

# SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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## THE SUISUN MARSH PRESERVATION ACT (As amended through the 2006 Legislative Session) Public Resources Code Sections 29000 through 29612

The Suisun Marsh Preservation Act was enacted in 1977. Subsequent amendments were made as follows:

### Acts of the 1982 Regular Session of the Legislature *(effective January 1, 1983)*:

#### Chapter 413 (AB 675)

Amended Section 29405 to add a reference to Section 29403

Amended Section 29605 to substitute "Bay Fill Clean-up and Abatement Fund established pursuant to Section 66647 of the Government Code" for "General Fund" in the second sentence.

Amended Section 29612 to provide for depositing of funds received in the Bay Clean-up and Abatement Fund rather than the General Fund

#### Chapter 1571 (SB 2090)

Added Section 29101.

### Acts of the 2006 Regular Session of the Legislature *(effective January 1, 2007)*:

#### Chapter 383 (SB 1110)

Repealed Sections 29411 and 29412.

#### Chapter 583 (SB 1852)

Amended Section 29305 to substitute "Code" for "division."



Making San Francisco Bay Better

# DIVISION 19. SUISUN MARSH PRESERVATION ACT

## CHAPTER 1. GENERAL PROVISIONS

- 29000. Short Title.** This division shall be known and may be cited as the Suisun Marsh Preservation Act of 1977.
- 29002. Legislative Findings and Declarations.** The Legislature hereby finds and declares that the Suisun Marsh, consisting of approximately 55,000 acres of marshland and 30,000 acres of bays and sloughs, and comprising almost 10 per cent of the remaining natural wetlands in California, plays an important role in providing wintering habitat for waterfowl of the Pacific Flyway; that during years of drought the area becomes particularly important to waterfowl by virtue of its large expanse of aquatic habitat and the scarcity of such habitat elsewhere; that the area provides critical habitat for other wildlife forms, including such endangered, rare, or unique species as the peregrine falcon, white-tailed kite, golden eagle, California clapper rail, black rail, salt-marsh harvest mouse, and Suisun shrew; that the existence of this wide variety of wildlife is due to the relatively large expanse of unbroken native habitat and the diversity of vegetation and aquatic conditions that prevail in the marsh; that man is an integral part of the present marsh ecosystem and, to a significant extent, exercises control over the widespread presence of water and the abundant source of waterfowl foods; that the Suisun Marsh represents a unique and irreplaceable resource to the people of the state and nation; that future residential, commercial, and industrial developments could adversely affect the wildlife value of the area; and that it is the policy of the state to preserve and protect resources of this nature for the enjoyment of the current and succeeding generations.
- 29003. Declaration of Need.** The Legislature further finds and declares that, in order to preserve the integrity and assure continued wildlife use of the Suisun Marsh, including the preservation of its waterfowl-carrying capacity and retention of the diversity of its flora and fauna, there is a need for all of the following:
- (a) Provisions for establishment and maintenance of adequate water quality.
  - (b) Improvement of present water management practices, including drainage and other water control facilities within the Suisun Marsh.
  - (c) Establishment of criteria for the production of valuable waterfowl food plants.
  - (d) Provisions for future supplemental water supplies and related facilities to assure that adequate water quality will be achieved within the wetland areas.
  - (e) Development and implementation of plans and policies to protect the marsh from degradation by excessive human use.
  - (f) Definition and establishment of a buffer area consisting of upland areas that have high wildlife values themselves and also contribute to the integrity and continued wildlife use of the wetlands within the marsh.

**29004. Suisun Marsh Protection Plan.** The Legislature further finds and declares as follows:

- (a) That the San Francisco Bay Conservation and Development Commission and the Department of Fish and Game, pursuant to the Nejedly-Bagley-Z'berg Suisun Marsh Preservation Act of 1974 (former Chapter 9 (commencing with Section 1850) of Division 2 of the Fish and Game Code), have made a detailed study of the Suisun Marsh; that there has been extensive participation by other governmental agencies, private interests, and the general public in the study; and that, based on the study, the commission has prepared the Suisun Marsh Protection Plan for the orderly and long-range conservation, use, and management of the natural, scenic, recreational, and man-made resources of the marsh.
- (b) That the Suisun Marsh Protection Plan contains a series of recommendations which require implementation by the Legislature; and, accordingly, these recommendations are implemented in the manner provided in this division.

**29005. Reliance on Local Government and Local Planning.** The Legislature further finds and declares as follows:

- (a) That, to achieve maximum responsiveness to local conditions, public accountability, and public accessibility, it is necessary to rely heavily on local government and local land use planning procedures and enforcement.
- (b) That, to ensure maximum state and federal conformity with the provisions of this division; to protect regional, state, and national interests in assuring the maintenance of the long-term productivity of the Suisun Marsh; to avoid long-term costs to the public and a diminished quality of life resulting from the misuse of the marsh; to coordinate and integrate the activities of the many agencies whose activities impact the marsh; and to supplement the activities of such agencies in matters not properly within the jurisdiction of any existing agency; it is appropriate to provide for continued state planning and management through the San Francisco Bay Conservation and Development Commission, which since 1965 has exercised jurisdiction over a substantial portion of the Suisun Marsh pursuant to Title 7.2 (commencing with Section 66600) of the Government Code.

**29006. Limitation on Powers and Rights.** No provision of this division is a limitation of any of the following:

- (a) On the power of a city, county, or district, except as otherwise limited by state law, to adopt and enforce regulations, in addition to, and not in conflict with, the requirements of this division, imposing further conditions, restrictions, or limitations with respect to any land or water use or other activity that might adversely affect the resources of the marsh.
- (b) On the power of any city, county, or district to declare, prohibit, and abate nuisances.

- (c) On the power of the Attorney General to bring an action in the name of the people of the state on his own motion or at the request of any state agency having standing under provisions of law other than this division, to enjoin any waste or pollution of the marsh or any nuisance.
- (d) On the right of any person to maintain an appropriate action for relief against a private nuisance or any other private relief.

**29007. Public Participation.** The Legislature further finds and declares that the public has a right to participate fully in governmental decisions affecting planning, conservation, and development of the Suisun Marsh; that achievement of sound protection of the marsh is dependent upon public understanding and support; and that continuing planning and implementation of programs for marsh protection should include the opportunity for public participation.

**29008. Application of Joint Policies Within Commission's Jurisdiction.** The Legislature further finds and declares that the Suisun Marsh Protection Plan is a more specific application of the general, regional policies of the San Francisco Bay Plan prepared and administered by the San Francisco Bay Conservation and Development Commission pursuant to Title 7.2 (commencing with Section 66600) of the Government Code, and is an appropriate supplement to those policies because of the unique characteristics of the policies of both the San Francisco Bay Plan and the Suisun Marsh Protection Plan shall apply within any area that is within the commission's jurisdiction, as defined in Section 66610 of the Government Code, and that is also within the marsh, as defined in Section 29101 of this code, except where the San Francisco Bay Plan and the Suisun Marsh Protection Plan may conflict. If a conflict occurs in a specific instance, the policies of the Suisun Marsh Protection Plan shall control.

**29009. Acquisition of Land.** The Legislature further finds and declares that land within or adjacent to the Suisun Marsh should be acquired for public use or resource management, or both, and facilities suitable for such purposes should be constructed thereon, if the land meets one or more of the following criteria:

- (a) It is suitable for passive recreational purposes such as fishing and nature observation and is located in the outer portions of the marsh near population centers or existing transportation routes, such as State Highway Route 12.
- (b) It is suitable for the purpose of restoring areas to tidal action or to marsh or managed-wetland conditions and such restoration cannot be required as a condition of private development.
- (c) It is suitable for providing additional wildlife habitat necessary to effective wildlife management, including consolidation of management units and improved public hunting opportunities. Acquisitions within this category should avoid privately owned property already managed as wildlife habitat unless offered for sale to the state.

**29010. Location of Suisun Marsh**

- (a) The Legislature further finds that:
- (1) The Suisun Marsh is located where the salt water of the Pacific Ocean and the fresh water of the Sacramento and San Joaquin River Delta meet and mix; and because of its location, the marsh provides a transition zone between salt and fresh water habitats, creating a unique diversity of fish and wildlife habitats.
  - (2) Water quality in the marsh is dependent on the salinity of the water in sloughs of the marsh, which depends in turn on the amount of fresh water flowing in from the Delta.
  - (3) Numerous upstream storage facilities, together with diversions of water from the Delta and tributary streams of the Delta, have substantially reduced the amount of fresh water flowing into the marsh from the Delta.
  - (4) Further substantial diversions are planned, and these diversions will have adverse impacts in the marsh through increased salinity intrusion unless adequate mitigation measures are taken.
  - (5) Possible mitigation measures, including the development of other sources of fresh water for the marsh, have been under study by a variety of state and federal agencies.
  - (6) Protection of the marsh from salinity intrusion, particularly protection through the development of alternative sources of fresh water for the marsh, cannot be considered independently of other issues relating to the management of California's water resources, and discussions are now underway among various agencies of the state and federal governments to resolve such issues.
- (b) The Legislature, therefore, declares that it expects any resolution of these issues, whether by written agreement, federal legislation, state legislation, or any combination thereof, will protect the marsh from the adverse impacts of salinity intrusion and from any other significant adverse impacts.

**29011. Priority.** The Legislature further finds and declares that the Suisun Marsh is a fragile ecological system and that, in order to protect wildlife, many areas of the marsh should not be subject to extensive human intrusion. Highest priority, therefore, should be given to developing and maintaining opportunities for public access on lands currently in, or in the future to be in, public ownership.

**29012. Construction of Division.** This division shall be liberally construed to accomplish its purposes and objectives.

**29013. Compensation for Taking or Damaging Property.** The Legislature hereby finds and declares that this division is not intended to authorize, and shall not be construed as authorizing, the commission or local government acting pursuant to this division, to exercise their powers 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 of the United States.

- 29014. Development Outside Suisun Marsh.** The Legislature finds and declares it is not its intent in enacting this division to grant the commission any authority over any development outside the Suisun Marsh, except as expressly authorized in Chapter 3 (commencing with Section 29200) and in Chapter 5 (commencing with Section 29400). Except as provided in Chapter 3 (commencing with Section 29200) neither the provisions of this division nor of the Suisun Marsh Protection Plan shall apply to any permit, development, or any other action or project which occurs outside of the marsh prior to the approval of the local protection program and its certification by the commission, as provided in Article 2 (commencing with Section 29410) of Chapter 5.

## CHAPTER 2. DEFINITIONS

**29100. Governing Definition.** Unless the context requires otherwise, the definitions set forth in this chapter govern the interpretation of this division.

**29101. "Suisun Marsh" or "marsh."** "Suisun Marsh" or "marsh" means water-covered areas, tidal marsh, diked-off wetlands, seasonal marshes, lowland grasslands, upland grasslands, and cultivated lands specified on the map identified in Section 16 of that chapter of the Statutes of the 1977-78 Regular Session enacting this division. It includes both the primary and secondary management areas as shown on the Suisun Marsh Protection Plan Map and includes the entire right-of-way of any state highway that is designated as a portion of the boundary of the marsh.

**29101.5. Operative Date Contingent on Property not Included In "Suisun Marsh."** Notwithstanding Section 29101, "Suisun Marsh" does not include the real property described as follows:

Beginning at a point in the easterly line of Section 32, T5N, R1W, MDB&M, said point being the northeast corner of the lands now or formerly of J. B. Lemon; thence along the north line of said lands of Lemon S 88 15' W 840 feet to the north line of Pacific Gas and Electric Company Tower Line; thence along said Tower line N 38 10' W 350 feet to an angle point; thence S 83 00' W 2,2020 feet; thence leaving said Tower Line N 42 W 450 feet; thence N 55 W 700 feet; thence N 75 W 540 feet; thence S 73 W 910 feet to the easterly line of Section 31, T5N, R1W, MDB&M; thence along said line N 1 30' W 1,060 feet to a point 915.00 feet, measured at right angles, south of the south right-of-way line of State Highway Route 12; thence parallel with said State Highway N 89 30' W 3,840 feet to the easterly line of Grizzly Island Road; thence along said easterly line N 2 30' W 981 feet to the northerly right-of-way line of State Highway Route 12; thence along said line S 89 30' E 3,825 feet to said easterly line of Section 31; thence continuing along said northerly line in an easterly line of said Section 32; thence along said easterly line southerly to the point of beginning.

Section 5 of this act shall become operative only if all of the following events occur:

- (a) All private rights, title, and interest in the real property consisting of Solano County Assessor's Parcels 046-130-010, 046-130-020, 046-130-030, 173-280-120, 173-280-130, and 173-280-140 is conveyed by the owner or owners of that property in fee to the Department of Fish and Game of the State of California, at no cost to the state, and that conveyance is recorded in the office of the Solano County Recorder. Any right, title, or interest of the State of California in these parcels held by virtue of its sovereignty in and to all tide and submerged lands shall not be affected by this conveyance and shall continue under the jurisdiction of the State Lands Commission.

- (b) The owner or owners of the real property described in Section 29101.5 of the Public Resources Code, as proposed to be added by Section 5 of this act, records in the office of the Solano County Recorder an agreement with the State of California, acting by and through the Department of Fish and Game, to do all of the following:
- (1) Complete hydrological and engineering studies necessary to design and construct proposed flood control channels, siltation basins and other water control structures affecting local watershed. Complete and implement a plan for the design and operation of those facilities, including the tidal slough specified in paragraph (2). The design of the tidal slough shall provide for approved flood flows, permanent retention of trees, brush and grasses from the toe to the top of the channel banks, adequate water circulation, sufficient water depth at low tides, and traps for sedimentation, and shall protect water quality, circulation, and flow directions in Hill Slough and any channels constructed by the state to bring higher quality water into Suisun Marsh. The owner or any subsequent entity responsible for the operation and maintenance of these facilities shall repair or replace, at no cost to the state, any damage to existing or future levees, water control structures or other property included within the Hill Slough Management Plan Area occurring as a result of the construction or operation of these facilities. The owner shall provide for the operation and maintenance of these facilities either by the owner, a special assessment district, or other local government entities. The plan, including the level of flood flow, design, operation, and maintenance of the facilities shall be as reviewed and approved in writing by the Director of Fish and Game. At least 45 days prior to approving the plan, the Director of Fish and Game shall submit the plan to the San Francisco Bay Conservation and Development Commission, the Department of Water Resources, and the State Department of Health Services for review, and comment. Upon approval of the plan by the Director of Fish and Game, no further state permits or approvals need be obtained to construct the facilities in the approved plan.
  - (2) Construct, at no cost to the state, a permanent tidal slough connected to Hill Slough of sufficient depth and width to both retain water during periods of any daily low tide and to act as an effective barrier against trespass between that property and the contiguous lands of the Suisun Marsh. The design and construction of the tidal slough shall conform to the specifications detailed in the plan required by paragraph (1).
  - (3) Complete and implement a plan, approved by the Director of Fish and Game, which describes other measures associated with the barrier, including, but not limited to, such features as the installation of water control structures, the placement of public and service roads, the establishment of trees and other vegetation, fencing, and maintenance procedures, consistent with the Department of Fish and Game's management plan for the lands described in subdivision (a).
  - (4) Contribute to the Department of Fish and Game for the construction by the department of an interpretive center to be located in the marsh, upon approval of the project by the State Public Works Board, the sum of two hundred fifty thousand dollars (\$250,000), adjusted annually from January 1,

1983, until approval of the project by the State Public Works Board by the percentage change in the U. S. Department of Commerce Composite Construction Cost Index for the preceding 12 months, except that the contribution shall be made only if the project is approved by the State Public Works Board on or before December 31, 1988. If the approval is not made before that date, the contribution need not be made and the landowner shall be released of all responsibility under this paragraph. The landowner shall obtain a cash bond in favor of the state, at no cost to the state, to secure its obligations under this paragraph.

- 29102.** “**Primary Management Area.**” “Primary management area” means water-covered areas, tidal marsh, diked-off wetlands, seasonal marsh, and lowland grassland specified on the map identified in Section 16 of that chapter of the Statutes of the 1977-78 Regular Session enacting this division.
- 29103.** “**Secondary Management Area.**” “Secondary management area” means the upland grasslands, cultivated lands, and low-lying areas adjacent to the primary management area specified on the map identified in Section 16 of that chapter of the Statutes of the 1977-78 Regular Session enacting this division.
- 29104.** “**Watershed.**” “Watershed” means the immediate watershed of the marsh upland from the secondary management area and located in the County of Solano, including those creeks, streams, channels, or other water areas in the County of Solano that are tributary to, or flow into, the marsh. “Creeks, streams, channels, or other water areas” includes areas that are riparian thereto.
- 29105.** “**Managed Wetland.**” “Managed wetland” means those diked areas in the marsh in which water inflow and outflow is artificially controlled or in which waterfowl food plants are cultivated, or both, to enhance habitat conditions for waterfowl and other water-associated birds, wildlife, or fish, regardless of whether such areas are used for hunting or fishing or non-consumptive uses such as nature study, photograph, and similar passive wildlife activities, or a combination of both such consumptive and non-consumptive uses.
- 29106.** “**Commission.**” “Commission” means the San Francisco Bay Conservation and Development Commission created by Title 7.2 (commencing with Section 66600) of the Government Code.
- 29107.** “**Department.**” “Department” means the Department of Fish and Game.
- 29108.** “**County.**” “County” means the County of Solano.
- 29109.** “**Local Government.**” “Local government” means the County of Solano and the Cities of Suisun City, Fairfield, and Benicia.
- 29110.** “**District.**” “District” means any public agency, other than a local government, formed pursuant to general law or special act for the local performance of governmental or proprietary functions within limited boundaries. “District” includes, but is not limited to, a county service area, a maintenance district or area, an improvement district or improvement zone, a mosquito abatement district, a

resource conservation district, an irrigation district, a reclamation district, a sanitary or sewer district, or any other zone or area, formed for the purpose of designating an area within which either an assessment or a property tax rate will be levied to pay for a service or improvement benefiting that area or a special function will be carried out within that area.

**29111. “Local Protection Program.”** “Local protection program” means those provisions of general or specific plans; ordinances; zoning district maps; land use regulations, procedures, or controls; or any other programs, procedures, standards, or controls that are adopted, undertaken, or carried out by local governments, districts, or the Solano County Local Agency Formation Commission in and adjacent to the marsh, are submitted by the county to the commission pursuant to Chapter 5 (commencing with Section 29400), and meet the requirements of, and implement, this division and the Suisun Marsh Protection Plan at the local level.

**29112. “Local protection Program Component” or “Component.”** “Local protection program component” or “component” means a part of the local protection program that is prepared by or submitted to the county pursuant to Section 29411 or prepared by the Suisun Resource Conservation District pursuant to Section 29412.5 for inclusion in the local protection program.

**29113. “Suisun Marsh Protection Plan” or “Protection Plan.”**

(a) “Suisun Marsh Protection Plan” or “protection plan” means the Suisun Marsh Protection Plan prepared and adopted by the commission and submitted to the Governor and Legislature pursuant to former Chapter 9 (commencing with Section 1850) of Division 2 of the Fish and Game Code. The protection plan includes the Suisun Marsh Protection Plan Map and the Suisun Marsh Protection Plan Natural Factors Maps prepared as a part of such plan.

(b) “Protection plan policies” or “policies of the protection plan” means the policies set forth in Part II (pages 10 to 29, inclusive) of the protection plan.

**29114. “Development.”**

(a) “Development” means on land, or in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water or in access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes.

(b) “Development” does not include either a change in the intensity of use of water or the removal or harvesting of major vegetation where such change, removal, or harvesting is to maintain or improve wildfowl habitat and does not have a significant, adverse effect on other fish and wildlife resources in the marsh.

- 29115.** **“Feasible.”** “Feasible” means capable of being accomplished in a successful manner with a reasonable period of time, taking into account economic, environmental, social, and technological factors.
- 29116.** **“Permit.”** “Permit” means any license, certificate, approval, or other entitlement for use granted or denied by any public agency which is subject to the provisions of this division.
- 29117.** **“Person”; “Aggrieved Person.”**
- (a) “Person” means any individual, organization, partnership, or other business association or corporation, including any utility; and the federal government, the state, any local government, or any district, or any agency thereof.
- (b) “Aggrieved person” means any person who, in person or through a representative, appeared at a public hearing of the local government in connection with the decision made or action appealed; or who, by other appropriate means prior to a hearing, informed the local government of the nature of his or her concerns; or who for good cause was unable to do either of the foregoing. “Aggrieved person” includes the applicant for a permit; and, with respect to the approval of the local protection program, or any component thereof, any affected local government.

## CHAPTER 3. RESPONSIBILITIES OF THE COMMISSION

- 29200. Implementation of Provisions of Division and Protection Plan.** Unless expressly provided otherwise in this division, the commission shall have the primary state responsibility for the implementation of the provisions of this division and the protection plan.
- 29201. Additional Powers and Duties.** In carrying out its responsibilities under this division, and in addition to the specific powers and duties of the commission under Chapters 5 (commencing with Section 29400) and 6 (commencing with Section 29500), the commission may do all of the following:
- (a) Accept grants, contributions, and appropriations from any person.
  - (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 or be sued in all actions and proceedings and in all courts and tribunals of competent jurisdiction, including prohibitory and mandatory
  - (e) Adopt regulations consistent with this division.
  - (f) Do such other things as are necessary to carry out the purposes of this division and are consistent with this division.
- 29202. Amendment of Protection Plan.**
- (a) Consistent with this division, the commission may amend the protection plan. Such amendments shall be made by resolution of the commission adopted after a public hearing on the proposed change, of which adequate descriptive notice shall be given. Such descriptive notice shall include a general description of the changes, if any, that would be required in the certified local protection program and whether any changes would be required in the local protection program as it applies to any area outside the marsh. If the proposed amendment pertains to a policy of the protection plan, the resolution adopting the amendment may 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. The resolution adopting any other amendment to the protection plan may not be voted on less than 30 days following notice of hearing on the proposed amendment and shall require the affirmative vote of a majority of the commission members.

- (b) Any local government or district or the Solano County Local Agency Formation Commission, if affected by any such amendment to the protection plan, shall, within one year from the effective date of such amendment, prepare and submit any amendments to the local protection program, or any component thereof, to bring such program or component into conformity with the amended protection plan.
- (c) No amendment to the policies of the protection plan that will require a change in the local protection program as it applies to the marsh or any area outside the marsh shall be effective until approved by the Legislature by statute if, within the 90-day period provided in subdivision (a), the local government having jurisdiction over any such area objects to such amendment in writing to the commission.
- (d) No amendment to the policies of the protection plan may require a change or amendment to the component of the local protection program prepared by the Suisun Resource Conservation District until it has been approved by the Legislature by statute if, within the 90-day period provided in subdivision (a), the department objects to such amendment in writing to the commission on the grounds that such amendment would be inconsistent with this division.
- (e) No amendment to the policies of the protection plan may require a change or amendment to the component of the local protection program prepared by the Solano County Mosquito Abatement District until it has been approved by the Legislature by statute if, within the 90-day period provided in subdivision (a), the Director of Health objects to such amendment in writing to the commission on the grounds that such amendment would be inconsistent with the applicable provisions of the Health and Safety Code.

**29203. Preparation and Adoption of Detailed Map.** Not later than March 1, 1978, the commission shall prepare and adopt a detailed map for the marsh, on a scale of one inch equals 24,000 inches, which shall show both the primary and secondary management areas, and which the commission shall file with the clerk of the county. Upon the filing of such map with the clerk of the county, no further changes in the boundaries of the marsh or the boundaries of the primary or secondary management areas shall be made without the approval of the Legislature by statute.

**29204. Changes to San Francisco Bay Plan and Priority Use Boundaries.** Not later than July 1, 1978, the commission shall make any necessary changes in the San Francisco Bay Plan and in existing priority use area boundaries established pursuant to Section 66611 of the Government Code. Notwithstanding any provision of the contrary in Title 7.2 (commencing with Section 66600) of the Government Code, such changes shall not require the approval of the Legislature.

**29205. Relation to Coastal Zone Management Program.**

- (a) The marsh shall be considered part of the commission's segment of the California coastal zone, and this division shall be part of the commission's segment of California's coastal zone management program, for purposes of the Coastal Zone Management Act of 1972 (P.L. 92-583; 16 U.S.C. 1451 et seq.) as amended, and any other federal act heretofore or hereafter enacted or amended that relates to the planning or management of coastal zone resources.
- (b) Except with respect to a facility defined in Section 25110, the commission may exercise any and all powers set forth in the Coastal Zone Management Act of 1972, as amended, or any amendment thereto, or any other federal act heretofore or hereafter enacted that relates to the planning or management of the marsh. In addition to any other authority, the commission may grant or issue any certificate or statement required pursuant to any such federal law that an activity of any person is in conformity with the provisions of this division.

## CHAPTER 4. RESPONSIBILITIES OF OTHER STATE AND FEDERAL AGENCIES

**29300. Minimizing Duplication and Conflicts.** It is the intent of the Legislature to minimize duplication and conflicts among existing state agencies carrying out their regulatory duties and responsibilities in connection with the subject matter of this division.

**29301. Authority of Existing State Agency.** Except as otherwise expressly provided in this division, enactment of this division does not increase, decrease, duplicate, or supersede the authority of any existing state agency.

This chapter does not limit in any way the regulatory controls over development provided in Chapters 5 (commencing with Section 29400) and 6 (commencing with Section 29500); except that the commission may not set standards or adopt regulations that duplicate regulatory controls established by any existing state agency pursuant to express statutory requirements or authorization.

**29302. Imposition of Judicially Enforcement Duty on State Agencies.**

- (a) This division imposes a judicially enforceable duty on state agencies to comply with, and to carry out their duties and responsibilities in conformity with, this division and the policies of the protection plan.
- (b) However, this division does not subject any agency of the state or federal government to the permit requirements of Sections 29502, 29503, and 29504.
- (c) Further, notwithstanding any policy of the protection plan to the contrary, nothing contained in this division requires any local government or state or federal agency to establish or meet a specific water quality standard in the marsh or to maintain a specific level of delta outflow.

**29303. Common Assumptions for Functional Plans for Marsh.** It is the intent of the Legislature that the provisions of this division, the protection plan, and the local protection program, or any component thereof, prepared pursuant to Chapter 5 (commencing with Section 29400) provide the common assumptions upon which state functional plans for the marsh are based in accordance with the provisions of Section 65036 of the Government Code.

**29304. Submission of Recommendations to State Agency.**

- (a) The Commission may periodically submit to any state agency recommendations designed to encourage such agency to carry out its functions in a manner consistent with the policies of the protection plan. The recommendations may include proposed changes in regulations, rules, and statutes.

- (b) Such state agency shall review and consider such recommendations and shall, in the event the recommendations are not implemented, report to the commission or the Governor and the Legislature its action and the reasons therefore within six months after receipt of the recommendations. Such report shall also include the agency's comments on any legislation which may have been proposed by the commission.
- (c) The procedures provided in this section do not relieve the commission of its responsibility to submit recommendations to other state agencies in a timely manner pursuant to existing procedures; and, to the maximum extent possible, the commission shall submit any recommendations authorized by subdivision (a) pursuant to such existing procedures.

**29305. Acquisition of Land or Water, Construction of Facilities.** The Wildlife Conservation Board shall acquire title to, or a lesser right or interest in, land or water that the board determines is appropriate for the purposes of the protection plan. When authorized by the board, the department shall construct facilities that are suitable for the purpose for which the acquisitions were made. The acquisitions shall be made in accordance with the Wildlife Conservation Law of 1947 (Chapter 4 (commencing with Section 1300) of Division 2 of the Fish and Game Code) and the criteria specified in Section 29009 of this code.

**29306. Wildlife and Fishery Management Programs.**

- (a) The department and the Fish and Game Commission are the state agencies that are primarily responsible for the establishment and control of wildlife and fishery management programs, and the San Francisco Bay Conservation and Development Commission may not establish or impose any controls with respect thereto that duplicate or exceed regulatory controls established by such agencies pursuant to express statutory requirements or authorization.
- (b) The department shall have primary responsibility for carrying out fish and wildlife management programs in the marsh in accordance with the management recommendations in the protection plan on lands owned by the state and under the jurisdiction, control, or supervision of the department.

**29307. Responsibilities of State Lands Commission.**

- (a) The State Lands Commission shall have the primary responsibility, in accordance with the provisions of Division 6 (commencing with Section 6001), for carrying out the management recommendations in the protection plan on lands owned by the state and under the jurisdiction, control, or supervision of the State Lands Commission, including tidelands, submerged lands, swamp and overflowed lands, and beds of navigable rivers and streams.
- (b) Prior to approval by the San Francisco Bay Conservation and Development Commission pursuant to Chapter 5 (commencing with Section 29400), the State Lands Commission shall review, and may comment on, the proposed local protection program, or any component thereof, that could affect state lands.

- (c) No power granted to any local government or district under this division, shall change the authority of the State Lands Commission over granted or ungranted lands within its jurisdiction or change the rights and duties of its grantees, lessees, or permittees.
- (d) Boundary settlements between the State Lands Commission and other parties and any exchanges of land in connection therewith shall not be a development within the meaning of that term as used in this division.
- (e) Nothing in this division shall amend or alter the terms and conditions in any legislative grant of lands, in trust, to any local government or district; except, that any development on such granted lands shall, in addition to the terms and conditions of such grant, be subject to the regulatory controls provided by Chapter 6 (commencing with Section 29500).

**29308. Federal Compliance.** All federal agencies, to the extent permitted under federal law or regulations or the United States Constitution, shall comply with this division and the policies of the protection plan.

## CHAPTER 5. RESPONSIBILITIES OF THE COMMISSION AND LOCAL AGENCIES

### Article 1. Local Protection Program

- 29400. Preparation of Plan.** The county shall prepare the local protection program for the marsh. The local protection program shall be consistent with the provisions of this division and the policies of the protection plan.
- 29401. Required Elements.** Within the marsh the local protection program shall include, but not be limited to, the following:
- (a) Any amendments to general or specific plans applicable to any area within the marsh necessary to bring such lands into conformity with this division and the policies of the protection plan.
  - (b) Enforceable standards for diking, flooding, draining, filling, and dredging of sloughs, managed wetlands, and marshes.
  - (c) Enforceable standards for operation of septic tanks and wastewater discharges.
  - (d) A management program prepared by the Suisun Resource Conservation District designed to preserve, protect, and enhance the plant and wildlife communities within the primary management area of the marsh, including, but not limited to, enforceable standards for diking, flooding, draining, filling, and dredging of sloughs, managed wetlands, and marshes.
  - (e) Zoning ordinances or zoning district maps, or both, designating principal permitted uses on lands within the marsh, which ordinances or maps shall designate the existing agricultural and wildlife habitat uses of such lands as principal permitted uses of such lands.
  - (f) Enforceable standards for development to ensure that any use of deep water industrial and port areas near Collinsville designated on the Suisun Marsh Protection Plan Map is in conformity with the policies of the protection plan.
  - (g) Enforceable standards for the design and location of any new development in the marsh to protect the visual characteristics of the marsh and, where possible, to enhance views of the marsh.
  - (h) Enforceable standards for development designed (1) to minimize soil erosion, especially during construction in areas of soil instability, (2) to require special provisions for surface and subsurface drainage, (3) to ensure that grading restores, rather than disrupts, natural patterns and volumes of surfaces runoff, and (4) to limit construction of impermeable surface over naturally permeable soils and geologic areas, all to control erosion, sedimentation, and runoff within the marsh.

- (i) Enforceable standards for development adjacent to creeks and watercourses to protect riparian habitat and to prevent waterway modification or vegetation removal that increases sedimentation or runoff in or into the marsh, to an extent that a significant, adverse environmental impact will occur in the marsh.

**29402. Inclusion of Ordinances Controlling Water Course Development.** Outside the marsh, but within the watershed, the local protection program shall include only ordinances controlling grading, erosion, sedimentation, runoff, and creekside development that meet the requirements of subdivisions (h) and (i) of Section 29401.

**29403. Additional Components of Program.** Within the marsh, in addition to the requirements of Sections 29400 and 29401, the component of the local protection program prepared by the county shall include the following:

- (a) A determination of the minimum size parcels necessary for long-term agricultural use and productivity.
- (b) Enforceable standards limiting or prohibiting land divisions or other development that are inconsistent with protection of the marsh and continued agricultural use.
- (c) Enforceable standards precluding agricultural uses by type and intensity that are inconsistent with the long-term preservation of the marsh.
- (d) Limitations on special assessments against agricultural lands for the provision of public services, the demand for which is not generated by agricultural uses on such lands.

**29404. Exclusion from Program.** Notwithstanding the provisions of Section 29403, the local protection program may not include any provision requiring particular crops to be planted and harvested on agricultural lands within or adjacent to the marsh or particular types or numbers of livestock to be grazed on such lands.

**29405. Water Course Development West of Route 680 and Outside City of Fairfield.** Notwithstanding the provisions of Sections 29400, 29401, 29402, and 29403, the local protection program for that portion of the secondary management area west of State Highway Route 680 and outside the city limits of the City of Fairfield as of January 1, 1977, may include only ordinances to be prepared by the county, in cooperation with the City of Benicia, which control grading, erosion, sediment, runoff, and creekside development and which meet the requirements of subdivisions (h) and (i) of Section 29401. Such ordinances shall take into consideration the seismic hazards and unusually erodible and landslide-prone soils at this location, and ensure that development, if any, in this portion of the secondary management area will not cause increased sedimentation within the marsh.

**29406. Area East of Route 680 and Within City of Fairfield.** Notwithstanding the provisions of Sections 29400, 29402, and 29403, the local protection program for the area that is located east of State Highway Route 680, southeast of State Highway Route 80, south of State Highway Route 12, and outside the marsh, and that is also located within the City of Fairfield, or within the sphere of influence of the City of Fairfield as such

- sphere of influence existed on January 1, 1977, may contain only (1) zoning ordinances implementing the land use designations of the Cordelia Area General Plan Diagram as adopted by the City of Fairfield on September 17, 1974, and which is a part of the Central Solano County General Plan, and (2) ordinances controlling grading, erosion, sedimentation, runoff, and creekside development that meet the requirements of subdivisions (h) and (i) of Section 29401.
- 29407. Improvements Related to Agricultural Uses.** Notwithstanding the provisions of Sections 29400, 29401, and 29403, the local protection program for that portion of the secondary management area west of Shiloh Road and south of State Highway Route 12 not prohibit construction of reasonable improvements (including construction of individual single-family dwellings) related to the long-term continuation of existing agricultural uses; nor shall the local protection program limit or prohibit divisions of agricultural land within or adjacent to this portion of the secondary management area if such divisions of land do not affect long-term continuation of compatible agricultural uses within, or adjacent to, the marsh.
- 29408. Continuation and Expansion of Nonagricultural Uses.** The local protection program shall not preclude the continuation and expansion of existing non-agricultural uses on sites in Section 11 or 12 of Township 4 North, Range 1 West, Mount Diablo Baseline and Meridian, that were zoned for such uses so that they do not cause any substantial, adverse impact on the marsh. The local protection program shall also provide that any other use of these sites in the future shall be compatible with the preservation of the marsh and its wildlife resources.
- 29409. Development of Solid Waste Disposal Site in Potrero Hills.** Notwithstanding the policies of the protection plan, the local protection program may not preclude the future development of a new solid waste disposal site in the Potrero Hills if it can be demonstrated that the construction and operation of solid waste facilities at that site would not have significant, adverse ecological or aesthetic impacts on the marsh.
- 29409.5. Encouragement of Continued Agricultural and Wildlife Uses.** The component of the local protection program prepared by the Solano County Local Agency Formation Commission shall conform to this division and the policies of the protection plan, which shall govern its decisions. That component of the local protection program shall be specifically designed to encourage continued long-term agricultural use of lands within and adjacent to the marsh and continued wildlife use of lands within the marsh.

## Article 2. Procedure for Preparation and Certification of the Local Protection Program

**29410. Requirements for Submission of Program to Commission.** The local protection program, if it is otherwise consistent with the requirements of this division, may be submitted to the commission if both of the following requirements are met:

- (a) It is submitted pursuant to a resolution adopted after at least one public hearing by each local government and district having jurisdiction in the marsh and the Solano County Local Agency Formation Commission stating the local protection program is intended to be carried out in a manner fully in conformity with this division.
- (b) It contains materials sufficient for a thorough and complete review.

**29412.5. Component Prepared by Suisun Resource Conservation District.** Notwithstanding Sections 29411 and 29412, the component of the local protection program prepared by the Suisun Resources Conservation District shall be submitted directly to the Commission not later than January 1, 1979. Such component shall include a water management program for each managed wetland in private ownership within the primary management area and shall specify all necessary development related to such management. Such component shall be processed by the commission pursuant to Sections 29413, 29414, 29415, and 29416 with the remainder of the local protection program submitted by the county.

**29413. Comments on Program.**

- (a) Not less than 15 days after submission of the local protection program, or any component thereof, pursuant to Section 29412, the commission shall request comments on the program from the Department of Fish and Game, from the State Department of Health, from all local governments and from such other governmental agencies and interested persons as the Commission may determine would be of assistance in reviewing the proposed program. The department or any such agency or person shall provide its comments within 60 days of the Commission's request, and failure to provide comments within such time shall be deemed to mean that the department or any such agency or person has no comments to make.
- (b) In addition to its responsibilities under sub division (a), the department shall specifically determine whether the component of the local protection program prepared by the Suisun Resource Conservation District is, in the opinion of the department, consistent with this division and the policies of the protection plan.
- (c) The Director of Health shall specifically determine whether the component of the local protection program prepared by the Solano County Mosquito Abatement District is in conformity with the applicable provisions of the Health and Safety Code.

- 29414. Public Hearing on Proposed Program.** After receipt of the comments requested under Section 29413, or the expiration of the 60-day time limit established in Section 29413, but in not event more than 90 days after receipt of the proposed local protection program, the Commission shall hold a public hearing on the proposed program. The Commission shall give notice pursuant to Section 66066 of the Government Code, commencing not less than 90 days before any such hearing.
- 29415. Certification of Program.**
- (a) After the public hearing, the Commission shall determine whether the proposed local protection program is in conformity with this division and the policies of the protection plan. The Commission shall certify the local protection program, or any component thereof, if the Commission finds that it in all respects meets the requirements of, and is in conformity with, this division and the policies of the protection plan. Certification of the local protection program, or any component thereof, shall require the affirmative votes of a majority of the Commission members. If, within 120 days of receipt of the local protection program, the Commission has not voted on whether or not to certify it, it shall be deemed certified.
  - (b) The Commission shall not certify the component of the local protection program, or any amendment thereto, prepared by the Suisun Resource Conservation District unless the department determines, in writing, pursuant to subdivision (b) of Section 29413, that such component or amendment is consistent with this division and the policies of the protection plan.
  - (c) The Commission shall not certify the component of the local protection program, or any amendment thereto, prepared by the Solano County Mosquito Abatement District unless the Director of Health has determined in writing, pursuant to subdivision (c) of Section 29413, that such component is in conformity with the applicable provisions of the Health and Safety Code.
- 29416. Failure to Certify Program.** If the Commission fails to certify the proposed local protection program, the Commission shall give written notice of its action, specifying the portions of the local protection program that are not in conformity with the provisions of this division and the protection plan, and shall return the proposed program to the county, which shall advise any affected local government or district, or the Solano County Local Agency Formation Commission if affected, of the Commission's action.
- 29417. Revision and Resubmission of Program.** The county may revise and resubmit the local protection program to the Commission in accordance with the provisions of this division. In the event the county declines to revise the local protection program and resubmit it to the Commission, any local government, district, or the Solano County Local Agency Formation Commission may submit its component of the local protection program to the Commission directly for approval in accordance with the provisions of this division.

**29418. Amendment of Program.**

- (a) After certification by the Commission, the local protection program, or any component thereof, may be amended by the appropriate local government or district, or the Solano County Local Agency Formation Commission if appropriate. Any such amendment shall meet, in all respects, the requirements of, and be in conformity with, this division and the policies of the protection plan.
- (b) Any proposed amendment to the local protection program, or any component thereof, shall be submitted directly to the Commission by the appropriate local government or district, or the Solano County Local Agency Formation Commission, if appropriate. If the amendment would affect any area in the marsh, it shall be processed by the Commission in accordance with the provisions of Sections 29413, 29414, 29416.
- (c) The Commission shall establish, by regulation, a procedure whereby amendments proposed by a local government, district, or the Solano County Local Agency Formation Commission to the local protection program, or any component thereof, may be reviewed and designated by the executive Director of the Commission as being minor in nature. Proposed amendments designated as minor shall not be subject to the provisions of Sections 29412, 29413, 29414, 29415, and 29416 and shall take effect on the 10th working day after such designation. Amendments that allow changes in uses may not be designated as minor.
- (d) For the purpose of this section an amendment of the local protection program, or any component thereof, includes, but is not limited to, any action by a local government, district, or the Solano County Local Agency Formation Commission that authorizes a use of a parcel of land other than that designated in the local protection program as a permitted use of such parcel.

**29419. Effective Date of Program.**

- (a) The local protection program, any component thereof, or any amendment, shall not take effect until it has been formally adopted by the responsible local government or district, or the Solano County Local Agency Formation Commission if responsible, and certified by the Commission.
- (b) Any amendment, or portion of any amendment, to the local protection program that would affect any area outside the marsh shall not be effective until the governing body of the local government or district has (1) held a public hearing on the proposed amendment, of which at least 30 days notice has been given; (2) notified the Commission and the county in writing of the nature and text of the proposed amendment at least 30 days prior to adoption, which notification shall be accompanied by a resolution adopted by the governing body stating that the amendment is consistent with this division and the policies of the protection plan; and (3) submitted the amendment as adopted to the Commission and the county.

**29420. Extension of Time for Submission of Program.**

- (a) Upon request to the Commission, the Commission shall grant to the county an extension of the time limit provided in Section 29412 for submission to the Commission of the local protection program, or of the time limit provided in Section 29411 for submission to the county of any local protection program component; provided, however, that no extension hereunder may authorize submission of the local protection program, or any component thereof, after January 1, 1980.
- (b) The Commission may extend, for a period not to exceed one year, any other time limitation established by this chapter for good cause.

**29421. Program not Certified or Certified Program Lacks Component.** If on or before January 1, 1981, the local protection program is not certified, or if the local protection program as certified lacks a component from one or more local governments, the Commission may take any of the following actions if it finds that, in the absence of the certified local protection program or component, (a) any new development in the marsh or in any area for which there is no local protection plan and (b) the development controls contained in Chapter 6 (commencing with Section 29500) are inadequate to ensure consistency with this division and the protection plan:

- (a) Prohibit or otherwise restrict, by regulations, the affected local government from issuing any permit or any type of entitlement for use for any development within the marsh, or any portion thereof, within the jurisdiction of such local government.
- (b) By regulation, extend the permit requirements of Chapter 6 (commencing with Section 29500) by requiring a permit from the Commission for any development within any area of the marsh under the jurisdiction of the affected local government.

**29422. Review of Certified Program and Components.**

- (a) The Commission shall, from time-to-time, but at least once every five years after certification, review the certified local protection program, and each component thereof, to determine whether such program is being effectively implemented in conformity with the policies of this division. If the Commission determines that the certified local protection program, or any component thereof, is not being carried out in conformity with this division or the protection plan, it shall submit to the affected local government or district, or the Solano County Local Agency Formation Commission, if affected, recommendations of corrective actions that should be taken. Such recommendations may include recommended amendments to the local protection program or any component thereof.
- (b) Recommendations submitted pursuant to this section shall be reviewed by the affected local government or district, or the Solano County Local Agency Formation Commission if affected, and, if the recommended action is not taken, the local government, district, or the Solano County Local Agency Formation Commission shall, within one year of such submission, forward to the

Commission a report setting forth its reasons for not taking the recommended action. The Commission shall review such report and, where appropriate, report to the Legislature and recommend legislative action necessary to assure effective implementation of the relevant policy of this division.

**29423. Effect of Prohibiting or Enjoining Application of Certified Program.** If the application of the certified local protection program, or any component or part thereof, is prohibited or enjoined by any court, any development that would otherwise be subject to such program or any component or part thereof, shall by operation of law be subject to the provisions of Chapter 6 (commencing with Section 29500) relating to control of development prior to certification.

**29424. Program Providing for Lesser Degree of Environmental Protection.** Nothing in this chapter shall permit the Commission to certify a local protection program, or any component thereof, which provides for a lesser degree of environmental protection than that provided by the plans and policies of any state regulatory agency.

## Article 2.5. Agricultural Lands

### 29427. Area to be Retained in Agricultural Use.

- (a) Prior to certification of the county's component of the local protection program, the county shall designate the area of the county adjacent to the marsh that should be retained in agricultural use, or in uses that are compatible with agricultural use, in order to ensure the long-term agricultural use and productivity of agricultural lands within the marsh.
- (b) Within such area the county shall do all of the following prior to certification of the county's component (1) determine the minimum size parcels necessary for long-term agricultural use and productivity, (2) establish enforceable standards limiting or prohibiting land divisions or other types of development that are inconsistent with protection of the marsh and continued agricultural use, (3) establish enforceable standards precluding agricultural uses by type and intensity that are inconsistent with the long-term preservation of the marsh, and (4) limit special assessments against agricultural lands for the provision of public services, the demand for which is not generated by agricultural uses on such lands.
- (c) No change by the county of any designation, standard, or limitation established pursuant to this section shall become effective until 30 days after it has notified the Commission of the proposed change and unless it makes a specific finding that the change will not adversely affect, directly or indirectly, the long-term agricultural use and productivity of agricultural lands within the marsh.

## Article 3. Preferential Assessment

### 29430. Land Used for Agriculture or Wildlife Habitat.

- (a) Any person who owns land within the marsh that is being used for the purpose of agriculture or wildlife habitat on January 1, 1978, or that is used for such a purpose at any time after that date, may petition the local government having jurisdiction over the land to enter into a contract pursuant to the California Land Conservation Act of 1965 (Williamson Act, Chapter 7, commencing with Section 51200 of Part 1 of Division 1 of Title 5 of the Government Code) or a wildlife habitat contract, as defined in subdivision (f) of Section 421 of the Revenue and Taxation Code.
- (b) Upon receipt of a petition pursuant to subdivision (a), such local government is authorized to, and shall, enter into such contract with the petitioning landowner.

- 29431. Inapplicability of Specified Acreage Limitations.** Neither the acreage limitations contained in Section 51230 of the Government Code and subdivision (f) of Section 421 of the Revenue and Taxation Code, nor the requirements of Section 51242 of the Government Code, shall apply to any contract entered into pursuant to this article.
- 29432. City to Succeed County Upon Annexation.** Notwithstanding the provisions of subdivision (b) of Section 51243 of the Government Code, upon the annexation by a city of any land within the marsh that is under contract with the county, the city shall succeed to all rights, duties, and powers of the county under such contract and the contract shall remain effective for all purposes even if (a) the land being annexed was within one mile of such city at the time that the contract was entered into, (b) the city had filed, and the local agency formation commission had approved, a protest to the contract pursuant to Section 51234.5 of the Government Code, and (c) the city had stated its intent not to succeed in its resolution of intention to annex.
- 29433. Cancellation or Nonrenewal of Agricultural or Wildlife Habitat Contracts.**
- (a) Notwithstanding Sections 51282, 51283, 51283.3, and 51285 of the Government Code, no contract with any person concerning land within the marsh and entered into by any local government pursuant to the California Land Conservation Act of 1965 (Williamson Act, Chapter 7, commencing with Section 51200 of Part 1 of Division 1 of Title 5 of the Revenue and Taxation Code) or pursuant to subdivision (f) of Section 421 of the Revenue and Taxation Code may be canceled, nor shall a notice of non-renewal of any such contract by any local government be effective, without the consent of the Commission, if such contract was in effect on or after September 27, 1974.
  - (b) The Commission may not consent to the cancellation or notice of non-renewal of any such contract unless the Commission finds that such cancellation or non-renewal is consistent with the provisions of this division and the protection plan.
  - (c) Other than as expressly provided herein, this section does not affect the right of any person or local government relating to the renewal or non-renewal of any such contract.

## CHAPTER 6. DEVELOPMENT CONTROLS

### Article 1. General Provisions

- 29500. Requirement of Permit.** In addition to obtaining any other permit required by law from any local government or from a state, regional, or local agency, on and after January 1, 1978, any person wishing to perform or undertake any development in the marsh shall obtain a marsh development permit.
- 29501. Nature of Permit; Conditions of Issuance; Appeal.**
- (a) Within the primary management area, a marsh development permit required under Section 29500 shall be obtained from the Commission and shall be in lieu of any other permit that may be required by law from the Commission.
  - (b) The Commission shall issue a marsh development permit under this section if it finds that the proposed development is consistent with either the provisions of this division and the policies of the protection plan or the certified local protection program, if any.
  - (c) Subsequent to certification of the local program, the Commission may define and delegate by regulation to the local government having jurisdiction the Commission's permit authority under this section over development that does not have significant impact on the marsh. Any local government to which the Commission has delegated any part of its permit authority under this section shall issue a marsh development permit under this section if it finds the proposed development is consistent with the local protection program.
  - (d) Any action by a local government on an application for a marsh development permit under this section may be appealed to the Commission pursuant to Section 29522. The Commission, on appeal, shall issue the permit if it finds the proposed development that is the subject of the appeal is consistent with the local protection program.
  - (e) Any delegation by the Commission of its permit authority under this section may be revoked at any time for good cause.
- 29501.5. Development Within Primary Management Area.** Notwithstanding the provisions of Section 29500, within the primary management area no marsh development permit shall be required for any development specified in the component of the local protection program prepared by the Suisun Resource Conservation District and certified by the Commission pursuant to Section 29415.

**29502. Issuance by Local Government.**

- (a) Except as provided in Section 29505, within the secondary management area, a marsh development permit required under Section 29500 shall be obtained from the local government having jurisdiction over the land in which the proposed development is to occur.
- (b) The local government may incorporate the procedures for issuing marsh development permits into its procedures relating to the issuance of any other land use or development permit.

**29503. Development Within Secondary Management Area.**

- (a) Prior to certification of the local protection program, a local government may issue a marsh development permit pursuant to Section 29502 only if it finds that the proposed development (a) is in conformity with this division and the policies of the protection plan and (b) will not prejudice the preparation of the local protection program.
- (b) Subsequent to certification, a local government may issue a marsh development permit pursuant to subdivision (b) of Section 29503 may be appealed to the Commission.
- (c) Prior to certification of the local protection program, the Commission, on appeal, shall issue the marsh development permit only if it finds that the proposed development that is the subject of the appeal (a) is in conformity with this division and the policies of the protection plan and (b) will not prejudice the preparation of the local protection program,
- (d) Subsequent to certification of the local protection program, the Commission, on appeal, shall issue the marsh development permit only if it finds the proposed development that is the subject of the appeal is in conformity with the local protection program. However, this subdivision does not authorize the Commission, on appeal, to consider any action by local government on a marsh development permit which is not appealable to the Commission by virtue of the provisions of subdivision (e) of this section.
- (e) The following actions of a local government on an application for a marsh development permit are not appealable to the Commission under this section:
  - (1) Any action denying an application for a marsh development permit.
  - (2) Any action that consists of a finding that a development is a principal permitted use under a zoning ordinance or zoning district map that has been certified by the Commission as part of the local protection program and any action that authorizes such development to the extent, but only to the extent, such action is based on such finding.

**29504. Appealable and Nonappealable Actions.**

- (a) Any action taken by a local government on an application for a marsh development permit pursuant to subdivision (a) of Section 29503, except an action denying such an application, may be appealed to the Commission.
- (b) Except as provided in subdivision (e) of this section, any action taken by a local government on an application for a marsh development permit pursuant to subdivision (b) of Section 29503 may be appealed to the Commission.
- (c) Prior to certification of the local protection program, the commission, on appeal, shall issue the marsh development permit only if it finds that the proposed development that is the subject of the appeal (1) is in conformity with this division and the policies of the protection plan and (2) will not prejudice the preparation of the local protection program.
- (d) Subsequent to certification of the local protection program, the commission, on appeal, shall issue the marsh development permit only if it finds the proposed development that is the subject of the appeal is in conformity with the local protection program. However, this subdivision does not authorize the commission, on appeal, to consider any action by local government on a marsh development permit which is not appealable to the commission by virtue of the provisions of subdivision (e) of this section.
- (e) The following actions of a local government on an application for a marsh development permit are not appealable to the commission under this section:
  - (1) Any action denying an application for a marsh development permit.
  - (2) Any action that consists of a finding that a development is a principal permitted use under a zoning ordinance or zoning district map that has been certified by the commission as part of the local protection program and any action that authorizes such development to the extent, but only to the extent, such action is based on such finding.

**29505. Development on Tidelands, Submerged Lands, or Other Public Trust Lands.** No person shall be required to obtain a marsh development permit from local government for any development on tidelands, submerged lands, or other public trust lands, whether filled or unfilled, or for any development by a public agency for which a local government permit is not otherwise required, but in such a case, a marsh development permit shall be obtained from the Commission. The Commission shall issue a marsh development permit pursuant to this section if the Commission finds that the proposed development is consistent with either this division and the policies of the protection plan or the certified local protection program, if any.

**29506. Terms and Conditions of Permit or Action Approved on Appeal.** Any permit that is issued or any development or action that is approved on appeal pursuant to this division shall be subject to such reasonable terms and conditions as the Commission determines will ensure that such development or action will be in accordance with the provisions of this division and the protection plan.

**29507. Vested Rights in Development.**

- (a) No person who has obtained a vested right in a development prior to January 1, 1978, or who has obtained a valid permit for development from the Commission pursuant to Title 7.2 (commencing with Section 66600) of the Government Code or from the Commission or any local government pursuant to former Chapter 9 (commencing with Section 1850) of Division 2 of the Fish and Game Code shall be required to secure a permit for the development pursuant to this division. However, no substantial change may be made in any such development or with respect to the activity authorized by such a permit without prior approval having been obtained under this division.
- (b) Any person who claims a vested right in a development and thereby an exemption from the requirements of this division shall, on or before January 1, 1979, notify the Commission in writing by filing a claim of exemption with the Commission. If any person does not file a claim of exemption on or before that date the development of such person shall be subject to the approval requirements of this division.
- (c) The Commission shall establish, by regulation, procedures, including public hearings, for determining claims of exemption and may require documentation or other competent evidence, including declarations under penalty of perjury or affidavits, to support any such claim.
- (d) The Commission shall take reasonable steps to notify persons of the provisions of this section, but the fact that any person did not receive such notice shall not extend the period within which a claim of exemption must be filed under this section.

**29508. Development Not Requiring Permit.** Notwithstanding any provision of this division to the contrary, no marsh development permit shall be required pursuant to this chapter for the following types of development and in the following areas:

- (a) Improvement to existing single-family residences.
- (b) Repair, replacement, reconstruction, or maintenance that does not result in an addition to, or enlargement or expansion of, the object of such repair, replacement, reconstruction, or maintenance. However, if the Commission determines that certain types of repair, replacement, reconstruction, or maintenance activities involve a risk of substantial adverse environmental impact, it shall require, by regulation, that a permit be obtained under this chapter.
- (c) The installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and any other development for which a marsh development permit is required and has been issued pursuant to this division. However, the Commission may, whenever it deems necessary, require, as a condition to the issuance of such a permit, reasonable measures for the mitigation of any adverse impacts on marsh resources, including scenic resources.

- (d) Any category of development, or any category of development within a specifically defined geographic area, that the Commission, by regulation, after public hearings, and by a two-thirds vote of its members, has described or identified with respect to which the Commission has found that there is no potential for any significant adverse effect, either individually or cumulatively, on the resources of the marsh and that such exclusion will not impair the ability of any local government or district or the Solano County Local Agency Formation Commission to prepare its component of the local protection program.

**29509. Permits in Cases of Emergencies.**

- (a) When immediate action by a person performing a public service is required to protect life and public property from imminent danger, or to restore, repair, or maintain public works, levees, dikes, utilities, or services destroyed, damaged or interrupted by natural disaster, serious accident, or on other cases of emergency, no permit from the Commission shall be required prior to commencing such action if within three days of the disaster or the discovery of the danger, whichever occurs first, the person performing such action notifies the executive director of the Commission of the type and location of the work undertaken pursuant to such action. Upon such notification, the executive director of the Commission may waive the requirements for a permit or other authorization for such work. However, this section does not authorize the permanent erection of structures valued at more than twenty-five thousand dollars (\$25,000).
- (b) The Commission shall provide, by regulation, for the issuance of marsh development permits by the executive director of the Commission, without compliance with the procedures specified in this chapter, in cases of emergency, other than an emergency as provided in subdivision (a) of this section, or for minor repairs or improvements.

**29510. Report to Legislature Regarding Appellate Procedure.** Not later than two years following certification of the local protection program, the Commission shall report to the Legislature regarding the operation of the appellate procedure in the secondary management area, as provided in subdivision (b) of Section 29504. Not less than 60 days prior to the date on which the report is required to be submitted to the Legislature, the report shall be made available, for review and comment, to each local government having jurisdiction within the marsh. Not later than 30 days prior to the date on which the report is required to be submitted to the Legislature, any comments by a local government shall be submitted to the Commission. Each such comment shall be included in the Commission's report, together with the Commission's response thereto.

## Article 2. Development Control Procedures

### 29520. Commission Procedures and Fees.

- (a) Except as expressly provided in this division, the Commission shall use the procedures set forth in Title 7.2 (commencing with Section 66600) of the Government Code for the submission, review, and issuance by the Commission of marsh development permits and claims of exemption.
- (b) The Commission or any local government may require a reasonable filing fee and the reimbursement of expenses for the processing by the Commission or the local government of any application by any person for a marsh development permit under this division. The funds received under this subdivision shall be deposited in the General Fund and shall be available for expenditure by the Commission only when appropriated by the Legislature.

### 29521. Adoption and Submission of Applications for Permits.

Not later than March 1, 1978, the Commission shall adopt procedures for the submission, review, and appeal of applications for marsh development permits to be issued by local government. Such procedures shall include reasonable provisions for notification to the Commission and other interested persons of any action by a local government pursuant to this division in sufficient detail to assure that a preliminary review of such action for conformity with the provisions of this division can be made.

### 29522. Authorization and Effect of Appeal.

- (a) Any appealable action on a marsh development permit for any development by a local government may be appealed to the Commission by any aggrieved person or by any two members of the Commission. Such action shall become final; after the 20th working day after receipt of the notice required by Section 29521, unless an appeal is filed within that time.
- (b) If an appeal of any action on a development by any local government is filed with the Commission, the operation and effect of such action shall be stayed pending the Commission's decision on the appeal.

### 29523. Hearing Requirement on Appeal.

The Commission shall hear an appeal unless it determines that the appeal raises no substantial issue as to the conformity of the proposed development with the provisions of this division, the local protection program, if in existence, and the policies of the protection plan.

### 29524. Hearing and Notice on Appeal.

- (a) The Commission shall provide for a public hearing de novo on any appeal brought pursuant to this division and shall give to any affected person a written public notice of the nature of the proceeding and of the time and place of the

public hearing. Notice shall also be given to any person who requests, in writing, such notice. A hearing on any appeal shall be set not earlier than 21 days nor later than 42 days after the date on which the appeal is filed with the Commission.

- (b) The Commission shall act upon an appeal within 21 days after the conclusion of the hearing pursuant to subdivision (a) and may approve, modify, or deny the application for the proposed development; and if no action is taken within the time limits specified in this subdivision and subdivision (a), the decision of the local government shall become final.
- (c) Thirteen (13) affirmative votes of members of the Commission, or of the Commission hearing an appeal, 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.
- (d) The applicant for a marsh development permit may waive any time limits prescribed in this section.

## CHAPTER 7. JUDICIAL REVIEW, ENFORCEMENT, AND PENALTIES

### Article 1. General Provisions

- 29600. Alternative Remedies.** The provisions of this chapter shall be in addition to any other remedies available pursuant to law.
- 29601. Cease and Desist Orders and Penalties.** The provisions of Chapter 4 (commencing with Section 66630) of Title 7.2 of the Government Code relating to cease and desist orders and penalties for violations thereof shall apply to all development for which a marsh development permit from the Commission, or the Commission hearing an appeal, may be required under this division.
- 29602. Writ of Mandate.** Any aggrieved person may seek judicial review of any decision or action of the Commission by filing a petition for a writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure within 60 days after such decision or action has become final.
- 29603. Review of Action Implementing Local Protection Program.** Any aggrieved person, including an applicant for a marsh development permit, or the Commission, may seek judicial review of any decision made or any action taken pursuant to this division by a local government that is implementing the certified local protection program, or any component thereof, whether or not such decision or action has been appealed to the Commission, by filing a petition for writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedures within 60 days after the decision or action has become final. The Commission may intervene in any such proceeding upon a showing that the matter involves a question of the conformity of a proposed development with the certified local protection program, or any component thereof, or the validity of any action taken by a local government to implement or amend the local protection program, or any component thereof. Any local government may request that the Commission intervene. Notice of any such action against a local government shall be filed with the Commission within five working days of the filing of such action. When an action is brought challenging the validity of the local protection program, or any component thereof or any amendment thereto, a preliminary showing shall be made prior to proceeding on the merits as to why such action should not have been brought pursuant to the provisions of Section 29602.
- 29604. Action to Enforce Duties Specifically Imposed on Commission.** Any person may maintain an action to enforce the duties specifically imposed upon the Commission, any government agency, any district, or any local government by this division. No bond shall be required for an action under this section.
- 29605. Action for Recovery of Civil Penalties.** Any person may maintain an action for the recovery of civil penalties provided in Section 29610 and 29611. Any penalties so recovered shall inure to the state and shall be deposited in the Bay Fill Clean-Up and

Abatement Fund established pursuant to Section 66647 of the Government Code. However, the person recovering such penalties shall be entitled to reimbursement for reasonable attorney's fees out of the penalties so recovered.

- 29606. Transfer of Action.** Any civil action under this division by or against a city or county, the Commission, a district, or any other public agency shall, upon motion of either party, be transferred to a county or city and county not a party to the action or to a county or city and county other than that in which the city, district, or other public agency which is a party to the action is located.

## Article 2. Penalties

**29610. Fine.**

- (a) Any person who intentionally or negligently violates any provision of this division shall be subject to a civil fine of not to exceed five thousand dollars (\$5,000).
- (b) In addition to any other penalties, any person who intentionally and knowingly commences any development in violation of this division shall be subject to a civil fine of not less than fifty dollars (\$50) and no more than five thousand dollars (\$5,000) per day for each day in which such violation occurs.
- (c) If any person negligently or intentionally violates a cease and desist order issued pursuant to Section 29601, then the penalties provided in subdivisions (a) and (b) of this section shall not apply and the penalties provided in Section 66641 of the Government Code shall apply.

- 29611. Exemplary Damages.** Except as provided in Section 818 of the Government Code, whenever a person has intentionally and knowingly violated any provision of this division, the Commission may maintain an action, in addition to an action under Section 29610, for the recovery of exemplary damages. In determining the amount to be awarded, the court shall consider the amount of such damages necessary to deter further violations.

- 29612. Disposition of Moneys Recovered.** Any moneys recovered by the Commission under this article shall be deposited in the Bay Fill Clean-Up and Abatement Fund established pursuant to Section 6647 of the Government Code.