2) Coyote Creek (and branches) in Alameda and Santa Clara Counties, to the easternmost point of Newby Island.

(3) Redwood Creek in San Mateo County, to its confluence with Smith Slough.

(4) Tolay Creek in Sonoma County, to the northerly line of Sears Point Road (State Highway 37).

(5) Petaluma River in Marin and Sonoma Counties to its confluence with Adobe Creek, and San Antonio Creek to the easterly line of the Northwestern Pacific Railroad right-of-way.

(6) Napa River, to the northernmost point of Bull Island.

(7) Sonoma Creek, to its confluence with Second Napa Slough.

The definition which is made by this section is merely for the purpose of prescribing the area of jurisdiction of the commission which is created by this title. This definition shall not be construed to affect title to any land or to prescribe the boundaries of the San Francisco Bay for any purpose except the authority of the commission created by this title.

66611. No later than December 1, 1971, the commission, after public hearing, of which adequate descriptive notice is given, shall adopt and file with the Governor and the Legislature a resolution fixing and establishing within the shoreline band the boundaries of the water-oriented priority land uses, as referred to in Section 66602. After such filing no further changes shall be made in such boundaries, except with the approval of the Legislature.

Chapter 3. San Francisco Bay Conservation and Development Commission

66620. The San Francisco Bay Conservation and Development Commission is hereby created. The commission shall consist of 27 members appointed as follows:

(a) One member by the Division Engineer, United States Army Engineers, South Pacific Division, from his staff.

(b) One member by the United States Secretary of Health, Education and Welfare, from his staff.

(c) One member by the Secretary of Business and Transportation, from his staff.

(d) One member by the Director of Finance, from his staff.

(e) One member by the Secretary of Resources, from his staff.

(f) One member by the State Lands Commission, from its staff.

(g) One member by the San Francisco Bay Regional Water Quality Control Board, who shall be a member of such board.

(h) Nine county representatives consisting of one member of the board of supervisors representative of each of the nine San Francisco Bay area counties, appointed by the board of supervisors in each county. Each county representative must be a supervisor representing a supervisorial district which includes within its boundaries lands lying within San Francisco Bay.

(i) Four city representatives appointed by the Association of Bay Area Governments from among the residents of the bayside cities in each of the following areas:

(1) North Bay—Marin County, Sonoma, Napa, and Solano;

(2) East Bay—Contra Costa County (west of Pittsburg) and Alameda County north of the southern boundary of Hayward;

(3) South Bay—Alameda County south of the southern boundary of Hayward, Santa Clara County and San Mateo County south of the northern boundary of Redwood City;

(4) West Bay—San Mateo County north of the northern boundary of Redwood City, and the City and County of San Francisco.

Each city representative must be an elected city official.

(j) Seven representatives of the public, who shall be residents of the San Francisco Bay area and whose appointments shall be subject to confirmation by the Senate. Five of such representatives shall be appointed by the Governor. One by the Committee on Rules of the Senate and one by the Speaker of the Assembly.

66621. One member of the Senate, appointed by the Senate Rules Committee, and one member of the Assembly, appointed by the Speaker of the Assembly, shall meet with, and participate in the activities of, the commission to the extent that such participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this title, such Members of the Legislature shall constitute a joint interim investigating committee on the subject of this title, and as such shall have the powers and duties imposed upon such committees by the Joint Rules of the Senate and Assembly.

66622. The members of the commission shall serve at the pleasure of their respective appointing powers. The members shall serve without compensation, but each of the members shall be reimbursed for his necessary expenses incurred in the performance of his duties.

A member, subject to confirmation by his appointing power, may authorize an alternate for attendance at meetings and voting in his absence. Each alternate shall be designated in a written instrument which shall include evidence of the confirmation by the appointing power and his name shall be kept on file with the commission. Each member may change his alternate from time to time, with the confirmation of his appointing power, but shall have only one alternate at a time. Each alternate shall have the same qualifications as are required for the member who appointed him, except that each county representative may designate any other member of that county's board of supervisors as his alternate.

66623. The Governor shall select, from among public representatives on the commission appointed pursuant to subdivision (k) of Section 66620, a chairman and a vice chairman. [Subdivision (k) has been redesignated subdivision (j).]

66624. The time and place of the first meeting of the commission shall be prescribed by the Governor, but, in no event, shall it be scheduled for a date later than 10 days after the effective date of this title.

66625. The headquarters of the commission shall be in the City and County of San Francisco.

Chapter 4. Powers and Duties of the Commission

66630. The commission shall make a continuing review of all the matters referred to in Section 66603, 66606.5 and Section 66651.

66630.1. The continuing review, among other things, shall include studies con-

cerning properties within the area of the commission's jurisdiction which, in the opinion of the commission, might be acquired by public agencies for public use. Based on such studies the commission shall annually prepare a report setting forth the general location of such properties, the interest or interests proposed to be acquired therein, the public uses recommended therefor, the public agencies recommended to make the proposed acquisitions, the estimated cost of the proposed acquisitions and recommendations for financing such cost. Each annual report shall cover proposed acquisitions during a three-year period commencing January 1 after the date of the report and shall indicate any material changes made with respect to the report for the previous year. Not later than the fifth legislative day of each regular session of the Legislature, commencing with the 1971 Regular Session, the commission shall file such report with the Governor and Legislature.

66631. In making the review, the commission shall cooperate to the fullest extent possible with the Association of Bay Area Governments; and shall, to the fullest extent possible, coordinate its planning with planning by local agencies, which shall retain the responsibility for local land use planning. In order to avoid duplication of work, the commission shall make maximum use of data and information available from the planning programs of the State Office of Planning, the Association of Bay Area Governments, the cities and counties in the San Francisco Bay area, and other public and private planning agencies.

66632. (a) During the existence of the San Francisco Bay Conservation and Development Commission, any person or governmental agency wishing to place fill, to extract materials, or to make any substantial change in use of any water, land or structure, within the area of the commission's jurisdiction shall secure a permit from the commission and, if required by law or by ordinance, from any city or county within which any part of such work is to be performed. For purposes of this title, "fill" means earth or any other substance or material, including pilings or structures placed on pilings, and structures floating at some or all times and moored for extended periods, such as houseboats and floating docks. For the purposes of this section "materials" means items exceeding twenty dollars ($20) in value.

The commission may require a reasonable filing fee and reimbursement of expenses for processing and investigating a permit application.

(b) Whenever a permit is required by a city or county for any activity also requiring a permit from the San Francisco Bay Conservation and Development Commission, an applicant for a permit shall file an application with the city council of the city if the proposed project is located in incorporated territory, or the board of supervisors of the county, if the proposed project is located in unincorporated territory. Upon filing such an application, the applicant shall notify the commission of the fact of the filing and the date thereof. The city council or the board of supervisors, as the case may be, shall investigate the proposed project and shall file a report thereon with the commission within 90 days after the application is filed with it.

Whenever a permit is not required by a city or county, no application for a permit need be made to the city or county.

(c) Upon receipt of the report from the city council or the board of supervisors, as the case may be, or, if the city council or the board of supervisors does not file a report with the commission within the 90-day period, upon the expiration of such 90-day period, and upon receipt of an application for a permit made directly to it, the commission shall hold a public hearing or hearings as to the proposed project and conduct such further investigation as it deems necessary. The commission shall give full consideration to the report of the city council or board of supervisors.

(d) The commission shall prescribe the form and contents of applications for permits. Among other things, an application for a permit shall set forth all public improvements and public utility facilities which are necessary or incidental to the proposed project and the names and mailing addresses of all public agencies or public utilities who will have ownership or control of such public improvements or public utility facilities if the permit is granted and the project is constructed. The executive director shall give written notice of the filing of the application to all such public agencies and public utilities. If the commission grants a permit for a project, the permit shall include all public improvements and public utility facilities which are necessary or incidental to the project.

(e) Upon receipt of an application for a permit the commission shall transmit a copy thereof to the San Francisco Bay Regional Water Quality Control Board. Within 60 days the board shall file a report with the commission indicating the effect of the proposed project on water quality within the bay.

(f) The commission shall take action upon an application for a permit, either denying or granting the permit, within 90 days after it receives the report (or, if the city council or the board of supervisors did not file a report with the commission within the 90-day period, within 90 days after the expiration of such 90-day period), or within 90 days after it receives an application from the applicant, whichever date is later. The permit shall be automatically granted if the commission shall fail to take specific action either denying or granting the permit within the time period specified in this section. A permit shall be granted for a project if the commission finds and declares that the project is either (1) necessary to the health, safety or welfare of the public in the entire bay area, or (2) of such a nature that it will be consistent with the provisions of this title and with the provisions of the San Francisco Bay Plan then in effect. To effectuate such purposes, the commission may grant a permit subject to reasonable terms and conditions including the uses of land

or structures, intensity of uses, construction methods and methods for dredging or placing of fill. Thirteen affirmative votes of members of the commission are required to grant a permit. Neither of the federal representatives who are members of the commission may vote on whether or not a permit shall be granted.

Pursuant to this title, the commission may provide by regulation, adopted after public hearing, for the issuance of permits by the executive director, without compliance with the above procedure, in cases of emergency, or for minor repairs to existing installations or minor improvements made anywhere within the area of jurisdiction of the commission including, without limitation, the installation of piers and pilings and maintenance dredging of navigation channels. The commission may also adopt after public hearing such additional regulations as it deems reasonable and necessary to enable it to carry out its functions efficiently and equitably, including regulations classifying the particular water-oriented uses referred to in Sections 66602 and 66605.

(g) If the commission denies the permit, the applicant may submit another application for the permit directly to the commission after 90 days from the date of such denial.

(h) Any project authorized pursuant to this section shall be commenced, performed and completed in compliance with the provisions of all permits granted or issued by the commission and by any city or county.

(i) If, prior to September 17, 1965, any person or governmental agency has already obtained a permit from the appropriate local body to place fill in the bay or to extract submerged materials from the bay, application may be made directly to the San Francisco Bay Conservation and Development Commission and the permit from the local body shall constitute the report of the local body.

(j) Any action, or proceeding to contest or question the commission's denial of a permit application, or conditions attached to approval of a permit application, must be commenced in the appropriate court within 90 days following the date of such action by the commission.

(k) The executive director shall, within 90 days following the effective date of this section, communicate the provisions of this section to all governmental bodies that issue permits for developments described in this section, and shall request of them information concerning any development that may fall within the provisions of this section.

66632.1. Nothing in this title shall apply to any project where necessary local governmental approval and a Department of the Army Corps of Engineers permit have been obtained to allow commencement of the diking or filling process, and where such diking or filling process has commenced prior to the effective date of

this title, nor to the continuation of dredging under existing Department of the Army Corps of Engineers permits.

66632.2. (a) The owner or operator of any public service facilities need not obtain a permit from the commission for the construction within or upon any public highway or street of any public service facilities to provide service to persons or property located within the area of the commission's jurisdiction. The public service facilities referred to in this subdivision shall be limited to those which are necessary for and are customarily used to provide direct and immediate service to the persons or property requiring such service.

(b) The owner or operator of public service facilities or a public street or road located anywhere within the area of the commission's jurisdiction may, without first obtaining a permit from the commission, make emergency repairs to such facilities as may be necessary to maintain service, provided, that the emergency is such as to require repairs before an emergency permit can be obtained under the provisions of subdivision (f) of Section 66632 and, provided further, that notification is given to the commission no later than the first working day following such undertaking.

(c) "Public service facilities," as used in this section, means any facilities used or intended to be used to provide water, gas, electric or communications service and any pipelines, and appurtenant facilities, for the collection or transmission of sewage, flood or storm waters, petroleum, gas or any liquid or other substance.

66632.3. If the most recent report made and filed pursuant to Section 66630.1 recommends that designated property be acquired for public use and all such property has not been so acquired within a period of three years, commencing with January 1 after the date of the report first recommending such acquisition, at any time after the expiration of said period the owners of all or any part of the property not previously acquired may file an application with the commission for the development of such property. Upon the filing of any such application, the commission shall grant or deny a permit in accordance with the provisions of this title and the San Francisco Bay Plan, then in effect, provided that a permit shall not be denied on the grounds that such property has been recommended to be acquired for public use.

66632.4. Within any portion or portions of the shoreline band which shall be located outside the boundaries of water-oriented priority land uses, as fixed and established pursuant to Section 66611, the commission may deny an application for a permit for a proposed project only on the grounds that the project fails to provide maximum feasible public access, consistent with the proposed project, to the bay and its shoreline.

66633. The commission may:

(a) Accept grants, contributions, and appropriations from any public agency, private foundation, or individual.

(b) Appoint committees from its membership and appoint advisory committees from other interested public and private groups.

(c) Contract for or employ any professional services required by the commission or for the performance of work and services which in its opinion cannot satisfactorily be performed by its officers and employees or by other federal, state, or local governmental agencies.

(d) Sue and be sued in all actions and proceedings and in all courts and tribunals of competent jurisdiction, including prohibitory and mandatory injunctions to restrain violations of this title.

(e) Do any and all other things necessary to carry out the purposes of this title.

66634. The commission shall, in addition to any funds which the Legislature may appropriate for planning activities of the commission, take whatever steps are necessary to attempt to obtain money available of such planning activities from any federal, state, or local sources.

66635. The commission shall appoint an executive director who shall have charge of administering the affairs of the commission, subject to the direction and policies of the commission. The executive director shall, subject to approval of the commission, appoint such employees as may be necessary in order to carry out the functions of the commission.

66636. Within a reasonable time, but not to exceed one year from the date of the first meeting of the commission, the chairman of the commission, in collaboration with and with the concurrence of the commission, shall appoint a citizens' advisory committee to assist and advise the commission in carrying out its functions. The advisory committee shall consist of not more than 20 members.

At least one member of the advisory committee shall be a representative of a public agency having jurisdiction over harbor facilities, and another shall represent a public agency having jurisdiction over airport facilities. The advisory committee shall also include representatives of conservation and recreation organizations, and at least one biologist, one sociologist, one geologist, one architect, one landscape architect, one representative of an industrial development board or commission, and one owner of privately held lands within the San Francisco Bay as defined in Section 66610.

Chapter 5. The San Francisco Bay Plan and Further Reports of the Commission

66650. This title shall be known and may be cited as the McAteer-Petris Act.

66651. Pursuant to this title the commission has adopted and submitted to the Governor and the Legislature the San Francisco Bay Plan, a comprehensive plan containing statements and maps concerning:

(a) The objectives of the plan;

(b) The bay, as a resource, including findings and recommended policies upon: fish and wildlife; water pollution; smog and weather; water surface, area and volume; marshes and mudflats; fresh water inflow; dredging; and shell deposits;

(c) The development of the bay and shoreline, including findings and recommended policies upon: economic and population growth; safety of fills; water-related industries; ports; airports; recreation; salt ponds and other managed wetlands; transportation; other uses of the bay and shoreline; refuse disposal sites; public access; appearance and design; and scenic views.

This plan shall constitute an interim plan for the commission (i) until otherwise ordered by the Legislature, or, (ii) until amended by the commission as provided in Section 66652.

66652. The commission at any time may amend, or repeal and adopt a new form of, all or any part of the San Francisco Bay Plan but such changes shall be consistent with the findings and declarations of policy contained in this title.

Such changes shall be made by resolution of the commission adopted after public hearing on the proposed change, of which adequate descriptive notice shall be given. If the proposed change pertains to a policy or standard contained in the San Francisco Bay Plan, or defines a water-oriented use referred to in Section 66602 or 66605, the resolution adopting the change shall not be voted upon less than 90 days following notice of hearing on the proposed change and shall require the affirmative vote of two-thirds of the commission members. If the proposed change pertains only to a map or diagram contained in the San Francisco Bay Plan, the resolution adopting the change shall not be voted on less than 30 days following notice of hearing on the proposed change and shall require the affirmative vote of the majority of the commission members.

66653. If a function or activity is within the area of the commission's jurisdiction and requires the securing of a permit, the commission shall exercise its power to grant or deny a permit in conformity with the provisions of this title and with any provisions of the plan pertaining to placing of fill, extraction of materials, construction methods and use or change of use of water areas, land or structures. If a function or activity is outside the area of the commission's jurisdiction or does not require the issuance of a permit, any provisions of the plan pertaining thereto are advisory only.

66654. Within the area of the commission's jurisdiction under subdivisions (b),

(c) and (d) of Section 66610, any uses which are in existence on the effective date of this section may be continued, provided, that no substantial change shall be made in such uses except in accordance with this title.

Any owner of property devoted to an existing use or uses may file an application with the commission to determine the nature of such existing use or uses, the extent of territory then devoted to such use or uses, and such additional territory adjacent thereto as may be expected to be reasonably necessary for the expansion of such use or uses during a period of not to exceed 15 years from the date of filing such application. Not later than 90 days after such filing, the commission after public hearing shall adopt a resolution making such determination. After the adoption of such resolution no permit need be obtained from the commission for any of the existing use or uses specified in the resolution or for the expansion thereof within the territory described in said resolution.

66655. If, prior to September 1, 1969, any city or county has adopted an ordinance or issued a permit authorizing a particular use or uses within the areas defined in subdivisions (b), (c) and (d) of Section 66610, no person who has obtained a vested right thereunder shall be required to secure a permit from the commission, providing, that no substantial changes may be made in any such use or uses, except in accordance with this title. Any such person shall be deemed to have such vested rights if, prior to September 1, 1969, he has in good faith and in reliance upon the ordinance or permit commenced and performed substantial work on the use or uses authorized and incurred substantial liabilities for work and materials necessary therefor. Expenses incurred in obtaining the enactment of an ordinance or the issuance of a permit shall not be deemed liabilities for work or material.

66656. Nothing in this title shall apply to any project where necessary local governmental approval and a Department of the Army Corps of Engineers permit have been obtained to allow commencement of the diking or filling process, and where such diking or filling process has commenced prior to September 17, 1965, nor to the continuation of dredging under existing Department of the Army Corps of Engineers permits and any renewals and extensions of such dredging permits.

"Project" shall include the execution or undertaking or assumption of any contractual commitments entered into prior to September 17, 1965; if prior to July 9, 1969, the city or county has adopted a long-range general plan in accordance with its charter, or Sections 65300 to 65306 and specific plans in accordance with Sections 65450 and 65451 and the land uses comply with the general objectives or guidelines of the San Francisco Bay Plan.

66657. In eminent domain or inverse condemnation proceedings for any property within the area of the commission's jurisdiction, in determining "just compensation," as used in Section 14 of Article I of the California Constitution, or "value," "damage," or "benefits," as used in Section 1248 of the Code of Civil Procedure, the influence of the San Francisco Bay Plan, in effect at the time of the taking or damaging of the property, upon the value of the property or the interest being valued shall be inadmissible as evidence and not a proper basis for an opinion as to the value of the property.

66658. Until the termination of the existence of the commission, it shall have all powers and duties prescribed by Chapter 1 (commencing with Section 66600) to 4 (commencing with Section 66630), inclusive, of this title including, without limitation, the power to continue or make further studies authorized thereby.

66659. The commission shall continue in existence until such time as the Legislature provides for the termination of the existence of the commission or for the transfer of the commission's functions and duties to some other permanent agency.

66660. The commission shall make a supplemental report, or reports, containing all of the following:

(a) The results of any continued or further studies made by the commission;

(b) Such other information and recommendations as the commission deems desirable.

66660.1. Notwithstanding any provision of this title to the contrary, the jurisdiction of the commission, except for the control of fill or extraction of materials shall not include the shoreline within a city limit upon which any person or entity has commenced and performed substantial work for the purpose of establishing a planned community development on land already filled and requiring no additional fill or extraction, and for which the planning commission approval of the city council has been obtained prior to July 1, 1969.

66661. The commission shall annually file a supplemental report with the Governor and the Legislature by the fifth legislative day of each regular session of the Legislature commencing not later than the 1971 Regular Session.

(Copies of the San Francisco Bay Plan and of a Supplement containing summaries of the Commission's detailed studies of the bay are available from the Documents and Publications Branch, Department of General Services, P.O. Box 20191, Sacramento, Calif. 95820. Send $2 for each copy of the Plan and $3 for each copy of the Supplement, plus sales tax—5 1/2% for residents of Alameda, Contra Costa, and San Francisco Counties; 5% for residents of most other California counties. There is no tax for persons outside California.)

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