

**MANAGEMENT PROGRAM**  
**FOR**  
**SAN FRANCISCO BAY**  
**BY**  
**THE SAN FRANCISCO BAY CONSERVATION**  
**AND**  
**DEVELOPMENT COMMISSION**

This publication was prepared with financial assistance from the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, under the provisions of the Federal Coastal Zone Management Act of 1972, as amended.

(As Amended Through April, 1979)

The San Francisco Bay Conservation and Development Commission (BCDC) consist of 27 members, who represent Federal State, and local governments and the general public. The Commission membership is as follows: (See BCDC website for current roster of Commissioners <<http://www.bcdc.ca.gov/commission.shtml>>)

#### **PUBLIC REPRESENTATIVES**

Joseph C. Houghteling, appointed by the Governor  
Cynthia Kay, appointed by the Governor  
Earl P. Mills, appointed by the Speaker of the Assembly  
Ms. Elizabeth Osborn, appointed by the Senate Rules Committee  
Thomas S. Price, appointed by the Governor  
Hans Schiller, appointed by the Governor  
Mrs. Dean A. Watkins, appointed by the Governor

#### **FEDERAL REPRESENTATIVES**

Col. John M. Adsit, representing the U. S. Army Corps of Engineers  
Paul DeFalco, Jr., representing the Environmental Protection Agency

#### **STATE REPRESENTATIVES**

Roy M. Bell, representing the Department of Finance  
Mrs. Barbara B. Eastman, representing the Regional Water  
Quality Control Board  
Donald L. Lollock, representing the Resources Agency  
William F. Northrop, representing the State Lands Commission

#### **LOCAL REPRESENTATIVES**

##### **COUNTY** (appointed by county board of supervisors)

Supervisor Richard Brann, Solano County  
Supervisor Sam Chapman, Napa County  
Supervisor James V. Fitzgerald, San Mateo County  
Supervisor John T. George, Alameda County  
Supervisor John L. Molinari, San Francisco County  
Supervisor Tom Powers, Contra Costa County  
Supervisor Helen V. Putman, Sonoma County  
Supervisor Denis Rice, Marin County  
Supervisor Geraldine F. Steinberg, Santa Clara County

##### **CITY** (appointed by the Association of Bay Area Governments)

Councilman Arthur Lepore, Millbrae  
Councilwoman Sherry C. Levit, Belvedere  
Councilman Frank H. Ogawa, Oakland  
Councilman Bryon D. Sher, Palo Alto

In addition, two Legislators are appointed to meet with the Commission and take part in its work to the extent allowed by their positions as Legislators.

## **MANAGEMENT PROGRAM FOR SAN FRANCISCO BAY**

### **INTRODUCTION**

This is the San Francisco Bay Conservation and Development Commission's (BCDC) Management Program for San Francisco Bay, approved by the Secretary of Commerce under Section 306 of the Coastal Zone Management Act of 1972. It is divided into two parts. Part One describes, in general terms, the BCDC Management Program, including the San Francisco Bay Plan and the Suisun Marsh Protection Plan, which together are the heart of the BCDC Management Program. It also describes the BCDC Management Program in more detail in terms of the requirements established by the Office of Coastal Zone Management for approval of segmented coastal zone Management Programs under Section 306 of the Coastal Zone Management Act. Part Two consists of several appendices and includes the San Francisco Bay Plan and the Suisun Marsh Protection Plan, copies of documents necessary for BCDC to meet Federal requirements, the text of relevant State laws, and other material.

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Memorandum of Understanding between the San Francisco Bay Conservation and Development Commission and the State Water Resources Control Board and the California Regional Water Quality Board, San Francisco Bay Region

## **PART ONE: CONTENTS OF MANAGEMENT PROGRAM**

### **General Management Policy Statement; Framework of Program Development and Implementation**

Nearly all of the policies and the implementing authority for the BCDC Management Program were developed and adopted by the Commission or the State Legislature prior to, and largely independently of, the Federal Coastal Zone Management Act of 1972. As a result, they are contained in separate comprehensive plans (the San Francisco Bay Plan and the Suisun Marsh Protection Plan), in individual pieces of comprehensive coastal zone management legislation (the McAteer-Petris Act and the Suisun Marsh Preservation Act of 1977), and in various other appendices to this program document. Consequently, Part One of this document is largely descriptive of the Management Program policies and implementing authorities contained in the appendices in Part Two. However, even though the actual Management Program policies and the implementing authorities are contained in Part Two, they are fully as much a part of the Commission's Management Program as they would be if they were set forth in full in this part of the program.

#### **1. The San Francisco Bay Plan**

##### **a. Major Conclusions and Policies**

###### **(1) The Bay**

The Bay is a single body of water, and the Bay Plan can be effectively carried out only on a regional basis.

###### **(2) Uses of the Bay**

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.

###### **(3) Uses of the Shoreline**

All desirable, high-priority uses of the Bay and shoreline can be fully accommodated without substantial Bay filling, and without loss of large natural resource areas. But shoreline areas suitable for priority uses—ports, water-related industry, airports, wildlife refuges, and water-related recreation—exist only in limited amounts, and should be reserved for these purposes.

###### **(4) Justifiable Filling**

Some Bay filling may be justified for purposes providing substantial public benefits if these same benefits could not be achieved equally well without filling. Substantial public benefits are provided by:

—Developing adequate port terminals, on a regional basis, to keep San Francisco Bay in the forefront of the world's

great harbors during a period of rapid change in shipping technology.

- Developing adequate land for industries that require access to shipping channels for transportation of raw materials or manufactured products.
- Developing new recreational opportunities—shoreline parks, marinas, fishing piers, beaches, hiking and bicycling paths, and scenic drives.
- Developing expanded airport terminals and runways if regional studies demonstrate that there are no feasible sites for major airport development away from the Bay.
- Developing new freeway routes (with construction on pilings, not solid fill) if thorough study determines that no feasible alternatives are available.
- Developing new public access to the Bay and enhancing shoreline appearance—over and above that provided by other Bay Plan policies—through filling limited to Bay-related commercial recreation and public assembly.

#### **(5) Effects of Bay Filling**

Bay filling is limited to the purposes listed above; however, any filling is harmful to the Bay because it has one or more of the following effects:

- Filling destroys the habitat of fish and wildlife. Future filling can disrupt the ecological balance in the Bay, which has already been damaged by past fills, and can endanger the very existence of some species of birds and fish. The Bay, including open water, mudflats, and marshlands, is a complex biological system, in which micro-organisms, plants, fish, waterfowl, and shorebirds live in a delicate balance created by nature, and in which seemingly minor changes, such as a new fill or dredging project, may have far-reaching and sometimes highly destructive effects.
- Filling almost always increases the danger of water pollution by reducing the ability of the Bay to assimilate the increasing quantity of liquid wastes being poured into it. Filling reduces the surface area of the Bay, the volume of water in the Bay, the capacity of the tidal basin, and affects currents; this reduces the ability of the Bay to maintain adequate levels of oxygen in its waters, and also reduces the tidal volume necessary to flush wastes from the Bay.

- Filling reduces the air-conditioning effects of the Bay and increases the danger of air pollution in the Bay Area. Reducing the open water surface over which cool air can move in from the ocean will reduce the amount of this air reaching the Santa Clara Valley and the Carquinez Strait in the summer—and will increase the frequency and intensity of temperature—inversions, which trap air pollutants and thus cause an increase in smog in the Bay Area.
- Indiscriminate filling will diminish the scenic beauty of the Bay.

(6) **Pressures to Fill**

As the Bay Area's population increases, pressures to fill the Bay for many purposes will increase. New flat land will be sought for many urban uses because most, if not all, of the flat land in communities bordering the Bay is already in use—for residences, businesses, industries, airports, roadways, etc. Past diking and filling of tidelands and marshlands have already reduced the size of the Bay from about 787 square miles in area to little more than 548. Although some of the diked land remains, at least temporarily, as salt ponds or managed wetlands, it has nevertheless been removed from the tides of the Bay. The Bay is particularly vulnerable to diking and filling for two reasons:

- **The Bay is shallow.** About two-thirds of it is less than 18 feet deep at low tide; in the South Bay and in the San Pablo Bay, the depth of the water two or three miles offshore may, at low tide, be only five or six feet or even less.
- **Ownership of the Bay is divided.** Private owners claim about 22 percent of the Bay (including extensive holdings in the South Bay) as a result of sales by the State Government 90 or more years ago. Cities and counties have received grants in trust of land from the State totaling about 23 percent of the Bay. The State now owns only about 50 percent of the Bay, and the Federal Government owns about 5 percent. The lands that are closest to shore, most shallow, and thus easiest to fill, are held by either private owners or local governments that may wish to fill for various purposes irrespective of the effects of filling on the Bay as a whole.

(7) **Water Quality**

Liquid wastes from many municipal, industrial, and agricultural sources are emptied into San Francisco Bay. Because of the work underway by the San Francisco Bay Regional Water Quality Control Board, the State Water Resources Control Board, and the U. S. Army Corps of Engineers, and the Bay-Delta Water Quality Control Program, the Bay Plan does not deal extensively with the problems of pollution control. But the entire Bay Plan is founded on the belief that water quality in San Francisco Bay can and will be maintained at levels sufficiently high to permit full public enjoyment and use of the Bay.

## (8) Fill Safety

Virtually all fills in the Bay are placed on top of Bay mud. The construction of buildings on such fills creates a greater number of potential hazards to life and property, during normal setting and during earthquakes, than does construction on rock or on dense, hard soil deposits. Adequate design measures usually can be taken, however, to reduce these potential hazards to acceptable levels, although it may be impossible to do so for some facilities.

The Commission has appointed an Engineering Criteria Review Board, consisting of leading geologists, soils engineers, structural engineers, and architects, to (a) establish safety criteria for Bay fills and structures built on fills, and revise the criteria as necessary; (b) review all except minor projects as to the adequacy of their safety provisions, and recommend changes if necessary; (c) develop an inspection system to ensure placement of fills according to approved designs; and (d) gather and publish data developed from specific fill projects. This work complements the functions of local building and planning departments, which are not presently staffed to provide soils inspections.

### b. Major Bay Plan Proposals

- Port expansion should be planned for Benicia, Oakland, Redwood City, Richmond, and San Francisco.
- Major shipping channels should be deepened from the Golden Gate to the Delta, and to Oakland, Redwood City, Richmond, and San Francisco.
- Waterfront land now used by industries that require access to deep water shipping should be continued in this use, and sufficient additional waterfront acreage should be reserved for future water-related industry.
  - New shoreline parks, beaches, marinas, fishing piers, scenic drives, and hiking or bicycling pathways should be provided in many areas. The Bay and its shoreline offer particularly important opportunities for recreational development in urban areas where large concentrations of people now live close to the water but are shut off from it. Highest priority should be given to recreational development in these areas, as an important means of helping immediately to relieve urban tensions.
- Airports around the Bay serve the entire Bay Area, and future airport planning can be effective only on a regional basis. The Bay provides an open area for aircraft to take off and land without having to fly over densely populated areas, and this is an excellent use of the water. But terminals and other airport facilities should be on existing land wherever feasible. Future airport development should be based on a regional airport plan. Airport expansion or construction on Bay fill should be permitted only if no feasible alternatives are available.

- Prime wildlife refuges in diked-off areas around the Bay should be maintained and several major additions should be made to the existing refuge system.
- Private investment in shoreline development should be vigorously encouraged. For example, shoreline areas can be developed in many places for attractive housing, which uses the Bay as a design asset.

**c. Carrying Out the Bay Plan**

The Commission also included in the Bay Plan several recommendations to the Legislature for carrying out the Bay Plan. Most of these were adopted by the Legislature. Under the McAteer-Petris Act as it now exists—and it has not changed substantially since 1969—as well as other existing State and Federal laws, the Commission carries out its Management Program for the Bay in two major ways: (1) through the administration of a permit system for work within those areas of the Commission’s jurisdiction under Section 66610 of the McAteer-Petris Act; and (2) coordination with other agencies which either regulate activities outside the Commission’s jurisdiction that may have a direct and significant impact on the Bay, or whose own activities may have such impacts.

**(1) Permit Jurisdiction in the Coastal Zone Outside the Suisun Marsh**

Under the McAteer-Petris Act (except as may be affected by the Constitution and applicable Federal laws and regulations), BCDC has permit jurisdiction over (a) all areas of the Bay subject to tidal action; (b) all marshlands lying between the Mean High Tide line and five feet above Mean Sea Level; (c) the first 100 feet of shoreline; (d) the salt ponds in the North and South Bays (large areas of open water diked-off from the Bay and used for salt production); (e) managed wetlands located mostly in the Suisun Marsh (wetland areas diked-off from the Bay and used largely for duck hunting and agriculture); and (f) the significant tributaries of the Bay to the extent they are subject to tidal action, with the exception of the Sacramento and San Joaquin Rivers. Within these areas, BCDC permits are required for practically all work, from the driving of a single pile to development on the largest scale. Permits are issued only if the proposed work or development is consistent with the McAteer-Petris Act and the Bay Plan.

To enforce the permit requirements of the McAteer-Petris Act, the Executive Director and the Commission are empowered to issue cease and desist orders. The Executive Director can issue a 30-day order requiring compliance with the BCDC law to any person who has undertaken, or is threatening to undertake, any activity inconsistent with the law. The Commission has the power to issue permanent orders. Intentional or negligent violation of a cease and desist order issued by the Executive Director or the Commission can result in civil liability of up to \$6,000.00 for each day the violation persist.

**(2) Management Network**

The Commission also recognizes that an effective Management Program requires the participation of agencies whose activities may affect the coastal zone. Consequently, the Commission also carries out its Management Program for the Bay

through a management network of Federal, State, regional, and local agencies. The management network augments BCDC's permit authority in the coastal zone in those cases where another agency is in a better position to regulate a use having a direct and significant impact on the Bay, or to regulate the impacts of that use. For example, other agencies have a major role in the regulation of air and water quality, a role to a great extent mandated by Federal law.

The management network also extends to the land and water areas of the nine Bay Area counties beyond the coastal zone. Within this area, the network is used to ensure that agency activities, or activities regulated by an agency, are consistent with the Management Program. For example, the Commission relies on the permit authority of the Corps of Engineers to obtain conformity with the Management Program in areas beyond the permit jurisdiction of the Commission. How this management network works is described more fully in Section 8, "Management Network," beginning on page 51.

## **2. Suisun Marsh Protection Plan**

Although the managed wetlands of the Suisun Marsh were placed within the Commission's jurisdiction by the 1969 amendments to the BCDC legislation making BCDC a permanent agency, the Legislature subsequently gave the Commission additional responsibilities for the Suisun Marsh. Under the Nejedly-Bagley-Z' Berg Suisun Marsh Preservation Act of 1974, the Commission in cooperation with the State Department of Fish and Game was directed to prepare the Suisun Marsh Protection Plan "to preserve the integrity and assure continued wildlife use" of the Suisun Marsh. In accordance with the requirements of the Preservation Act, the completed Protection Plan was submitted to the Legislature in December, 1976. The Legislature enacted the Suisun Marsh Preservation Act of 1977, which gave the Protection Plan the force of law and gave BCDC primary responsibility at the State level for carrying it out.

### **a. Major Conclusions and Policies**

#### **(1) Environment**

The Marsh and adjacent uplands provide a unique resource for a wide range of aquatic and wildlife species, because of the diverse habitats that lie in close proximity to one another. This occurs as a result of the natural estuarine character of the Marsh and the existence of extensively managed agricultural lands around the Marsh. The Protection Plan policies indicate that this diversity should be encouraged through special protection of existing habitats and maintenance of existing uses.

#### **(2) Water Supply and Quality**

The Marsh is located where the salt water of the Pacific Ocean and the fresh water of the Sacramento-San Joaquin River Delta meet and mix. However, diversions of fresh water from the Sacramento-San Joaquin system threaten the Marsh and the destruction of riparian habitat in the immediate watershed also threatens the Marsh. The Protection Plan recommends that water quality standards in the Marsh be met through adequate Delta outflows and that disruptions or impediments to runoff and stream flow in the Marsh watershed not be permitted if they would result in adverse effects on the quality of water entering the Marsh. The Protection Plan also recommends that riparian vegetation in the immediate vicinity of the Marsh be preserved and stream modification be permitted only to prevent flooding.



**(3) Natural Gas Resources**

The Protection Plan recognizes that important natural gas deposits are located beneath the Marsh and that depleted fields may be useful for natural gas storage. The Protection Plan, therefore, prescribes standards for future pipeline construction to ensure that any such construction will be consistent with protection of the fragile habitats of the Marsh.

**(4) Utilities, Facilities, and Transportation**

The Marsh, because it consists of a large expanse of relatively flat terrain, is attractive for utility routes. As with natural gas pipelines, the Protection Plan prescribes standards to ensure that utilities are installed and undergrounded in a manner consistent with protection of the Marsh.

**(5) Recreation and Access**

A major attraction of the Marsh for recreational use is its undisturbed open-space character. However, there is a potential conflict between public recreational use of the Marsh and the existing private recreational uses, primarily duck hunting on duck clubs left vacant for long periods of time. The Protection Plan recommends that additional land, not already used for managed wetlands, be acquired for public use on the periphery of the Marsh.

**(6) Water-Related Industry**

One of the major accomplishments of the Protection Plan was to strike a balance between preservation of the Marsh, a wildlife habitat of national and international importance, and use of lands adjacent to the Marsh for water-related industry. These lands, located in the Collinsville area at the southeast corner of the Marsh, provide some of the last undeveloped deep water frontage in the Bay and represent an important part of the total Bay Area inventory of water-related industrial sites. The Protection Plan provides that the portion of this area lying farthest from the Marsh can be developed for water-related industry. However, the Protection Plan also provides that the western half of the Collinsville site, the portion located closest to the Marsh, is to be maintained in its existing state to serve as a buffer between the Marsh wetlands and the adjacent industrial activity.

**(7) Land Use and Marsh Management**

The Protection Plan divides the Marsh into two areas: the primary management area and the secondary management area. The primary management area consists of the tidal marshes, managed wetlands, seasonal marshes, and the lowland grasslands of the Marsh. Because of the critical importance of these areas to Marsh wildlife, the Protection Plan recommends that existing land uses within the primary management area continue, and land and water areas should be managed so as to achieve the following objectives:

- Preservation and enhancement of Marsh habitat.
- Provision of habitat attractive to waterfowl.

- Improvement of water distribution and levee systems.
- Encouragement of agricultural and grazing practices consistent with wildlife use, waterfowl hunting, and elimination of mosquito breeding.
- Restoration of historic wetlands.

Surrounding the primary management area is an area consisting of upland grasslands and cultivated lands. The upland grasslands and cultivated lands provide habitat for Marsh-related wildlife, but more importantly, by their location and existing uses, they insulate the habitats in the primary management area from the adverse impacts of urban development and other upland land uses and practices incompatible with Marsh preservation. Except at Collinsville, the Protection Plan provides that existing grazing and agricultural uses should continue in the secondary management area, and that agricultural practices favoring wildlife use and habitat enhancement should be encouraged.

The Protection Plan also recognizes the direct relation of the watershed of the Marsh to the protection of the aquatic and wildlife resources in the Marsh. It recommends that controls over runoff, erosion, and sediment transfer be established within the watershed. It also recommends controls limiting disruption of riparian vegetation and habitat.

**b. Carrying Out the Protection Plan**

**(1) Local Protection Program**

The completed Suisun Marsh Protection Plan was submitted to the Legislature in December, 1976, as required by the Nejedly-Bagley-Z'Berg Suisun Marsh Preservation Act of 1974. During the 1977 session, the Legislature enacted the Suisun Marsh Preservation Act of 1977. This legislation is in Appendix III to this amended program, and it enacted into law most of the recommendations of the Protection Plan. It requires local governments and special districts to prepare a local protection program for the Marsh. Each local government or special district is to prepare a component of the local protection program for that portion of the Marsh within its jurisdiction. The completed local protection program, consisting of all the locally prepared components, must be consistent with the Preservation Act and the Protection Plan and must be submitted to BCDC. The program must include development controls designed to (a) protect the wetlands within the Marsh; (b) protect agricultural lands within the Marsh; (c) designate permitted land uses within the Marsh; (d) limit erosion, sedimentation, and water-runoff; (e) protect riparian habitat; (f) ensure that the use of the water-related industrial and port area at Collinsville is in conformity with the policies of the Protection Plan; and (g) ensure that new development in the Marsh is designed to protect the visual characteristics of the Marsh. After submission of the local protection program, BCDC must determine whether it is consistent with the Preservation Act and the Protection Plan.

**(2) Permit Jurisdiction in the Marsh**

Both before and after the BCDC certification of the local protection program, a marsh development permit is required for any development in the Marsh. BCDC issues the permit within the "primary management area," which includes the

wetlands within the Marsh. Local governments issue the marsh development permit within the “secondary management area,” which surrounds the primary management area and consists mainly of agricultural lands that are part of the Marsh ecological system.

**(3) Management Network**

The Commission relies on the same management network to carry out the Preservation Act and the Protection Plan as it does to assist in the implementation of the Bay Plan. Furthermore, Chapter 4 (beginning with Section 29300) of the Preservation Act spells out the duties of State and Federal agencies to comply with the Act. Of particular importance is Section 29302(a), which imposes a judicially enforceable duty on State agencies to comply with, and to carry out, their duties and responsibilities in conformity with the Preservation Act and the Protection Plan.

**3. Relation of the BCDC Management Program to Sections 302 and 303 of the Coastal Zone Management Act**

The findings and policies contained in Sections 302 and 303 of the Coastal Zone Management Act are fully reflected in the BCDC Management Program for San Francisco Bay. It was precisely because of public concerns identical to those expressed by Congress in Sections 302 and 303 of the Coastal Zone Management Act that the Legislature created BCDC in 1965. The Legislature gave BCDC the responsibility for developing a comprehensive plan for the Bay that would (a) protect the Bay as a great natural resource for the benefit of present and future generations; and (b) allow development of the Bay and its shoreline to their highest potential with a minimum of Bay filling. The result was the nationally acclaimed San Francisco Bay Plan. Its policies and recommendations, which were largely accepted by the Legislature and the Governor in making the BCDC a permanent agency in 1969, give high priority to the ecological, cultural, historic, and aesthetic values of the Bay, while at the same time allowing for orderly development in and around the Bay. Similar concerns led to the enactment of the Nejedly-Bagley-Z’Berg Suisun Marsh Preservation Act of 1974 and its successor, the Suisun Marsh Preservation Act of 1977.

Furthermore, as indicated in the national interest statement included in this submission, the national interest in the Bay has been considered from the very first days of BCDC planning. As a result, the Bay Plan and the Suisun Marsh Protection Plan provide for numerous facilities of national interest, and many Federal agencies play an on-going role in the Commission’s Management Program.

**Section 306 Requirements**

**1. Boundaries**

**a. The BCDC Segment**

For purposes of the Coastal Zone Management Act of 1972, as amended, the boundary of the BCDC segment of the coastal zone consists of the Commission’s permit jurisdiction under Section 66610 of the McAteer-Petris Act. The Commission’s permit jurisdiction includes:

—All areas of the Bay subject to tidal action, from the south end of the

Bay to the Golden Gate, and to the Sacramento River, including all sloughs, marshlands lying between Mean High Tide and five feet above Mean Sea Level, tidelands and submerged lands;

—The first 100 feet of the shoreline;

—Large areas of open water diked-off from the Bay and used in salt production;

—Those portions of the significant tributaries of the Bay that are subject to tidal action, with the exception of the Sacramento and San Joaquin Rivers.

The BCDC segment of the coastal zone also includes the Suisun Marsh, as defined in Sections 29101 and 29203 of the Suisun Marsh Preservation Act of 1977 (see Appendix III).

**b. Boundaries Outside San Francisco Bay**

The coastal zone outside San Francisco Bay is defined in Section 30103 of the California Coastal Act of 1976 as follows:

“Coastal Zone means that land and water area of the State of California from the Oregon border to the border of the Republic of Mexico, specified on the maps identified and set forth in Section 17 of that chapter of the Statutes of the 1975-76 Regular Session enacting this division, extending seaward to the state’s outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea. In significant coastal estuarine, habitat, and recreational areas it extends inland to the first major ridgeline paralleling the sea or five miles from the mean high tide line of the sea, whichever is less, and in developed urban areas the zone generally extends inland less than 1,000 yards....”

This boundary was determined by the Legislature of the State of California when it enacted the California Coastal Act of 1976 on the basis of recommendations made by the California Coastal Zone Conservation Commission.

**c. Determination of the Boundaries of the BCDC Segment of the Coastal Zone**

The extent of the Commission’s permit jurisdiction was determined by the State Legislature after debate and analysis of the recommendations submitted by the Commission in 1969 in the San Francisco Bay Plan. The extent of the Commission’s jurisdiction in the Suisun Marsh was determined by the Legislature in 1977 on the basis of recommendations of the Commission in the Suisun Marsh Protection Plan.

The Commission believes that the boundary of the BCDC segment of the coastal zone meets the requirements of the Coastal Zone Management Act of 1972, as amended, at this time for the following reasons:

## (1) **Segmentation**

The difference in boundaries between the BCDC segment of the California coastal zone and the remainder of the coastal zone under jurisdiction of the California Coastal Commission exists for historical reasons. When the California Coastal Act (Proposition 20) and the Coastal Zone Management Act were passed in 1972, BCDC had been in existence for seven years and had been managing its segment of the coastal zone as a permanent agency for over three years. In fact, the Bay was excluded from Proposition 20 largely because it was already effectively managed by BCDC under the McAteer-Petris Act and the San Francisco Bay Plan. This exclusion was carried over into the California Coastal Act of 1976 for the same reasons.

In short, the boundary difference arises from a situation unique in the United States. Nevertheless, the State recognizes the need ultimately for an integrated, state-wide coastal zone management program. But because the Legislature has only recently acted on the Coastal Commission's proposed management program for the remainder of the coastal zone, the State does not believe that an attempt should be made to integrate the two programs immediately or to establish identical boundaries. Instead, the Coastal Commission made the following recommendation to the Legislature in the Coastal Plan in 1976:

### **“Coordination with the San Francisco Bay Conservation and Development Commission**

Within 18 months after enactment of legislation to carry out the Coastal Plan, the Coastal Plan and the San Francisco Bay Plan shall be reviewed to assure a unified coastal management program. The review shall be performed jointly by the State coastal agency and the San Francisco Bay Conservation and Development Commission (BCDC) and shall determine the future relationship of BCDC to the overall State coastal management program, including consideration of possible changes in BCDC's existing regulatory authority and its area of jurisdiction. Recommendations for legislative implementation shall be presented to the Legislature by the coastal agency and BCDC within the 18-month period.”

This recommendation was included in the California Coastal Act of 1976, and the study has now been completed. The two commissions concluded that the programs of both agencies were adequate to protect the Bay and coastal resources, and the present relationship between the two agencies is satisfactory. They further concluded that certain things should be done with regard to boundaries to better relate BCDC's program to that of the Coastal Act. These are discussed subsequently under “Adequacy of the Boundary of the BCDC Segment,” page 13; and “Diked Wetlands,” page 15. The joint report was transmitted to the Legislature in June, 1978. The Legislature has not yet acted on the recommendations in the report.

## **(2) Biological and Physical Considerations**

Though the boundary of the BCDC segment of the coastal zone differs from that for the remainder of the coastal zone, the fundamental considerations in determining the BCDC boundary were the same as those used in determining the Coastal Management segment: the biological and physical characteristics of the coastal zone. During the planning process from 1965 to 1969, the Commission made detailed studies of the Bay and adjacent shore lands. From these studies, the Commission concluded that nearly all development activities in the Bay itself or in adjacent shorelands—the salt ponds, the marshes, the managed wetlands, and the adjacent shoreline—would have direct and significant biological and physical impacts on the Bay, and therefore all development should be regulated by the State through the BCDC. The Commission, therefore, recommended that its permit jurisdiction include all of these areas. This recommendation was accepted by the Legislature and enacted into law through amendments to the McAteer-Petris Act in 1969. The Legislature also subsequently gave the Commission jurisdiction over the ecologically important portions of major tributaries to the Bay, except for the Sacramento and San Joaquin Rivers. For permit purposes, these tributaries are treated the same way as the Bay itself.

The extent of the area subject to the provisions of the Suisun Marsh Preservation Act of 1977 was also determined primarily on the basis of the physical and biological characteristics of the Marsh. Within this area are all of the managed wetlands of the Marsh. Also included are key upland areas identified by the Commission and the Department of Fish and Game in the Suisun Marsh Protection Plan. These upland areas are significant because they have high wildlife values themselves and also because they contribute to the integrity and continued wildlife use of the Marsh wetlands.

The Commission also determined that certain measures ought to be taken in the Marsh watershed to reduce urban runoff, sedimentation, and destruction of riparian habitat. The Preservation Act, therefore, provides that within the Marsh watershed, local governments are to adopt and submit as part of the local protection program required by the Preservation Act, enforceable standards to minimize soil erosion, control grading, provide for adequate drainage, limit construction of impermeable surfaces over naturally permeable surfaces, and control development that disrupts riparian habitat.

## **(3) Other Considerations**

Some factors other than the biological and physical characteristics of the Bay were considered in determining the boundaries of the BCDC segment outside the Suisun Marsh because most of the coastal zone in the Bay Area was highly urbanized prior to the creation of BCDC in 1965. On the shoreline, in particular, most of the natural ecosystems had already been greatly altered, and except for air and water quality, which were already under the jurisdiction of other agencies, the biological and physical relationships of shoreline uses to the coastal waters of the Bay were either not important or difficult to define. At the same time, the degree of preexisting local government involvement in shoreline land use decisions meant that the Commission had to demonstrate a clear state-wide need for any specific shoreline land use controls.

The Commission ultimately concluded that the need for State regulation of shoreline land uses around the Bay lay in reserving the key sites identified in the Bay Plan as most suitable for the high-priority, water-oriented uses of regional benefit which required waterfront locations (ports, airports, water-related industry, and water-related

recreation), so that future pressures to fill the Bay and adjacent shorelands for such sites would be minimized. The Commission also concluded that, because the Bay shoreline was already highly urbanized, the most serious impact of development on the shoreline outside the priority use areas was the loss of public access to the Bay.

Therefore, in the Bay Plan as submitted to the Legislature, the Commission recommended that it be given permit authority over the first 1,000 feet of shoreline, except within the “priority use areas” designated in the Bay Plan, where jurisdiction should include all parcels within the boundary of the priority use area. Within the priority use areas, the Commission requested authority to ensure that any proposed development was consistent with the designation. In all other shoreline areas within the first 1,000 feet, the Commission recommended it be given the power to require maximum feasible public access as a condition of approving any shoreline development.

With one exception, the Legislature, which had to pass the necessary amendments to the Commission’s organic legislation, accepted the recommendations of the Commission. The exception was the inland extent of the shoreline boundary. The Legislature was persuaded that the Commission could provide adequate public access and reserve the needed shoreline sites by controlling the first 100 feet inland from the water’s edge, rather than the first 1,000 feet.

**(4) Adequacy of the Boundary of the BCDC Segment**

Because the Commission and the Legislature determined that any use in the Bay itself, the marshes, the salt ponds, the managed wetlands, and later the major tributaries, had a direct and significant impact on Bay waters because they required Bay fill, the inland boundary of the BCDC segment was intended to, and does, allow the Commission to control, through the BCDC permit system, all uses in those areas.

On the shoreline, the extent of the Commission’s jurisdiction is sufficient for it to control uses both within and outside of the priority use areas to the extent necessary to ensure compliance with the management program. Inside priority use areas, the Commission cannot issue a permit for development unless the proposed use is consistent with the priority use designation. Moreover, even though many of the priority use areas extend more than 100 feet from the shoreline, the Commission cannot issue a permit for development unless the proposed use is consistent with the priority use designation. This has been sufficient to control these areas because the value of most of these sites lies mostly in their shoreline frontage. By controlling that, the Commission effectively controls the use of the remainder of the site. As is described more fully subsequently, the Commission also uses the permit authority and the State environmental impact report process to ensure that the Bay Plan designations are maintained by local agencies beyond the 100-foot shoreline band.

Outside the priority use areas, the Commission can grant a permit for development only if the proposed project provides maximum feasible public access consistent with the project. Both inside and outside priority use areas, the Commission can insert conditions in permits relating to the uses of land and structures, intensity of uses, construction methods, and methods for dredging in order to reduce or eliminate any other adverse impacts on the Bay.

Although the Commission continues to believe that the extent of its shoreline jurisdiction is adequate for it to carry out its management program, comments during the review period prior to approval suggested that additional shoreline jurisdiction might be needed. In response to these comments, the Commission examined the adequacy of its shoreline band jurisdiction in the course of the study it did jointly with the California Coastal Commission on how the programs administered by the two commissions should be related. The consultant retained by the Coastal Commission and BCDC to develop the background information for the recommendations to the Legislature concluded that “for the present, BCDC’s shoreline jurisdiction is adequate to protect the public interest—as defined by the State Legislature—in both the priority and non-priority areas.”

The commissions concurred with their consultant’s conclusions and made the following recommendations to the Legislature for future action:

**“2. BCDC Jurisdiction Over Shoreline Priority Use Areas.** The McAteer-Petris Act gives BCDC jurisdiction over a 100-foot shoreline band around San Francisco Bay. Within certain areas of this shoreline jurisdiction, only certain water-oriented priority land uses—for example, ports, water-related industry, airports, wildlife refuges, and water-oriented recreation and public assembly—are permitted. In the remainder of the shoreline band, the power of BCDC is limited to the provision of maximum feasible public access. There appears to be no known example of an area mapped in the San Francisco Bay Plan for a priority use having been devoted to a use that would not be permitted by the Plan and only one example of the 100-foot shoreline band being of inadequate depth to assure adequate public access to the shoreline in connection with facilities actually built near the shoreline.

“However, because of the importance of reserving appropriate areas around San Francisco Bay for water-oriented priority uses, the BCDC should: (a) re-examine the areas reserved for designated water-oriented priority land use and make any changes it may find advisable; and (b) evaluate the adequacy of its jurisdiction over areas designated for water-oriented priority land uses, and if it determines the present jurisdiction to be inadequate it should examine all alternatives, including making recommendations to the Legislature.

“In addition, the BCDC should establish, in cooperation with local governments and regional, state and federal agencies, a system for monitoring development permits and changes of use within the full extent of each such priority use area so that it will receive adequate notice of and the opportunity to comment on any such proposed permit and/or change of use within such area that might be incompatible with the priority use designation made in the San Francisco Bay Plan. The BCDC should include the results of this monitoring



system in the annual reports that it must make to the Legislature and to its performance reports to the Office of Coastal Zone Management.”

The Commission’s permit authority also extends to matters relating to air and water quality within the BCDC segment of the coastal zone; however, the inland boundary of the BCDC segment of the coastal zone does not include all areas where uses might be located that affect coastal air and water quality. Rather, the Commission recognizes that comprehensive regulation of both air and water resources has ramifications far beyond any reasonable definition of the coastal zone, and that the existing agencies established by State law to deal with these matters have the necessary competence and authority. Consequently—and as required by the Coastal Zone Management Act—the Commission considers the air and water quality standards established by the Federal Water Pollution Control Act and the Clean Air Act, together with the State’s programs to meet them administered by the State Air Resources Control Board, the Bay Area Air Quality Management District, the State Water Resources Control Board, and the Regional Water Quality Control Board for the Bay Area, to be part of the BCDC management program. These agencies in turn recognize the BCDC management program for the Bay as the State management program for this segment of the coastal zone.

**d. Boundary Location**

The boundary of the BCDC segment of the coastal zone as defined in both the McAteer-Petris Act and the Suisun Marsh Preservation Act can be mapped, and under the Commission’s Regulations, any property-owner can obtain on request a determination of whether or not his or her property lies within this segment of the coastal zone.

**e. Excluded Federal Lands**

Section 304(a) of the Coastal Zone Management Act requires exclusion from the coastal zone of “lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.” The Attorney General of the United States and the Office of Coastal Zone Management have interpreted this clause to require exclusion of “those lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government, its officers or agents.”

The Commission does not fully agree with this interpretation, but will abide by it in the administration of its management program—in particular the so-called “Federal consistency” provisions—until such time as it is overturned in court or Section 304(a) is changed by Congress.

**f. Diked Wetlands**

The vast majority of diked wetlands that are ecologically part of San Francisco Bay—the salt ponds in the South and North Bay and the managed wetlands in the Suisun Marsh—are already under the jurisdiction of the Commission. Moreover, the Commission’s responsibility for protecting the managed wetlands in the Marsh was recently expanded by the passage of the Suisun Marsh Preservation Act of 1977.

Nevertheless, comments on the Commission's management program when it was first submitted suggested that the Commission's authority over salt ponds and managed wetlands was not adequate, and that the Commission should have jurisdiction over other diked wetlands adjacent to the Bay that were within the jurisdiction of the Corps of Engineers. In response to these comments, the Commission examined this situation in the study it did jointly with the California Coastal Commission on how the programs administered by the two commissions should be related. Based on this study, the commissions made the following recommendations to the California Legislature with regard to diked wetlands, salt ponds and managed wetlands:

**"4. Enact Legislation to Control Diked Wetlands.** Because of their natural resource value and the interrelationship between diked wetlands and the open waters of San Francisco Bay, and to provide for the comprehensive planning and management of the Bay ecosystem, the Legislature should enact a bill that authorizes and directs the BCDC to: (a) identify and study the diked wetlands surrounding San Francisco Bay that are not now subject to the jurisdiction of the BCDC; (b) establish, in cooperation with the California Department of Fish and Game, the relative resource value of each diked wetland area as it relates to the San Francisco Bay ecosystem; (c) recommend a legislative program for the protection of diked wetlands; and (d) protect the status of the diked wetlands while the protection program is being prepared by a temporary permit system under which BCDC could prevent development in diked wetland areas that could be inconsistent with the management program being prepared. The bill should include an appropriation adequate to carry out the necessary planning and regulation.

**"5. BCDC Should Study Salt Ponds and Managed Wetlands.** To determine the adequacy of BCDC's ability to manage future possible uses of salt ponds and managed wetlands, the BCDC should undertake, in consultation with the Coastal Commission, the State Lands Commission, and the California Department of Fish and Game, a study, to be completed by January 1, 1980, on the following aspects of the salt ponds and management wetlands in BCDC's jurisdiction: (a) the ownership of each area; (b) any legal questions with respect to the private ownership of and to the public rights (other than the police power), especially including the public trust, applicable to each area; (c) the economic prospects for the continued use of the areas for the salt business, hunting clubs, and agricultural purposes, including the current and project property tax levels affecting these properties; (d) a designation of the areas that are of particular importance for eventual reopening to the free flow of Bay waters; and (e) an evaluation of the adequacy of the McAteer-Petris Act for protecting salt ponds and managed wetlands, concluding with recommendations for changes that should be made in any State legislation."

The Commission has begun the study of diked wetlands; however, it is not seeking legislation at this time to give it interim control over these areas. The Commission believes that the existing Corps of Engineers permit authority (recently reaffirmed in the

1978 amendments to Section 404 of the Federal Water Pollution Control Act) provides sufficient protection for these areas pending completion of the BCDC study and any necessary action by the Legislature. The study is scheduled for completion by July 1, 1980, and any necessary legislation will be sought during the 1981 session of the Legislature.

The Commission will not be able to meet the timetable set forth in the study with regard to salt ponds and managed wetlands. There are two major reasons for this: post-Proposition 13 cutbacks have left the Commission with inadequate funds, even with Federal assistance, to carry out and complete this study by January, 1980, and still meet its other obligations, in particular funding the preparation of the local protection program for the Suisun Marsh required by the Suisun Marsh Preservation Act of 1977. Secondly, there appears to be no immediate threat to the salt ponds, as a recent special area planning effort at Redwood City indicates that most, if not all, of the salt ponds in the Bay will remain in salt production for some time. The Commission still plans to begin this study in 1980, depending on budget and staffing.

**g. Other Areas Outside the Coastal Zone**

To augment its management program for the coastal zone, the Commission also reviews projects and activities outside the Commission's permit jurisdiction. This review focuses primarily on the land and water areas in the nine Bay Area counties outside BCDC's permit jurisdiction, and it takes place through a "network" of legal authorities and institutional arrangements, such as the A-95 review process, the California Environmental Quality Act, review of and comment on Corps Public Notices, preparation of BCDC special area plans, and coordination with other local, regional, and State agencies. Described more fully in Section 8, "Management Network," the purpose of this network is to supplement the direct State control of land and water uses through the BCDC permit process in the coastal zone, and to influence projects and activities affecting the coastal zone but located outside it.

**h. The Delta**

The Sacramento-San Joaquin Delta is located just east of San Francisco Bay. Fresh water from both the Sacramento and San Joaquin River systems flows through the Delta into the Bay, where it mixes with the salt water from the ocean in the largest tidal estuary on the West Coast. Though once a marsh, nearly all of the Delta was diked off many years ago for agricultural use, and the farmland in the Delta is now some of the most fertile and productive in California.

Although the Delta is an important natural resource, it is not within the jurisdiction of either BCDC or the Coastal Commission; therefore, it is not included within the boundaries of the California coastal zone at present. Furthermore, the Coastal Zone Management Act does not require inclusion of the Delta in the California coastal zone because, unlike the waters along the remainder of the coastline, the water in the Delta is fresh and must remain so if it is to continue to be used for irrigation and as a source of drinking water.

In addition, several State agencies already deal with the most pressing Delta problems, and consequently the need for including the Delta within the State's coastal zone management program has not been urgent as elsewhere along the coastline. The State agencies involved include the State Water Resources Control Board (fresh water inflow and water quality), the Department of Water Resources (levee stability and

maintenance and management of water resources), the State Lands Commission (management of all public trust lands to ensure highest and best state-wide use and benefit), and the Resources Agency (comprehensive State planning for recreation). A regional agency, the Delta Advisory Planning Council, created by the counties of Contra Costa, Sacramento, San Joaquin, Solano and Yolo through a joint powers agreement, has also completed an advisory plan for its jurisdiction which includes, with minor exceptions, the ‘Legal Delta’ (Cal. Water Code, Section 12220).

Nevertheless, the boundaries of the California coastal zone should not be considered fixed for all time. Even though the Coastal Zone Management Act does not require inclusion of the Delta within the boundaries of the coastal zone, these boundaries will have to be reviewed from time to time in light of changing conditions. Specifically, as the counties constituting the Delta Advisory Planning Council have already indicated, the Delta (i.e., the area of the council’s jurisdiction) is a unique area of particular concern from a coastal perspective. Its ecological relationship to the rest of the coast, and especially to the Bay and the Suisun Marsh, is well-documented. Moreover, development pressures are increasing, particularly for water-related industry and for waterfront and recreational housing, to some extent because waterfront land for these uses is in increasingly short supply in the coastal zone. Water-related recreational use of the Delta is also increasing. All these uses compete with agriculture for the fertile soils of the Delta and indicate that the same trends that created the need for coastal zone management elsewhere in California are at work here also.

In California’s proposed coastal zone management program, the bulk of the coastline—where development pressures are greatest and issues most complex—will be managed under the provisions of the Coastal Act as administered principally by the Coastal Commission and local governments. San Francisco Bay and its shoreline will continue to be managed under the approach that has proven, over the past ten years, to be the nation’s most successful program in regulating the use of a largely urbanized coastline through the use of the Bay Plan, as administered by BCDC and other State agencies. The Suisun Marsh will be administered under the Suisun Marsh Preservation Act of 1977 and the Suisun Marsh Protection Plan. And the Delta, where a vast, rural area is just beginning to be exposed to development pressures, will for the immediate future not be addressed as part of the coastal zone management program, but will instead be managed by state agencies and local governments using existing regulatory authorities.

## **2. Permissible Uses**

### **a. Permissible Uses in the Bay Plan**

In its planning from 1965 to 1969, the Commission made an exhaustive analysis of all uses that might have an impact on San Francisco Bay. In particular, the Commission studied in detail the demands for Bay fill for certain uses because fill has historically had the greatest impact on the Bay by reducing its size and altering its ecology. The Commission also studied the need for State control of land use in and around the Bay to assure that the Bay Plan would be carried out.

From this emerged the Commission’s management program for the Bay, at the heart of which is the San Francisco Bay Plan. (See Part V of the Bay Plan, “Carrying Out the Bay Plan,” beginning on page 35.) It contains the following major conclusions with regard to permissible uses and priority guidelines:

- The Commission should have adequate controls over Bay filling and dredging; and over Bay-related shoreline development, including salt ponds and managed wetlands.
- Further fill in the Bay should be limited to the minimum necessary for certain high-priority, water-oriented uses possibly requiring additional fill, such as ports, airports, roads, bridges, marinas, water-related recreation, Bay-oriented commercial recreation, and Bay-oriented public assembly (e.g., hotels, restaurants, and specialty shops).
- Managed wetlands and salt ponds—as large areas of the Bay diked-off from the Bay many years ago and in private ownership—should continue in their present use as long as possible, and when no longer possible, every effort should be made to purchase these areas and reopen them to the Bay.
- Specific areas of the shoreline (shown as blue and green “priority use areas” on the Bay Plan Maps) should be reserved for high-priority water-oriented uses requiring a waterfront location in order to reduce future pressures for fill (e.g., waterfront recreational uses, ports, airports, and water-related industry); in other shoreline areas development should provide maximum feasible public access to the Bay.

In effect, by restricting Bay fill, the Commission determined that the only permissible uses of the Bay itself (and later of the “named waterways”) were those priority uses identified in the Bay Plan, i.e., ports, airports, roads, bridges, marinas, water-related recreation, Bay-oriented commercial recreation, and Bay-oriented public assembly (hotels, restaurants, and specialty shops). On the shoreline, in the priority use areas, only uses consistent with the priority use designation are permissible. Outside the priority use areas, any shoreline use is permissible that does not adversely affect the Bay and shoreline and also provides maximum feasible public access. In salt ponds and managed wetlands, only existing uses are permissible so long as they are economically feasible. If and when that is no longer the case, other uses would be permissible, provided that any development included maximum feasible public access and retained maximum feasible water surface area.

The Bay Plan is for the most part directly enforceable as the result of the 1969 amendments to the McAteer-Petris Act (the BCDC law). As is explained more fully in Section 7, “Legal Authorities,” permits are required for all development within the Commission’s jurisdiction, and by law all such development must be consistent with the McAteer-Petris Act and the Bay Plan before a permit can be issued.

Although uses affecting air and water quality were also addressed in the Commission’s planning (see Bay Plan Policies on Water Pollution, page 10, and on Smog and Weather, page 210), the Commission did not seek direct authority to regulate discharges into the Bay watershed or emissions into the Bay Area basin. This is because uses affecting air and water quality are often located beyond the coastal zone. Furthermore,

under the Porter-Cologne Act (the State water quality law), uses that have a direct and significant impact on coastal waters by discharging into the waters of the State are controlled by the State Water Resources Control Board and the Regional Water Quality Control Boards. These uses must meet waste discharge requirements set by the appropriate Regional Board, and uses that cannot do so are in effect precluded.

In addition, under State law, emissions in the San Francisco Bay Area must meet standards for air quality set by the Bay Area Air Pollution Control District. These standards are as strict, or stricter, than Federal standards, and apply throughout the Bay region, including all areas within the coastal zone as previously defined. Uses that cannot meet these standards are in effect not permissible.

**b. Permissible Uses in the Suisun Marsh Protection Plan**

The Suisun Marsh Preservation Act of 1977, and the Suisun Marsh Protection Plan generally limit permissible uses to existing uses. Within the primary management area described in the Protection Plan, which includes most of the Marsh wetlands, the existing use is overwhelmingly duck hunting preserves. Surrounding the primary management area are upland grasslands and cultivated lands that serve as a buffer area insulating the more sensitive habitats of the primary management area. The existing uses within the secondary management area are grazing and agricultural uses.

There are some limited exceptions to the general restriction of permissible uses to existing uses. In the Portero Hills area, a natural upland bowl located on the northern edge of the Marsh, the Preservation Act would permit development of a solid waste disposal site if it can be demonstrated that the construction and operation of a solid waste facility at the site would not have significant adverse ecological or aesthetic impacts on the Marsh. The Collinsville area at the southeast corner of the Marsh includes some vacant land that is extremely important for water-related industry, and the Protection Plan permits development of such industry, provided that a buffer zone is provided between the industrial activity and the wetlands of the Marsh. Some limited urban development is also permitted under the Act in the immediate vicinity if the City of Fairfield.

**c. Permissible Uses and the National Interest**

Uses that can be considered in the national interest are all permissible uses under the BCDC Management Program. These include ports; airports, facilities for energy production and transmission, such as power plants, petroleum off-loading facilities, pipelines, and utility routes; recreational facilities of an interstate nature, such as tourist facilities and parks; highways; national defense facilities; and wildlife refuges for migratory waterfowl. In addition, the maintenance of existing air and water quality standards by the Bay Area Air Quality Management District and the Regional Water Quality Control Board for the San Francisco Bay Region is also in the national interest because these standards are fully consistent with Federal air and water quality legislation.

### **3. Geographic Areas of Particular Concern**

#### **a. Areas of Particular Concern**

The geographic areas of particular concern are designated on the Bay Plan Maps and based upon the background reports that led to the Bay Plan. They include Bay marshland, which is shown on all Plan Maps. In addition, other areas important to fish and wildlife, such as shellfish beds and important habitats, are also shown. The Bay Plan policies and the Policy Notes on the Plan Maps indicate that these areas all must be protected.

Other areas deemed best suited to commerce and recreation are also designated on the Plan Maps as the priority use areas. Sites for future marinas, fishing piers, and other water-related recreational facilities are also shown on the Plan Maps.

Certain open water areas adjacent to the Bay but not subject to tidal action were also designated as areas of particular concern to the Bay and the Bay region. These are the managed wetlands, which are located primarily in the Suisun Bay area and provide a wildfowl habitat of nation-wide importance; and the salt ponds, which are located in the South Bay and the North Bay and are important to the climate at those locations. These areas are also shown on the Bay Plan Maps and the Bay Plan policies encourage their protection and continuance in their present use (duck hunting and agriculture for the managed wetlands, and salt production for the salt ponds) for as long as possible.

Although not shown on the Bay Plan Maps, generalized subsidence and fault zones susceptible to flooding and earthquake hazards are shown on page 16 of the Bay Plan in conjunction with the policies in Safety of Fills. These policies require rigorous review of all structures built on Bay fill or in areas susceptible to flooding within the Commission's jurisdiction. They also emphasize the need for proposed developments in areas outside the Commission's permit jurisdiction to be constructed so as to anticipate possible flooding, particularly in areas of subsidence such as the South Bay.

#### **b. Areas for Preservation and Restoration**

##### **(1) The Bay Itself**

The Bay Plan policies state the open water of the Bay should be preserved to the maximum feasible extent and filling should be limited to the minimum necessary for the high-priority, water-oriented uses specified in the McAtteer-Petris Act and the Bay Plan. Before a permit can be issued for any project, the Commission must find that the project is consistent with this policy.

##### **(2) Marshes and Mudflats**

The Bay Plan and the law place special emphasis on the preservation of existing marshlands and the adjacent mudflats. Fill can be permitted only for purposes providing substantial public benefits and then only if there is no reasonable alternative.

### **(3) Salt Ponds and Other Managed Wetlands**

Because the water surface area of the salt ponds and managed wetlands is important to the climate of the Bay Area to wildlife, and their present use is entirely consistent with the protection of the Bay as a natural resource, the Bay Plan Policies on Salt Ponds and Other Managed Wetlands (page 27) state that these areas should be preserved in their present uses as long as economically feasible. Restoration to tidal action should be considered when and if development is proposed.

In 1977, the State Legislature also passed the Suisun Marsh Preservation Act of 1977. A major element of this legislation is the preservation of the existing managed wetlands in the Suisun Marsh, and where possible, restoration of diked-off areas to either tidal action or greater biological productivity.

### **(4) Other Areas**

As part of the permit process, the Commission has also been requiring that diked-off areas be restored to tidal action as mitigation for large-scale fills. One example of this is the condition included in the permit for the Dumbarton Bridge (bridges are considered fill, but can be permitted as water-oriented uses), which required the sponsor of the project, the California Toll Bridge Administration, to provide over 200 acres of new Bay surface area to offset the 94 acres of fill required for the bridge. The Toll Bridge Administration, in cooperation with the Commission and affected local governments, prepared a plan to carry out this mitigation condition, and the sites identified are being acquired and turned over to regional and local park and open space agencies for development and management.

## **4. Federal Consultation**

In developing the BCDC Management Program for the Bay, the Commission has consulted with those Federal agencies interested in the Bay and Bay planning. These agencies include the Federal Aviation Administration, the U. S. Coast Guard, the Environmental Protection Agency, the Federal Housing Administration, the General Services Administration, the Bureau of Land Management, the Maritime Administration, the Bureau of Mines, the National Park Service, the Bureau of Outdoor Recreation (now the Heritage, Recreation, and Conservation Service), the Bureau of Reclamation, the Division of River Basin Studies of the U. S. Fish and Wildlife Service, the U. S. Army, the U. S. Army Corps of Engineers, and the U. S. Navy. All comments received from these agencies have been considered by the Commission in the same fashion as comments from State and local agencies and the general public.

### **a. Facilities of National Importance**

Because of the Federal participation in the development of the Bay Plan and the BCDC Management Program for the Bay, and because the Bay is a harbor and commercial center of nationwide importance, Bay planning has had to take national needs into consideration. As a result, Bay shoreline sites are reserved for all facilities of national importance. These include:



## **(1) Facilities for Energy Production and Transmission**

There are no known oil deposits in the Bay; however, gas wells can be and have been permitted. Storage and distribution facilities for petroleum products and refineries are all permitted uses of sites designated for water-related industry. (See Bay Plan Policies on Water-Related Industry, pages 17 and 18.) Petroleum off-loading facilities are a permitted port use. (See Bay Plan Policies on Ports, page 19.) Power plants, high voltage transmission lines, power distribution lines can be permitted, if certain conditions are met relating to aesthetics and the unavailability of alternative upland locations. (See Bay Plan Policies on Other Uses of the Bay and Shoreline, page 28.)

In addition, the Suisun Marsh Protection Plan provides for development, storage, and transmission of natural gas in the Suisun Marsh (see Protection Plan Policies on Natural Gas Resources, page 16); and for construction of new pipelines and electric transmission lines in or in the area of the Marsh (see Protection Plan Policies on Utilities, Facilities and Transportation, page 18).

Assembly Bill 1717, which included the Suisun Marsh Preservation Act of 1977, also contained special procedures for the siting of power plants within CDC's jurisdiction. These procedures are described in the Energy Facilities Siting Element beginning on page 82.

## **(2) Recreation (of an Interstate Nature)**

Recreational needs in the Bay Area were projected through the year 2020. These projections were based not only on local, regional and State needs, but also on interstate needs. As a result, the Bay Plan Maps include about 5,000 acres of existing shoreline parks, 5,800 acres of new parks, and 4,400 acres of military establishments (especially around the Golden Gate) are proposed as parks if and when military use is terminated. In addition, specific habitats needed to prevent the extinction of any species or to maintain and increase any species that would prove substantial public benefits are designated as Wildlife Areas on the Plan Maps. Since completion of the Bay Plan, the National Park Service of the Golden Gate National Recreation Area and the U. S. Fish and Wildlife Service have begun development of the San Francisco Bay National Wildlife Refuge in areas of the South Bay used by millions of migrating waterfowl.

The attraction and importance of the Bay to tourists was also recognized. Places like Fisherman's Wharf in San Francisco, downtown Tiburon and Sausalito in Marin County, and Jack London Square in Oakland are magnets that draw increasing numbers of out-of-state visitors every year, and the Bay Plan encourages the use of the Bay and shoreline for these purposes. Bay-oriented commercial recreation and public assembly are among the water-oriented uses for which some fill can be permitted under the McAteer-Petris Act.

More recently, the Commission completed the Suisun Marsh Protection Plan and the Legislature enacted the Suisun Marsh Preservation Act of 1977, which was based in larger part on the recommendations in the Protection Plan. The Preservation Act and the Protection Plan were specifically designed to protect and preserve the 89,000-acre Marsh, which is a major stopover on the Pacific Flyway and a wildfowl habitat of nationwide importance. The Marsh is currently heavily used for duck hunting, which the Protection Plan permits, and draws sportsmen from all over the western United States.

### **(3) Interstate Transportation**

Highways and airports can both be permitted on Bay fill if there is no feasible alternative upland location. There are, however, no current plans to locate any interstate highways in the Bay, and the Commission is participating in a study of regional airport needs, called for in the Bay Plan because of the lack of reliable existing information, to determine if there is a need for additional airport fill. Sites and expansion requirements for ports and harbors are fully covered in the Bay Plan Policies on Ports (page 19), and by the Bay Plan Maps, as is evident from the findings preceding the Port policies. The Port policies were based on regional, State, and national needs.

### **(4) Production of Food and Fiber**

The Bay region is already highly urbanized, and there is little, if any, prime agricultural land within the Commission's jurisdiction. There are no current proposals for mariculture, though this would be a permitted use of the Bay, and the Bay Plan places great emphasis on the protection of fisheries. (See Bay Plan, Part III, "The Bay as a Resource.")

### **(5) Preservation of Life and Property**

The need for flood and storm protection facilities was considered in the development of the Bay Plan. The Bay Plan Policies on "Safety of Fills" (page 17) emphasize the need to consider flood protection and earthquake safety in the design of projects on fill or near the shoreline. The commission's Engineering Criteria Review Board, which is composed of leading experts in the world in the areas of engineering and seismic safety, reviews every project on fill and many on the shoreline, as well.

### **(6) National Defense and Aerospace**

Military facilities in and around the Bay were considered to be the primary responsibility of the Federal Government, and because no reduction in military use of existing bases was then foreseen, the Bay Plan did not advocate the closing of any military installation. Rather, the Bay Plan recommended possible alternative uses for these facilities in the event, and only in the event, they were ever determined to be surplus to national defense needs. In the meantime, continued military use of these installations is fully consistent with the Bay Plan.

Since completion of the Bay Plan, military use of the Hunter's Point Naval Shipyard in San Francisco and Hamilton Air Force Base in Marin County has been terminated, at least for the time being. The Commission, through the staff, has been participating in the planning for future use of both these areas in accord with the Policy Notes on Bay Plan Maps 10 and 11.

### **(7) Historic, Cultural, Aesthetic, and Conservation Values**

The designations on the Bay Plan Maps of important habitat areas and appropriate sites for wildlife refuges, and the Bay Plan policies relating to the Bay as a resource, were developed on the basis of information provided by the relevant Federal agencies, particularly the Environmental Protection Agency; the Department of the Interior;

the U. S. Fish and Wildlife Service; and the Corps of Engineers. The Commission also maintains a continuing relationship with these agencies with regard to individual permit applications.

**(8) Mineral Resources**

The Bay Plan Policies on Shell Deposits (page 13) were adopted on the basis of reports that included information available from the Federal Government. In addition, dredging for sand can be permitted under the Dredging policies, pages 12-13. Other than natural gas, discussed above under Energy Production, there are no other significant mineral resources identified within the Commission's jurisdiction.

**b. The National Interest in San Francisco Bay**

In addition to considering the national interest in its planning for the Bay from 1965 to 1969, and in its planning for the Suisun Marsh from 1974 to 1976, the Commission has also attempted to define the national interest in the Bay specifically for the purpose of the Coastal Zone Management Act. This definition is in the form of a statement entitled "The National interest in San Francisco Bay," which has been circulated to those Federal agencies that appear to have an interest in San Francisco Bay. It is being included in the BCDC Management Program at this time to meet the specific requirements of the Coastal Zone Management Act and related regulations. It reads as follows:

**"San Francisco Bay is a National Resource.** San Francisco Bay is of more than local or even State importance; it is a resource of national significance. Visitors from across the country can enjoy the scenic beauty and recreational facilities of the Bay. Foreign goods bound for consumers in inland states, and United States products on their way to distant countries, pass through Bay Area ports. The Bay is also the largest tidal estuary on the West Coast and provides wildlife habitat of nationwide importance, particularly in and around the Suisun Marsh.

"Use of the shoreline and adjacent waters of the Bay for national defense and security is of paramount importance. National defense and security are therefore among the highest priorities in the management of the coastal zone in the Bay Area. The Bay is the site of several significant military installations, such as the Alameda Naval Air Station, Treasure Island, and the Mare Island Naval Shipyard, with defense missions necessarily requiring operational use of the coastal zone. In addition, Bay Area military installations are important components in their local areas, and represent a stable and substantial contribution to the Bay Area and State economy.

"Of equally high priority is the Coast Guard's use of the Bay and shoreline to carry out federally mandated programs for the protection of life and property at sea, for the safety of navigation through aids to navigation and vessel traffic service programs, and for the protection of the marine environment.

**“The Federal Coastal Zone Management Act.** Recognizing the distinct and irreplaceable value of this country’s entire coastline as a national resource, the United States Congress enacted the Coastal Zone Management Act of 1972 (PL 92-583), which states, ‘...it is national policy...to restore or enhance, the resources of the nation’s coastal zone for this and succeeding generations’ (Section 303(e)). This language, to a considerable degree, indicates an objective similar to the pioneering efforts of California in creating the San Francisco Bay Conservation and Development Commission (BCDC), the agency which since 1969 has been carrying out the San Francisco Bay Plan, and which since 1976 has been carrying out the Suisun Marsh Protection Plan. Together these two plans form the core of California’s management program for San Francisco Bay.

**“Consideration of the National Interest in the Siting of Facilities.** One of the requirements of the Federal Act is that the BCDC Management Program provide ‘for adequate consideration of the national interest in the siting of facilities necessary to meet requirements which are other than local in nature’ (Section 30(c)(8)). And recognizing its responsibilities to the rest of the nation in its planning for the Bay, California, through the Commission, has made every effort to consider the national interest in the siting of facilities. California asked for and received extensive assistance and cooperation from several Federal agencies in the preparation of the Bay Plan and the Suisun Marsh Protection Plan. And in the years since completion of both plans, the Commission has developed on-going cooperative relationships with those Federal agencies whose activities to date have related most directly to San Francisco Bay. These agencies include the Maritime Administration, the National Park Service, the U. S. Fish and Wildlife Service, the National Marine Fisheries Service, the United States Geological Survey, the Army, the Navy, and the U. S. Army Corps of Engineers.

“As a result, the BCDC Management Program, and in particular the policies of the Bay Plan and the Suisun Marsh Protection Plan, recognize national defense and security as important aspects of the national interest, because without the attainment of such objectives, all other goals and objectives can be threatened. On the issue of energy, both plans also identify waterfront sites suitable for energy-related facilities, such as power plants, refineries, and petroleum off-loading facilities, that may be needed to meet state and national energy needs. The policies of both plans also reflect the ever-increasing popularity of the Bay as an out-of-state tourist destination by giving facilities for recreational and other public-oriented uses a high priority along the Bay shoreline. Other facilities of national importance, such as ports, airports, military bases, Coast Guard facilities, navigational channels, and wildlife refuges were also fully considered, and, where appropriate, were included in the Bay Plan.

**“Planning for Federal Activities.** The national interest in the Bay also includes consideration of Federal agencies’ planning activities for facility construction, grant programs, and regulatory programs. To

bring these activities within the context of the comprehensive planning called for in the Federal Coastal Zone Management Act, the Act provides that 'each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs' (Section 307(c)(1)). The Act further provides that 'any Federal agency which shall undertake any development project in the coastal zone of a state shall ensure that the project is, to the maximum extent practicable, consistent with approved state management programs' (Section 307(c)(2)). However, the Act also excludes 'from the coastal zone...lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents' (Section 304(a)).

"This exclusion has been interpreted by the Attorney General of the United States to mean all lands owned, leased, held in trust or whose use is otherwise subject solely to the discretion of the Federal Government, its officers or agents. The Commission will abide by this opinion in the administration of its Management Program until such time as it is overturned in court or Section 304(a) is changed by Congress.

"Planning for the areas surrounding Federal lands should be coordinated with local Federal representatives so that, to the maximum extent practicable, these areas are used in a manner consistent with national needs. And just as Federal lands should be protected from incompatible surrounding areas by the BCDC Management Program, it is anticipated that all Federal agencies, being equally aware that environmental problems do not respect jurisdictional boundaries, will do their utmost to comply with the BCDC program, as required by the Coastal Zone Management Act. In this regard, although there is general support for the Bay Plan objectives among Federal agencies, there may be some disagreement in applying the policies of both plans to particular circumstances. Nevertheless, continued cooperation can ensure that the national interest is protected through uniform application of either plan's policies by whichever local, State, or Federal agency has regulatory jurisdiction. Where the Bay Plan or the Suisun Marsh Protection Plan would conflict with an overriding national need under circumstances unforeseen when the relevant plan was being prepared, it may be necessary to amend or, in exceptional circumstances, override policies in the relevant plan in the national interest. Such cases can be expected to be rare. Except for national defense and security needs as established by the President and Congress, the determination of national interest needs, along with any measures necessary to mitigate the adverse impacts of meeting those needs, should be made cooperatively by the affected local, regional, State, and Federal agencies.

“Because Federal lands are excluded from the coastal zone in the Bay Area in an interim basis, development projects on those lands may not be subject to Section 307(c)(2) of the Coastal Zone Management Act, but such projects must be consistent with the BCDC Management Program to the maximum extent practicable if they significantly affect the coastal zone. Furthermore, under Section 307, the final decision, short of litigation, on the extent to which Federal activities directly affecting the coastal zone will be consistent with the BCDC Management Program rests with the Federal Government. However, Federal agencies, in particular the Navy, which is the Federal agency most dependent on coastal installations for its continued operations, have displayed increasing sensitivity to environmental issues in their operations. The Navy has also cooperated in the development and implementation of the BCDC Management Program by making its interests known and, in the past, entering into memoranda of understanding with BCDC on individual projects. Furthermore, it is Navy policy to conduct Navy activities, to the maximum extent practicable, consistent with the Bay Plan and the Suisun Marsh Protection Plan, as long as national defense objectives are protected. To this end, the Navy intends to permit review, subject to security restrictions, of its master plans, general development maps, and offshore operating area requirements, for comment and recommendation by the agencies responsible for carrying out the BCDC Management Program. Agencies within the Department of Defense should also, subject to national defense and security restrictions, continue to enter into memoranda of understanding with the Commission with regard to projects that would otherwise require BCDC permits, or prepare and submit to the Commission determinations of consistency for such projects pursuant to the Federal consistency regulations issued by the Department of Commerce (15 C.F.R. Sec. 930.1-930.145).

“Other Federal agencies have indicated their willingness to cooperate in a similar manner. There has, for example, been extensive cooperation with the Army Corps of Engineers, which shares regulatory authority with BCDC over the waters and wetlands of the coastal zone, and with the Environmental Protection Agency on air and water quality standards and dredge disposal criteria. Through a continuation of this discussion, negotiation, and arbitration, when necessary, among local, State, and Federal interests differences can be addressed cooperatively. Only in this way can the coastal zone in the Bay Area be treated as an interrelated environmental and economic system.”

**5. The BCDC Management Program and Section 307 of the Coastal Zone Management Act (Federal Consistency)**

**a. Federal Requirements**

Section 307 of the Coastal Zone Management Act includes what are generally referred to as the “federal consistency” provisions. These provisions require the following:

— **Federal agency activities:**

“(c)(1)(A) Each federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved state management programs. A Federal agency activity shall be subject to this paragraph unless it is subject to paragraph (2) or (3).”

“(c)(1)(B) [Omitted].”

“(c)(1)(C) Each Federal agency carrying out an activity subject to paragraph (1) shall provide a consistency determination to the relevant State agency designated under section 1455(d)(6) of this title at the earliest practicable time, but in no case later than 90 days before final approval of the Federal activity unless both the Federal agency and the State agency agree to a different schedule.”

— **Federal development projects:**

“(c)(2) Any Federal agency which shall undertake any development project in the coastal zone of a state shall ensure that the project is, to the maximum extent practicable, consistent with the enforceable policies of approved state management programs.”

— **Federal licenses and permits:**

“(c)(3)(A) After final approval by the Secretary of a state’s management program, any applicant for a required Federal license or permit to conduct an activity, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the state’s approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state, or its designated agency, a copy of the certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such certifications, and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practicable time, the state, or its designated agency, shall notify the Federal agency concerned that the state concurs with or objects to the applicant’s certification. If the state, or its designated agency, fails to furnish the required notification within six months after receipt of its copy of the applicant’s certification, the state’s concurrence

with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state, or its designated agency, has concurred with the applicant's certification, or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this title or is otherwise necessary in the interest of national security."

— **Federal assistance:**

"(d) State and local governments submitting applications for Federal assistance under other Federal programs, in or outside of the coastal zone, affecting any land or water use or natural resources of the coastal zone shall indicate the views of the appropriate state or local agency as to the relationship of such activities to the approved management program for the coastal zone. Such applications shall be submitted and coordinated in accordance with the provisions of Title IV of the Intergovernmental Coordination Act of 19687 (82 Stat. 1098). Federal agencies shall not approve proposed projects that are inconsistent with the enforceable policies of a coastal state's management program, except upon a finding by the Secretary that such project is consistent with the purposes of this title or necessary in the interest of national security."

In summary, Section 307 requires that Federal activities directly affecting the coastal zone and federal development projects in the coastal zone must be consistent to the maximum extent practicable with a Federally-approved state coastal management program. In addition, Federal agencies are also constrained from taking the following actions unless a state has found that proposed activities would be consistent with its management program:

- Issuing a license or permit for any activity affecting the coastal zone; and
- Providing financial assistance to state or local government proposals affecting the coastal zone.

Under Section 307(c)(3)(B), Federal agencies also may not grant a license or permit for an activity affecting the coastal zone covered by a plan for the exploration or development of, or production from, areas leased under the Outer Continental Shelf Lands Act (OCS) if the activity is not consistent with a state's management program. However, all OCS consistency determinations in California will be made by the California Coastal Commission, and this aspect of Federal consistency will not be addressed further in this program.



Federal activities, including development projects undertaken by Federal agencies on Federally owned lands, are subject to the Federal consistency provisions when the actions affect the coastal zone under the jurisdiction of the BCDC Management Program.

A state finding that a federal license or permit activity or a federal assistance activity would be inconsistent with the state coastal management program can be appealed to the Secretary of Commerce who can overrule the state and allow the proposed activity to be conducted if it is found that the proposed action is either consistent with the objectives of the Coastal Zone Management Act or necessary in the interest of national security.

**b. Administration of the Federal Consistency Provisions**

The Commission intends to carry out its responsibilities in connection with the Federal consistency provisions as follows:

- (1) **Federal Activities Affecting the Coastal Zone and Federal Development Projects Within the Coastal Zone**
  - (a) **Consistency of Federal Activities and Federal Development Projects That Would Require a Commission Permit Under the McAteer-Petris Act or the Suisun Marsh Preservation Act If Undertaken By a Non-Federal Entity.**

For Federal agency activities, the federal agency determines whether its activity will affect the State's coastal zone. However, if a Federal agency is undertaking any activity, including any activity on excluded Federal lands, that would require a permit under the McAteer-Petris Act or the Suisun Marsh Preservation Act of 1977 if it were being undertaken by anyone other than a Federal agency, the Commission will presume that the activity will affect the coastal zone and the Federal agency will either need to provide a consistency determination or negative determination pursuant to CZMA regulation at 15 C.F.R. Part 930, Subpart C. The Federal agency shall seek Commission concurrence with its consistency determination or negative determination by submitting to the Commission for its concurrence a determination by the Federal agency that the proposed activity is consistent to the maximum extent practicable with the Commission's Management Program or will not affect the State's coastal zone.

For Federal agency activities that the Federal agency determines will have coastal effects the consistency determination will be used to assist the Federal agency in assuring that the Federal activity is consistent to the maximum extent practicable with the BCDC Management Program. BCDC will hold a public hearing on consistency determination, unless the activity would qualify as a "minor repair or improvement" or for the issuance of a regionwide permit or an abbreviated regionwide permit under the Commission's regulations. In the latter case, the consistency determination will be processed by the Commission staff accordingly.

If the activity is located in the Suisun Marsh, as defined in Section 29101 of the California Public Resources Code, any local government or other public agency that has a component in the local protection program certified by the Commission under the Suisun Marsh Preservation Act of 1977 will be invited to participate in the public hearing. It will assist the Commission's deliberations by presenting

a determination regarding the consistency of the Federal action with its component of the certified local protection program.

If the Commission determines that the proposed activity or development is consistent to the maximum extent practicable with the Management Program, it will concur with its consistency determination. If the Commission does not agree that the proposed Federal activity is consistent to the maximum extent practicable with the Management Program, it will either concur with conditions that would make the activity consistent or object to the consistency determination.

If a Federal agency is unable to obtain the Commission's concurrence to a consistency determination, it may nevertheless decide to go forward with the activity. The Commission may then request the Secretary of Commerce to seek to mediate the serious disagreement as provided by Section 307(h) of the Coastal Zone Management Act, or it may seek judicial review of the dispute.

If a Federal agency submits a consistency determination to the Commission, a Federal agency must submit a brief statement of consistency, a detailed description of the proposed activity, of all associated facilities, and of all anticipated coastal effects and an evaluation of the relevant enforceable policies of the BCDC management program. The Federal agency shall also submit comprehensive data and information sufficient to support these conclusions and commensurate with the expected coastal effects. If a Federal agency is aware that a proposed activity is not fully consistent with all mandatory policies, the Federal agency's consistency determination shall describe the legal authority that prohibits full consistency. Federal regulations provide that the Federal agency must submit the consistency determination at least 90 days prior to final approval of the Federal agency activity unless both the Federal agency and BCDC agree to an alternative schedule.

Furthermore, this information should be submitted at the earliest practicable time and, at a minimum, must be submitted in time for the Commission to concur with the consistency determination using its normal procedures before the Federal agency commences the activity.

**(b) Federal Activities Not Requiring CZMA Review and Exceptions**

Except as provided below, a consistency determination will not be required for an activity undertaken by a Federal agency when the activity would also not require a permit under the McAteer-Petris Act or the Suisun Marsh Preservation Act if it were being undertaken by anyone other than a Federal agency. There are three exceptions: (1) if the Federal agency itself determines that the activity will directly affect the BCDC segment of the coastal zone; (2) if the Federal agency determines that its activity will not affect the coastal zone, but the Commission determines that the activity will affect the BCDC segment of the coastal zone and notifies the Federal agency of this determination in a timely manner as provided for the 15 C.F.R. Sec. 930.35 and the Federal agency agrees; and (3) if the activity is located outside the Suisun Marsh but within the Marsh watershed, as defined in the Suisun Marsh Preservation Act of 1977. If a concurrence with a consistency determination is needed from the Commission, it will be processed according to the procedures described in paragraph (1)(a), above.

(c) **BCDC Monitoring and Review of Federal Activities in or Affecting the Coastal Zone**

To assist in implementing the policy and procedures set forth in paragraphs (a) and (b) above, the Commission will monitor all Federal activities in the nine Bay Area counties that may affect the BCDC segment of the coastal zone. This monitoring effort will rely upon existing inter-government coordination processes—the federal grant review process, review of environmental impact statements, and review of Corps of Engineers public notices—supplemented as necessary with special coordination with individual Federal agencies. The Commission will make every effort to notify Federal agencies of potential inconsistent Federal activities as early as possible in the Federal agencies’ planning process. At the same time, it is expected that each Federal agency proposing to conduct Federal activities including development projects which may affect the BCDC segment of the coastal zone will notify the Commission at the earliest practicable time. These reciprocal efforts can assist the parties in identifying potential conflicts with the BCDC Management Program and once they are identified, the Federal agency and the Commission can work towards early resolution of the problem.

(2) **Federal Licenses and Permits Subject to Certification for Consistency**

(a) **Federal License and Permit List**

The following Federal agency licenses and permits will be subject to the certification process for consistency with the Management Program, under Section 307(c)(3) of the Coastal Zone Management Act, if the activity being licensed or permitted affects land or water uses in the coastal zone:

**Department of Defense—U. S. Army  
Corps of Engineers:**

- Permits and licenses required under Sections 9 and 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Sections 401 and 403);
- Permits and licenses required under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 ( 33 U.S.C. Section 1413; and
- Permits and licenses required under Section 404 of the Clean Water Act (33 U.S.C. Section 1344).
- Provided that no individual certification for consistency with the Management Program will be required for activities authorized under the Corps’ of Engineers Regional Permit No. 14895R98, which authorizes all activities that comply with the terms and conditions of the regional permit, including the fact that the activity must be located entirely within the permit jurisdiction of the Commission, the

activity must qualify under the Commission's regulations for treatment as a minor repair or improvement or be covered by a regionwide permit or an abbreviated regionwide permit, and that the authorization will not become effective until an administrative permit, a regionwide permit, or an abbreviated regionwide permit, as applicable has been issued by the Executive Director of the Commission. A copy of the regional permit is included in the Management Program at Appendix V.

**Nuclear Regulatory Commission:**

- Permits and licenses required for siting and operation of nuclear power plants pursuant to the Atomic Energy Act of 1954, Title II of the Energy Reorganization Act of 1974.

**Department of the Interior—Bureau of Land Management—U. S. Geological Survey:**

- Permits and licenses required for drilling and mining on public lands (BLM) (30 U.S.C. Sections 22-42 and 181-287); and
- Permits and licenses for rights-of-way on public lands (43 U.S.C. Section 1761).

**Environmental Protection Agency:**

- Permits and licenses required under Sections 402 and 405 of the Clean Water Act (33 U.S.C. Section 1342 and 1345); and
- Permits and applications for reclassification of land areas under regulations for the prevention of significant deterioration (PSD) of air quality (42 U.S.C. Section 7474).

**Department of Homeland Security—U. S. Coast Guard:**

- Permits for construction of bridges under 33 U.S.C 401, 491-507 and 525-534; and
- Permits for deepwater ports under the Deepwater Port Act of 1974 (PL 93-627) (33 U.S.C Section 1503).

**Department of Transportation—Federal Aviation Administration:**

- Certificates for the operation of new airports (Federal Aviation Regulations, Part 139) (49 U.S.C. Section 44706);
- Final approval of airport layout plans that involve the placement of fill into the San Francisco Bay (49 U.S.C 47107(a)(16).

**Federal Energy Regulatory Commission:**

- Licenses for construction and operation of hydroelectric generating projects including primary transmission lines (16 U.S.C. Section 779);
- Certifications required for interstate gas pipelines (15 U.S.C. Section 717); and
- Permits and licenses for construction and operation of facilities needed to import, export, or transship natural gas or electrical energy (15 U.S.C. Sections 717 et seq.).

This listing is intentionally limited to those Federal licenses and permits that may affect coastal land and water uses. This is desirable to minimize the administrative burdens on the governmental entities as well as on the applicant. If it is found that the issuance of other Federal permits and licenses would always affect coastal land and water uses, the consistency requirements will be applied to those permits or licenses through administrative addition to the list above. However, the Commission may also require consistency review of specific projects that require a federal permit or license not listed above and referred to as “unlisted activities, on a case-by-case basis if the Commission complied with 15 C.F.R Part 930, Subpart D and obtains NOAA approval to review the unlisted activity.

**(b) Federal License or Permit Activities Within the Coastal Zone**

Within the BCDC segment of the coastal zone, a permit under the McAtter-Petris Act or the Suisun Marsh Preservation Act of 1977 will be required from non-Federal applicants for the above activities. The application form for all Commission permits will require the permit applicant to certify that the activity to be undertaken is consistent with the Commission’s Management Program for San Francisco Bay. All permits issued by the Commission\* under either the McAtter-Petris Act or the Suisun Marsh Preservation Act of 1977 will contain a finding that the permitted activity is consistent with the Commission’s Management Program, and this finding shall be deemed to be concurrence with the applicant’s certification in the application form. No further certification will be required. If a Commission Permit is required for a federal license or permit activity, the Commission’s permit application is necessary data and information pursuant to C.F.R. Section 930.58(a)(2), and the six-month CZMA federal consistency review period shall not start until the Commission receives a consistency certification, the Commission’s permit application, and other necessary data and information described in 15 C.F.R. Section 930.58.

To ensure that the national interest is adequately protected, in that portion of the coastal zone comprising the secondary management area of the Suisun Marsh where the State's management authority has been largely delegated to local governments, a local decision to issue a marsh development permit under the Preservation Act will be automatically reviewed by the Commission.

The Commission's decision on an appeal, or on review of the issuance of the marsh development permit that was not or could not be appealed, will be deemed to be the State's finding of the consistency of the proposed activity with the BCDC Management Program. Consequently, the Commission will have the lead role, and during its deliberations it will consider the views of local governments with the major management authority.

**(c) License and Permit Activities Outside of the Coastal Zone**

The Commission will review Federal licenses and permits for activities outside the BCDC segment of the coastal zone (for example, on upland areas beyond BCDC permit jurisdiction) but within the nine Bay Area counties. Normally, consistency certifications for such activities will not be required. There are three exceptions to this: (1) if the Commission determines that the license or permit activity can reasonably be expected to affect the BCDC segment of the coastal zone (this determination will be made on a case-by-case basis in the course of the monitoring program described in paragraph b(1)(d), above), and notifies the Federal licensing or permitting agency and the applicant in a timely manner as provided for in 15 C.F.R. Sec. 930.54; (2) if the license or permit activity is located on excluded Federal lands and, but for that fact, would otherwise require a permit under the McAteer-Petris Act or the Suisun Marsh Preservation Act; or (3) if the activity is located outside the Suisun Marsh but within the Marsh watershed as defined in the Suisun Marsh Preservation Act of 1977. In any case, BCDC must comply with 15 C.F.R. Part 930 Subchapter D and obtain NOAA approval to review an unlisted activity.

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\* The issuance of a permit for an electric transmission line or a thermal power plant by the State Energy Resources Conservation and Development Commission pursuant to Section 66645 of the McAteer-Petris Act is considered a Commission permit for purposes of this section.

Consistency certifications for Federal license or permit activities outside the BCDC segment of the coastal zone will be processed as much as possible using the Commission's existing procedures under the McAteer-Petris Act or the Suisun Marsh Preservation Act of 1977, whichever applies, to allow for timely public notice and hearings.

(d) **Commission Objections to Federal License and Permit Activity**

If, in connection with the review of proposed Federal license or permit activity under paragraphs (b) or (c), the Commission determines that a non-Federal applicant's proposed license or permit activity will affect land or water uses within the Commission's jurisdiction and is not consistent with the State's Management Program as required by Section 307(c)(3)(A) of the Coastal Zone Management Act, the Federal agency may not issue the license or permit unless the Secretary of Commerce, on his or her own initiative or upon appeal by the applicant, finds, after providing an opportunity for comments from the Federal agency involved and from the Commission, that the activity is consistent with the objectives of the Coastal Zone Management Act or is otherwise necessary in the interest of national security. If the Commission objects to the consistency of a Federal applicant's proposed license or permit activity, and the Federal agency decides to go forward with the activity, the Commission may use the mediation dispute resolution procedures provided for in the Coastal Zone Management Act.

(3) **Federal Assistance Subject to Consistency with the Management Program**

To review State and local government applications for Federal assistance under Federal programs affecting the BCDC segment of the coastal zone the Commission will use the Federal grant review process administered by Regional Clearinghouses and statewide by the Office of Planning and Research.

The scope of Commission review will be limited to determining whether the proposed project will affect land or water uses within the Commission's jurisdiction and to ensuring that the proposed project is consistent with the BCDC Management Program. In the event the Commission determines that the proposed project will affect land or water uses within the Commission's jurisdiction and is not consistent with the Management Program, the Commission will attempt to resolve the inconsistency through negotiation with the applicant. If no resolution is possible, the Commission will forward its determination to the appropriate Federal agency and, as required by Section 307(d) of the Coastal Zone Management Act, the Federal agency will not approve the proposed project unless the Secretary of Commerce finds that the project is consistent with the purposes of the Coastal Zone Management Act or is in the interest of national security.

6. **Public Participation/ Intergovernmental Involvement**

A primary objective in the development of the BCDC Management Program for San Francisco Bay was to encourage the maximum feasible involvement of both the public and other agencies of government. This was accomplished in a variety of ways.

a. **Membership on the Commission**

(1) **Bay Planning**

The Commission was deliberately made representative of a cross-section of the Bay Area and included members representing Federal agencies, State agencies, counties, cities, and the 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 (later the Regional Administrator of the Environmental Protection Agency).
- The administrator of the California Transportation Agency.
- The State Planning Officer.
- The Secretary of the California Resources Agency.
- A member of the State Lands Commission.
- A member of the San Francisco Bay Regional Water Quality Control Board.
- A member of the Bay Area Transportation Study Commission.
- Nine county representatives, each a resident of one of the nine 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 which were appointed by the governor, one by the Senate Rules Committee, and one by the Speaker of the Assembly.
- (In addition, a member of the State Senate and a member of the State Assembly were appointed by the Senate Rules Committee and the Speaker, respectively, to meet with and participate in BCDC's activities to the extent compatible with their legislative duties.)

(2) **Suisun Marsh Planning**



With only a few exceptions, this same diverse representation on the Commission continued through the planning process leading to the Suisun Marsh Protection Plan. The 1969 amendments to the McAteer-Petris Act, which had made BCDC a permanent agency, had also substituted a member if the staff of the Business and Transportation Agency for the Administrator of the Transportation Agency; deleted the State Planning Officer and the representative from the Bay Area Transportation Study Commission; and added another city representative appointed by the Association of Bay Area Governments. Otherwise the Commission membership remained the same during preparation of the Suisun Marsh Protection Plan.

**b. The Advisory Committee**

To assist in planning for the Bay, the Commission had the aid of an advisory committee required by the McAteer-Petris Act. The Advisory Committee, as it came to be known, included those agencies and individuals with a commercial interest in the Bay, as well as representatives of prominent conservation groups and the professions. Under the law, the Advisory Committee had to include 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 member.

The members of the Advisory Committee during the planning years are listed on page iii of the Bay Plan. The names and positions of the present members of the Advisory Committee are included in Appendix IV. They include, among others, the Executive Vice President and Manager of the San Mateo County Development Association; a project director of the U. S. Geological Survey; the director of Urban and Regional Studies for Stanford Research Institute; the Chief of Planning for San Francisco International Airport; a past president if the Bay Area League of Women Voters; the General Manager of the East Bay Municipal Utilities District; the Land Use Planning Advisor for the Pacific Gas and Electric Company; a professor of sociology at the University of California; the Executive Director of the Port of Oakland; the General Manager of the East Bay Regional Park District; a member of the Save San Francisco Bay Association; and the President of the Leslie Salt Company.

The Advisory Committee also played a similar role in the preparation of the Suisun Marsh Protection Plan.

**c. The Planning Process**

**(1) Bay Planning**

In order to deal adequately with the complexity of the development-related issues facing the Bay, and at the same time provide a manageable, easily understood planning process, the Commission divided the Bay and the problems into 23 topics. They covered the Bay as a resource, the pressures on that resource, various aspects of planning, and the means to carry out the Bay Plan. The 23 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;
- 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 the Plan;
- Public Facilities and Utilities;
- Waterfront Housing; and
- Waterfront Industry.

The Commission staff, assisted by special consultants where necessary, prepared a detailed technical report on each of these topics. All reports presented facts as well as a discussion of alternative uses of the Bay. They were written in a clear, easily understood style to facilitate understanding of the Commission's work and were accompanied by both a summary and one or two pages of "possible planning conclusions" based on the report.

Drafts of background reports and the possible planning conclusions were submitted for full review and comments to the individual members of the advisory committee, which functioned as an advisory board rather than as a committee. The individual comments were returned to the staff, which made revisions as it felt appropriate.

The final reports, and possible planning conclusions, along with the advisory committee members' comments, were then presented to the Commission. In case of disagreement with members of the advisory committee, or among staff or consultants, all points of view were presented to the Commission.

In addition, prior to formal Commission consideration, the final reports and tentative planning conclusions were widely distributed to other Federal, State and Local agencies and to the public at large. Many testified or wrote letters expressing their opinions of the suggested policies. Many revisions in the conclusions were made during Commission meetings as a result of suggestions from the floor by the public.

The same sequence was followed in the next step of the planning 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, widely distributed, and then presented to the Commission for public hearing, debate and voting. Hearings were held at various points around the Bay. Further amendments and changes were made, with final adoption of the Bay Plan occurring on September 20, 1968.

## (2) **Suisun Marsh Planning**

Much the same process was used in the preparation of the Suisun Marsh Protection Plan. Ten background reports were prepared covering all aspects of the Suisun Marsh as a resource. The first and most detailed of these reports was the Fish and Wildlife Element of the Protection Plan, which was prepared by the Department of Fish and Game pursuant to the provisions of the 1974 Suisun Marsh Preservation Act. It was followed by reports on the following subjects prepared by the BCDC staff:

- Suisun Marsh Environment;
- Suisun Marsh Aquatic and Wildlife Resources;
- Water Supply and Quality in the Suisun Marsh;
- Recreation and Access in the Suisun Marsh;
- Developing an Implementation Program for the Suisun Marsh Protection Plan;
- Water Related Industry Adjacent to the Suisun Marsh;
- Suisun Marsh and Upland Resource Management; and
- Public Facilities, Utilities, and Transportation In and Around the Suisun Marsh.

The BCDC staff reports were later bound in the Suisun Marsh Supplement. The Supplement and the Fish and Wildlife Element are being submitted along with this amended program.

Each of these reports was considered in the same way as the background reports for the Bay Plan. Following adoption of all of the reports, together with the tentative findings and conclusions included in each one, a tentative Suisun Marsh Protection Plan was prepared. This was also the subject of public hearings before the Commission, followed by adoption of the final Protection Plan on December 16, 1976. The completed Protection Plan was submitted to the California Legislature shortly thereafter.

**d. The Permit Process**

**(1) Bay Planning**

Another major factor in ensuring maximum intergovernmental and public involvement during development of the Bay Plan was the Commission's power to control land use in the Bay. The BCDC law specified that, with the exception of "minor repairs or improvements" which could be approved by the Executive Director, all development in the Bay required a permit from the Commission itself. With this permit authority, the Commission was able to do its planning and at the same time protect the Bay from destructive projects while the Bay Plan was being completed and the necessary protections enacted into law. The permit authority made the Commission the protector of an important resource, which made it immediately popular, and the permit matters generated interest from both the press and the public.

(Because they are voluminous, the minutes of the over 75 Commission meetings from 1965 to 1968 when the Bay Plan was submitted to the Legislature, and the over 45 meetings from 1974 to 1976 when the Marsh Protection Plan was submitted to the Legislature, which document in considerable detail both planning and permit decisions, have not been included. The originals are on file in the Commission's office and copies can be provided, if necessary.)

**(2) Suisun Marsh Planning**

The permit process did not play as great a role in encouraging public and governmental agency involvement in the preparation of the Suisun Marsh Protection Plan because permit activity in the Marsh was much less than in other areas of the Bay. However, the possibility of using the Potrero Hills basin in the middle of the Marsh as the site for a regional solid waste disposal site had, to a great extent, stimulated passage of the first Suisun Marsh Preservation Act in 1974. The proposed dump became a symbol of the kind of urban development threatening the Suisun Marsh, and the realization that the Protection Plan might be the last chance for protecting the Marsh from development of this sort maintained both Commission and public interest in the planning process.

In addition, the Commission did not shy away from other controversial issues in its planning, and this also generated continuing interest in the Commission's work. The most important of these issues was the maintenance of an adequate supply of fresh water for the marsh, which was essential for the Marsh to continue as a major wildfowl habitat. Providing fresh water for the Marsh, however, had state-wide implications because other areas of the State wished to use the water that would otherwise be required for Marsh protection.

**e. Other Factors**

Other factors also encouraged public interest and support, both during preparation of the Bay Plan and the Protection Plan. The law creating the Commission and the first Suisun Marsh Preservation Act made public hearings on permit applications mandatory, and under California law all Commission meetings were open to the public. And 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. As a result, there was considerable press coverage of BCDC meetings.
- The clarity and succinctness of the summary reports. They were circulated widely as each was completed, and public reaction was vigorously sought.
- 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 for the Bay Plan, the Commission produced a short film about its Bay Plan, which was shown widely.

**f. Involvement of Regional and Local Governments**

**(1) Bay Planning**

The Commission maintained close relations with regional and local government throughout the 1965-1969 planning period. There were a number of reasons for this:

- Of the 27 BCDC members, 12 were county or city officials, including 3 appointed by the Association of Bay Area Governments.
- The law directed BCDC to "give consideration to the master plans of cities and counties around the bay"; to "coordinate its planning for the bay with planning for the land area surrounding the Bay by local agencies, which shall retain responsibility for land use planning."

Furthermore, as the Commission began refining the Bay Plan and considering particular areas of the Bay, it held meetings with local planners, public works directors, recreation officials and others. These meetings produced a great amount of invaluable advice, and the Commission was alerted to local problems.

But perhaps the most important factor in the Commission's relative success involving local governments in the Bay Area was that the local governments still retained jurisdiction over proposed projects. If a project required a local permit, as well as one from the Commission, the applicant was required by law to obtain the local permit from

the appropriate city council or county board of supervisors before going to BCDC. A local agency, after investigation, could deny the application, putting an end to the project, or approve it and file a report with 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.

## **(2) Suisun Marsh Planning**

The composition of the Commission that prepared the Suisun Marsh Protection Plan was little changed from that which prepared the Bay Plan. The Commission continued to have 27 members; however, 13, rather than 12, Commissioners were county or city officials, with four appointed by the Association of Bay Area Governments. Consequently, the Commission was sensitive to local government concerns and was able to work closely with local government in the preparation of the Protection Plan, even though there were inevitably disagreements.

The small number of local governments with jurisdiction in the Marsh was another factor that fostered involvement of local governments in the Suisun Marsh planning. Only three cities and one county were directly affected: the Cities of Fairfield, Benicia, and Suisun City; and the County of Solano. In addition, the Suisun Resource Conservation District was a special purpose district that included most of the landowners in the Marsh itself, and it played a prominent role in the development of the Protection Plan.

### **g. State Agencies**

All State agencies with a stake in San Francisco Bay have been included in the development of the BCDC Program. Those with the most direct interest in the Bay were, and are, represented on the Commission. These included the Resources Agency, the Department of Transportation, the Department of Finance, the State Lands Commission, and the Regional Water Quality Control Board. In addition, the Governor had five appointees to the Commission including the chairman and vice-chairman, and the Legislature has two appointees.

Many of these agencies, and other agencies as well, played an additional role in preparation of the Bay Plan, either through the preparation of one of the background reports (Department of Fish and Game, the Division of Mines and Geology, and the Department of Parks and Recreation), or as key reviewers of background reports prepared by the staff (the State Lands Commission and the Department of Transportation). In addition, all other State agencies with any potential interest in Bay planning received copies of the Commission's background reports, and had opportunities to make their views known to the Commission. The same held true in the preparation of the Suisun Marsh Protection Plan. Although only the Department of Fish and Game actually contributed to preparation of the background material for the Protection Plan, other State agencies (State Water Resources Control Board, Department of Water Resources, and the Resources Agency) were involved as key reviewers of background reports.

**h. Continuing Involvement  
of State and Local Agencies**

The involvement of State and local agencies begun during the preparation of the Bay Plan has continued since 1969 as an essential element of the Management Program. This continuing involvement is described in Section 8, "Management Network."

**7. Legal Authorities\*\*\***

**a. Permit Control in the Coastal Zone Outside the Suisun Marsh**

Within the BCDC segment of the coastal zone outside the Suisun Marsh, the State, through BCDC, controls the permissible land and water uses and excludes land and water uses that are not permissible, through a permit system administered by the Commission under the provisions of the McAteer-Petris Act (California Government Code Sections 66600 through 66661). Specifically, the Commission's jurisdiction over the Bay, the first 100 feet of the shoreline, managed wetlands, salt ponds, and certain named waterways is defined in Section 66610. Under Section 66632, any person or governmental agency wishing to place fill, to extract materials or to make a substantial change in use of any water, land, or structure within the area of the Commission's jurisdiction must secure a permit from the Commission. "Fill" under Section 66632 is defined as "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." As a result, all except the most minimal development within the Commission's jurisdiction requires a BCDC permit.

**(1) The Bay**

Under Section 66605 of the McAteer-Petris Act and the provisions of the Bay Plan, fill in the Bay is limited to the minimum necessary for specified water-oriented uses, except where, under Section 66632(f)(1), the Commission finds and declares that a proposed project is necessary to the health, safety, or welfare of the public in the entire Bay Area.

**(2) The Shoreline**

Under Section 66611 of the McAteer-Petris Act, the Commission can designate areas within the 100-foot shoreline band for certain water-oriented priority uses, and the Commission has done so on the Bay Plan Maps. The precise written descriptions of the priority use areas referred to in Section 66611 were made in Resolution No. 16 adopted on November 18, 1971, a copy of which is included as part of Appendix IV. Within these priority use areas, under Sections 66632 and 66632.4 of the McAteer-Petris Act, any project must be consistent with the Bay Plan. Outside the priority use areas, under Section 66632.4, a project in the shoreline band must provide maximum feasible public access consistent with the project.

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\*\*\* Except as noted, Authorities cited are in Appendix III.

### **(3) Salt Ponds and Managed Wetlands**

Under Section 66602.1 of the McAtter-Petris Act, the Commission is to encourage continued maintenance and operation of the salt ponds and managed wetlands, and under Section 66632, permits for work in these areas must be consistent with both the Act and the Bay Plan. Both the Act and the Bay Plan further provide that, if development is proposed for these areas, dedication or public purchase of some of these areas should be encouraged to preserve water areas. The Act and the Bay Plan also provide that any development ultimately authorized should provide maximum feasible public access to the Bay and retain the maximum amount of water surface area consistent with the project.

### **(4) Named Waterways**

Added to the Commission's jurisdiction in 1970, the certain waterways referred to in Section 66610(e) are regulated under the Bay Plan and the McAtter-Petris Act as if they were part of the Bay.

#### **b. The Suisun Marsh**

Within that portion of the BCDC segment of the coastal zone consisting of the Suisun Marsh, the Commission controls permissible land and water uses slightly differently than in other portions of the coastal zone. Both the Suisun Marsh Preservation Act (Cal. Pub. Res. Code, Sections 29000-29612) and the Suisun Marsh Protection Plan divide the Marsh into primary and secondary management areas. The primary management area includes most of the open water, tidal marsh, managed wetlands, seasonal marsh and lowland grasslands in the Marsh, The secondary management area includes upland grasslands and cultivated lands around the primary management area. These are also important to wildlife and insulate the primary management areas from the adverse impacts of both urban development and other upland uses and practices incompatible with Marsh protection.

#### **(1) Local Protection Program**

Under the Preservation Act, primary responsibility for carrying out the Suisun Marsh Protection Plan rests with local government. Each local government or special district in the Marsh must prepare its component of a "local protection program" for the Marsh and submit it to Solano County. The County, which has overall responsibility for coordinating preparation of the local protection program, then has six months to prepare the final program and submit it to BCDC.

The local protection program must be consistent with the policies of the Protection Plan and the provisions of the Preservation Act. It must include development controls designed to (a) protect the wetlands within the Marsh; (b) protect agricultural lands both within and adjacent to the Marsh; (c) designate principal permitted uses on lands within the Marsh; (d) limit erosion, sedimentation, and runoff; (e) protect riparian habitat; (f) ensure that use of the deep water industrial and port area at Collinsville is in conformity with the Protection Plan; and (g) ensure that new development in and adjacent to the Marsh is designed to protect the visual characteristics of the Marsh.

Once the local protection program has been submitted to BCDC by the County, BCDC must obtain comments on the program from the Department of Fish and Game, all local governments, and all other interested agencies. Within 120 days of submission, BCDC must vote on whether to certify the program if it is in conformity with



the Preservation Act and the Protection Plan. If for any reason BCDC does not certify the local protection program, or any portion of it, BCDC must so advise the County, specifying the portions of the program that are not in conformity with the Preservation Act or the Protection Plan. The County may then revise the program and resubmit it; or if it declines to do so, the affected local government may do so.

**(2) Permits**

The Preservation Act requires a permit for any development in the Marsh. However, the standards governing the issuance of the permit, the agency from which the permit must be obtained, and the appealability of the decision differ depending on whether or not the local protection program has been certified by BCDC.

**(a) Prior to Certification of the Local Protection Program**

Within the primary management area prior to certification, a marsh development permit must be obtained from BCDC. BCDC must issue the permit if the proposed development is consistent with the Preservation Act and the policies of the Protection Plan.

Within the secondary management area prior to certification, a marsh development permit must be obtained from the local government having jurisdiction, unless local permits are not otherwise required {e.g., if the applicant is a State agency}. In the latter case, permits must be obtained from BCDC. Either BCDC or the local government must issue the permit if the development is (1) consistent with the Preservation Act and the policies of the Protection Plan; and (2) will not prejudice the preparation of the local protection program.

**(b) Subsequent to Certification of Local Protection Program**

Within the primary management area subsequent to certification, BCDC may delegate its permit authority over development that would not have a significant impact on the Marsh to the local government having jurisdiction. If BCDC does so, the local government must issue the permit if it finds the proposed development is consistent with the local protection program. If BCDC retains its permit authority, it must issue the permit upon making the finding that the proposed development is consistent with the local protection program.

Within the secondary management area subsequent to certification, the local government must issue the permit if it finds the proposed development is consistent with the local protection program.

**(3) Appeals**

**(a) Prior to Certification of the Local Protection Program**

BCDC may not delegate its permit authority in the primary management area prior to certification. Hence no appeals are possible.

Within the secondary management area prior to certification, any action taken by a local government on an application for a marsh development permit, except denial of a permit, may be appealed to BCDC. BCDC must issue the permit if it finds the development (1) is in conformity with the Preservation Act and the policies of the Protection Plan; and (2) will not prejudice preparation of the local protection program.

**(b) Subsequent to Certification of Local Protection Program**

Within the primary management area subsequent to certification, if BCDC has delegated its permit authority to a local government, any action taken by a local government on a marsh development permit is appealable to the Commission. The same is true in the secondary management area, except for the following:

- An action denying a marsh development permit; and
- An action that represents a finding that a development is a principal permitted use under the certified local protection program, and any action on such a development to the extent it is based on such a finding.

BCDC must issue the marsh development permit on appeal if it finds the proposed development is consistent with the local protection program.

**c. Permit Conditions**

In any area of the Commission's jurisdiction, permits issued can be subject to reasonable terms and conditions including the uses of lands or structures, intensity of uses, construction methods, methods for dredging or placing of fill, dedication, public access, and the retention of water surface area (see Section 66632(f)).

**d. State Regulation of Air and Water Quality in the BCDC Segment of the Coastal Zone**

Within the BCDC segment of the coastal zone, the Commission's permit authority also extends to matters relating to air and water quality. However, the Commission recognizes that comprehensive regulation of both air and water quality has ramifications beyond any reasonable definition of the coastal zone, and that there are existing agencies established by State law with the necessary expertise and authority to deal with these matters. These agencies are included in the Commission's management network described in Section 8, and with rare exceptions, the Commission pursues air and water quality objectives in the coastal zone through these agencies.

**e. Techniques for Control of Land and Water Uses, Power to Administer Land Use Regulations, Control Development and Resolve Conflicts**

BCDC controls existing, projected, and potential land and water uses within its segment of the coastal zone through Technique B described in Section 923.43 of the federal regulations implementing the Coastal Zone Management Act. Outside the Suisun Marsh, the State, through BCDC, is directly involved in the establishment of reasonably detailed land and water use regulations, which are then applied to individual cases through the BCDC permit process. Local governments may adopt their own zoning ordinances or regulations. However, every development requiring a BCDC permit must be consistent with

the McAteer-Petris Act and the Bay Plan, regardless of local zoning. Through the permit process, therefore, the Commission has the power to control development in order to ensure compliance with the Management Program and to resolve conflicts among competing uses.

In the Suisun Marsh, the Commission controls existing, projected and potential land and water uses through Technique A described in Section 923.42 of the federal regulations. The institutional structure is somewhat more elaborate in the Marsh than in the rest of the Bay, consisting of a local protection program requirement and a system of permits and appeals administered by BCDC and local governments with jurisdiction. This process is described more fully in Section 7b, "The Suisun Marsh," above.

f. **Authorities\*\*\*\* for Property Acquisition**

Under California law, the State can condemn any type of property, and any right title, or interest therein necessary for the public use for which it is required (Cal. Const., Art. I, Sec. 19; Cal. Code Civ. Proc., Sections 1240.010 and 1240.110). The Department of Transportation, Department of Water Resources, Regents of the University of California, Hastings College of the Law, the State Lands Commission, the Reclamation Board (on behalf of the Sacramento and San Joaquin Drainage District), and the Department of Fish and Game (for certain limited purposes) may exercise the State's power of eminent domain on their own behalf. Condemnation of property for all other State purposes, including parks, recreation, and open space, is the responsibility of the State Public Works Board under the Property Acquisition Law (Cal. Gov't Code, Sections 15850 to 15886).

Acquisition, however, is not necessary to achieve conformity with the Management Program. The Bay Plan designates sites for waterfront parks and other water-related recreational uses and further recommends that either BCDC or a sister regional agency be given authority and funding to carry out these acquisitions. These recommendations in the Bay Plan relating to acquisition are advisory only.

Nevertheless, since completion of the Bay Plan, and as public concern about the quality of the environment has increased, especially with regard to the disappearance of open space, there has been considerable acquisition by Federal, State, and local agencies of lands within the coastal zone for purposes consistent with the Bay Plan and the BCDC Management Program. Some of the more significant results are the San Francisco Bay National Wildlife Refuge (U. S. Fish and Wildlife Service), the Golden Gate National Recreation Area (National Park Service), Point Pinole Regional Park (East Bay Regional Park District), and Candlestick Point State Park (State Department of Parks and Recreation). The Commission is also working with these and other agencies on a continuing basis to ensure that their acquisition programs for the future are consistent with the Bay Plan and the BCDC Management Program.

As was the case in the San Francisco Bay Plan, the Suisun Marsh Protection Plan contained a number of recommendations for acquisition in the Suisun Marsh (see pages 42-43 of the Protection Plan). These recommendations have already largely been implemented by the California Department of Fish and Game through the Wildlife Conservation Board.

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\*\*\*\* Because they are not essential elements of the Commission's Management Program, the authorities cited in this subsection are not included in Appendix III

**g. Local Regulations and Uses of Regional Benefit**

**(1) Bay Planning**

The entire BCDC planning process from 1965 to 1969, and the Commission's on-going activities since 1969, have been directed toward defining uses of regional benefit and providing that such uses are not arbitrarily or unreasonably excluded by local governments. The major reason for this is that prior to BCDC, the Bay was being filled under the auspices of local governments and other agencies for a wide variety of purposes, ranging from clearly Bay-related uses, such as port facilities, to completely unrelated uses, such as garbage dumps and subdivisions. Consequently, the Commission's primary task was to determine which uses of the Bay were of regional benefit and how to ensure that these uses were accepted by local governments.

Through the planning process, these uses were determined to be ports, water-related industries, airports, wildlife refuges, and water-oriented public assembly. The planning process also ensured, and continues to ensure, that these uses are not arbitrarily or unreasonably excluded by local governments. Both the uses themselves and the suggested locations for these on the Bay Plan Maps were made only after affected local governments had been given the fullest possible opportunity to participate and express their views.

Furthermore, the Commission enforces the decisions made during the planning process with regard to uses of regional benefit. Even if a local government should zone a priority use area for a use inconsistent with the designations, and thus potentially attempt to exclude a use of regions' benefit as determined by the Commission, BCDC could not issue a permit for all development within the first 100 feet of the shoreline that was inconsistent with the designation. In most cases, this is sufficient to ensure use of a parcel for a designated priority use, because most of the value of the parcel lies in its shoreline frontage.

Where necessary, the Commission augments the permit process with the powers available to it under other State laws, such as the California Environmental Quality Act, to assure consistency with the priority use designations. Environmental impact reports (EIR's) must be prepared on zoning changes, amendments to general plans, and specific development proposals along the shoreline. In reviewing these, a major objective of the Commission is to assure that parcels located partially beyond the 100-foot shoreline band, but designated for a priority use, are used for purposes consistent with the designation. This is also a major objective of the Commission when it reviews legally required local general plans and when it prepares special area plans in cooperation with local governments for specific areas within the Commission's jurisdiction.

The result has been that attempts by local governments to exclude the uses of regional benefit identified in the Bay Plan have not been a problem. If anything, the more serious problem has been competition among localities for regional facilities like ports and airports with their real or imagined economic benefits. To resolve these potential conflicts, the Commission has strongly advocated more detailed regional planning and participates in several planning efforts for specific uses. In particular, the Commission is a member of the Regional Airport Planning Committee studying Bay Area airport needs under the auspices of the Association of Bay Area Governments and the Metropolitan Transportation Commission. Participating in this effort are the State Department of Transportation, which has responsibility for state-wide aviation planning, and the Federal

Aviation Administration. The Commission has also recently undertaken a regional port planning effort with the Metropolitan Transportation Commission and the Bay Area ports. State-wide input is being provided by a representative from the California Department of Transportation.

## **(2) Suisun Marsh Planning**

The same planning principles were followed in the preparation of the Suisun Marsh Protection Plan. Consequently, local exclusion of uses of regional benefit is not a problem. However, the Suisun Marsh Preservation Act of 1977 also requires local zoning to be consistent with the Act and the Protection Plan, and therefore local zoning has to permit the uses permitted in the Protection Plan (such as port and water-related industrial uses at Collinsville), some or all of which might be considered uses of regional benefit.

## **8. Management Network**

BCDC has the primary responsibility for carrying out the State coastal zone management program in the Bay Area. As is discussed more fully in the preceding section, within the BCDC segment of the coastal zone, this is done primarily through the McAteer-Petris Act and the Suisun Marsh Preservation Act. Outside the BCDC segment of the coastal zone, the program is carried out through coordination and cooperation with other governmental agencies.

Based on the roles they play, these agencies fall into two categories: (a) those that play a primary role in the BCDC Management Program; and (b) those that play a secondary role. An agency plays a primary role if it participated regularly and directly in the Commission's activities, either as a member of the Commission, or as a key advisor on planning and permit matters; or if the Commission relies on the agency to carry out an essential element of the Management Program. An agency plays a secondary role if it does not participate directly, but its activities may affect, or be affected by, the Management Program from time to time. In these cases, coordination takes place as required.

### **a. Federal Agencies--Primary Roles**

There are two Federal agencies with major regulatory responsibilities in the BCDC segment of the coastal zone. Under the Federal Water Pollution Control Act of 1972 and the Rivers and Harbors Act of 1899, the Corps of Engineers administers an extensive Federal permit system in the Bay. The Corps is also responsible for a considerable amount of maintenance dredging and navigation-related construction in the Bay. The Environmental Protection Agency (EPA) has the Federal responsibility for overseeing State implementation of Federally-required air and water quality programs in the Bay Area.

Because of their responsibilities and authority under Federal law, both the Corps and the EPA play primary roles in the BCDC Management Program. Both are represented on the Commission and though their representatives do not vote on permit applications, they participate in all planning and permit matters before the Commission.

The Commission also relies on the Corps of Engineers for assistance in implementing the Bay Plan and the Suisun Marsh Protection Plan. The Corps considers the two plans as reflecting "local factors of the public interest" under Section 209.120(g)(3)(i) of its

regulations governing the issuance of permits. This means that the Corps will normally grant a permit for projects for which BCDC has issued a permit, unless the Corps determines that there are overriding factors of the national interest which require denial of the permit. It also means that the Corps will normally deny a permit for projects for which BCDC has denied a permit.

Another area in which the Corps is of great assistance is surveillance and enforcement. The Regulatory Functions Branch of the San Francisco District continually apprises the Commission of potential violations of the McAteer-Petris Act, and often supplies the necessary evidence for follow-up enforcement.

**b. Federal Agencies--Secondary Roles**

Several additional Federal agencies are playing a secondary role in the further development of the BCDC Management Program. The Army and the Navy, subject to national security restrictions, are submitting consistency determinations to the Commission with regard to activities that would otherwise require BCDC permits. The Federal Maritime Administration played a major role in the preparation of a Commission report for the California Legislature on the regulation of dredging. This report was of particular interest to the Maritime Administration because the major ports in the Bay Area are among the larger dredgers and are most directly affected by the delays in the regulatory process. In addition, numerous Federal agencies are included on the Commission's mailing list, coordination occurs with them as needed, and their comments were specifically solicited in the preparation of the Commission's statement of the National Interest in San Francisco Bay included in this program. These agencies are listed in Appendix I.

**c. State Agencies Primary Roles**

The following State agencies, departments, boards and commissions play a primary role in the BCDC Management Program:

**(1) The Resources Agency**

In addition to BCDC, the Resources Agency comprises the Departments of Conservation, Fish and Game, Navigation and Ocean Development, Parks and Recreation, and Water Resources, together with the State Lands Division, the Air Resources Board, the Colorado River Board, the State Reclamation Board, the State Water Resources Control Board, the nine Regional Water Quality Control Boards, the Solid Waste Management Board, the Energy Resources Conservation and Development Commission, and the California Coastal Commission. The Secretary for Resources is responsible for communicating the Governor's policies and program objectives to the organization within the Resources Agency and for advising the Governor on major policy and program considerations relative to the Resources Agency. The Secretary also represents the Governor in the coordination of Resources Agency programs, and in relations with other State, Federal, and local jurisdictions.

The Secretary for Resources and the Resources Agency staff play a primary role in the BCDC Management Program in a number of ways. A member of the Secretary's staff is by law a member of the Commission, and consequently plays a direct role

in both planning and permit decisions. In addition, it is Resources Agency policy that all agencies, boards and commissions within the Agency should contribute to, and conduct their activities in accordance with the BCDC program to the maximum feasible extent.

Of particular significance with regard to the Coastal Zone Management Act, both BCDC and the Coastal Commission are located within the Resources Agency, and the Agency exercises budgetary oversight over both Commissions.

**(2) The Department of Fish and Game**

The Department of Fish and Game is concerned with all Bay activities that might affect the fisheries or wildlife habitat of the Bay. Consequently, although part of the Resources Agency, the Department has a special relationship to the Commission and comments on the fish and wildlife aspects of all permits. These comments become the basis for special conditions relating to mitigation of adverse impacts on fish and wildlife resources, and on occasion, for denial of a permit where warranted. Furthermore, the Department and the Commission worked closely together to prepare the Suisun Marsh Protection Plan.

**(3) The State Lands Commission**

The State Lands Commission, as the custodian of all property owned or held in trust by the people of the State of California, owns substantial portions of San Francisco Bay. Along with the BCDC, it is also responsible for the exercise of public rights in still other portions of the Bay in private ownership. In carrying out its responsibilities in the BCDC segment of the coastal zone, the Lands Commission recognizes the McAteer-Petris Act and the Bay Plan and the Suisun Marsh Preservation Act of 1977 and the Suisun Marsh Protection Plan as the State management program for the BCDC segment of the coastal zone, and ensures that State-owned property is used for purposes consistent with the management program.

In cooperation with BCDC, the Lands Commission has also asserted State claims to lands in and adjacent to San Francisco Bay. As a result, the extent of public rights in over 10,000 acres of privately-claimed tidelands in the Bay has been successfully established. This is a substantial step forward in protecting the Bay. The Lands Commission has also asserted State claims in other key areas of the Bay, and the resulting settlements have guaranteed the preservation of substantial areas that might otherwise have been lost to development.

**(4) The Regional Water Quality Control Board  
and the State Water Resources Control Board**

The Regional Water Quality Control Boards and the State Water Resources Control Board, which has state-wide jurisdiction and supervises the Regional Water Quality Control Boards throughout the State, both play a primary role in the BCDC Management Program. This is because the State and Regional Boards have specific statutory authority over water quality in the Bay under the Porter-Cologne Water Quality Control Act, and the entire California water quality control system predates the creation of BCDC. In addition, the State and Regional Boards have the jurisdiction and expertise to deal comprehensively with water quality matters, which usually have ramifications beyond the coastal zone. Therefore, in its planning for the Bay from 1965 to 1969, and in its Suisun Marsh planning from 1974 to 1976, the Commission did not deal extensively with water pollution,

and the Commission considers the requirements and program of the State and Regional Boards to be the water quality element of the BCDC Management Program. Close continuing cooperation is further ensured by specific provisions of the McAteer-Petris Act. Under Section 66632(g), one member of the Regional Board sits on the Commission. Under Section 66632(e), the Commission is required to transmit copies of all applications to the Regional Board, which is then required to respond within sixty (60) days, indicating the effect of the proposed project on water quality in the Bay. Where appropriate, these comments become the basis for special permit conditions relating to water quality.

The reverse is also true. The Regional Board and the State Board recognize the McAteer-Petris Act and the Bay Plan as the management program for the BCDC segment of the coastal zone, and consider them a major factor in determining the beneficial uses of the Bay, which are the bases for water quality planning, programming, and control.

This legally-established relationship is further supplemented by a high level of staff interaction. The BCDC staff and the Regional Board staff are working together on the development of dredge disposal criteria, criteria for the safe harvesting of shellfish, and similar matters.

**(5) The Department of Transportation**

The Department of Transportation (CalTrans) has responsibility for administering the State's transportation programs. These include transportation planning, development of mass transportation, aeronautics, highway planning and construction. Because CalTrans activities affect the BCDC segment of the coastal zone in a variety of ways, a representative of CalTrans sits on the Commission and participates in all planning and permit decisions. CalTrans also recognizes the McAteer-Petris Act and the Bay Plan as the management program for the BCDC segment of the coastal zone.

**(6) The Department of Finance**

The Department of Finance is responsible for assisting the Governor in the development of the State's annual financial plan, and by statute the Director of Finance serves as the Governor's chief fiscal policy advisor. The Department also provides economic, financial, and demographic information. A representative of the Department is by law a member of the Commission and participates in all planning and permit decisions. The Department is also responsible for advising the Governor on the fiscal needs of the Commission.

**(7) The Department of Justice**

The Department of Justice, headed by the California Attorney General, represents the Commission in all litigation and acts as the Commission's legal advisor. The role of the Department has been of profound importance in the success of BCDC to date. The quality of the Commission's legal representation has been excellent, and because the Attorney General, as the chief law enforcement officer of the State, brings a state-wide perspective to both the Commission's work and its litigation, much of which is necessarily precedent-setting.



## **(8) The State Office of Planning and Research**

The State Office of Planning and Research is the State Clearinghouse for A-95 and State environmental impact report (EIR) review. The Clearinghouse plays a primary role in the BCDC Management Program by providing information on projects and activities that may affect the BCDC segment of the coastal zone. The EIR process is a major tool by which BCDC can assure that these projects and activities are consistent with the BCDC Management Program.

## **(9) The Energy Resources Conservation and Development Commission**

The Energy Resources Conservation and Development Commission was created by the State Legislature in 1974, and has a broad mandate to:

- Assess trends and to forecast state-wide demand for electricity and other forms of energy;
- Determine the need for new power plants and to evaluate and certify proposed designs and sites, either on the coast or inland;
- Study and promote the development of new alternative energy resources and new generation and transmission techniques;
- Prescribe and carry out new and expanded energy conservation measures; and
- Make recommendations to the Governor and Legislature for State policies and actions for the orderly development of all potential sources of energy to meet the State's needs.

As a result of the passage of Assembly *Bill 1717 (Fazio)*, which included the Suisun Marsh Preservation Act of 1977, BCDC plays the same role in the State Energy Commission's procedures for the siting of power plants within its jurisdiction as does the Coastal Commission for the remainder of the California coastal zone. This role, along with the entire BCDC energy facility siting process, is described fully in the Energy Facility Planning Element of this program, which begins on page 69.

### **d. State Agencies—Secondary Roles**

The following State agencies play a secondary role in the BCDC Management Program:

#### **(1) The Department of Parks and Recreation**

The Department of Parks and Recreation is responsible for the acquisition and management of the State Parks System. BCDC permits are required for all park developments within BCDC jurisdiction, and the Department and BCDC coordinate as needed on specific projects, such as the State Park at Candlestick Point in San Francisco currently under development.

(2) **The Department of Boating and Waterway**

The Department of Boating and Waterways (formally the Department of Navigation and Ocean Development) makes loans for recreational harbor developments and grants for boat launching facilities, and its activities in the Bay are directly affected by the BCDC Management Program. The Department uses the Bay Plan to guide its decisions on the location of boating facilities, and BCDC and the Department coordinate closely on the design and construction of individual facilities funded by the Department in the Bay.

(3) **The Department of Water Resources**

The Department of Water Resources (DWR) is responsible for the California Water Plan and the California Water Project. These are both of concern to the Commission because of the potential diversion of fresh water inflow from the Delta, and hence from the Bay, under the Water Plan through the facilities of the Water Project. While the facilities of the Water Project are not located within the Commission's jurisdiction, the Commission has worked closely with DWR and the State Water Resources Control Board, which regulates the operation of the Water Project, to assure that an adequate flow of fresh water into the Bay is maintained.

e. **State Agencies -- Suisun Marsh**

In addition to the management network described above, there are special requirements for State agency conformity with the Suisun Marsh Preservation Act of 1977. Section 29302(a) of the Act "imposes a judicially enforceable duty on State agencies to comply with, and to carry out their duties and responsibilities in conformity with," the Act and the Protection Plan.

f. **Regional Agencies**

The following regional agencies play a primary role in the BCDC Management Program:

(1) **The Association of Bay Area Governments**

The Association of Bay Area Governments (ABAG) is the HUD-designated comprehensive planning agency for the Bay Area, and as such serves as the Metropolitan Clearinghouse. BCDC relies on the Clearinghouse for information on projects both within and outside its permit jurisdiction and uses the A-95 process and the State environmental impact report process to implement the Bay Plan outside the Commission's permit jurisdiction. The ABAG also appoints four (three during the planning years from 1965 to 1969) representatives of local government to the Commission.

ABAG also plays a primary role in the BCDC Management Program as the "areawide waste treatment management planning agency" for the Bay Area under Section 208 of the Federal Water Pollution Control Act of 1972. ABAG received a \$4.3 million grant from the Environmental Protection Agency and has prepared a plan to meet the requirements of Section 208. An "Environmental Management Task Force" broadly representative of local governments, regional agencies and citizen groups oversaw development of this plan. BCDC participated on this task force. The plan is currently being reviewed by State and Federal air and water quality management agencies.

(2) **The Metropolitan Transportation Commission**

The Metropolitan Transportation Commission (MTC) is the regional transportation planning agency for the Bay Area. One member of the Commission is by law a member of MTC; the MTC Regional Transportation Plan recognizes the Bay Plan as the regional plan for the Bay and shoreline, and the staffs of MTC and BCDC coordinate to ensure that all MTC transportation planning is consistent with the Bay Plan. BCDC is represented on the ABAG-MTC Regional Airport Planning Committee. In addition, BCDC and MTC have jointly undertaken a regional port planning effort in cooperation with the Bay Area ports. These areas are of particular importance to the Commission because of the potential Bay fill involved in either port or airport expansion.

(3) **The Bay Area Air Quality Management District**

The Bay Area Air Quality Management District (BAAQMD) has primary responsibility for enforcing the air quality standards in the Bay Area under State and Federal law. Because the BCDC segment of the coastal zone is only a small portion of the area under the District's jurisdiction, and because most uses affecting regional air quality are located outside the coastal zone, the BCDC Management Program does not deal extensively with air quality. However, to the extent that air quality issues do exist which primarily or exclusively affect the BCDC segment of the coastal zone, they have been addressed in the Management Program. For example, the Commission found that filling a substantial part of the Bay could cause (a) higher summertime temperatures and reduced rainfall in the Santa Clara Valley and the Carquinez Strait-Suisun Bay area; and (b) increases in the frequency and thickness of both fog and smog in the Bay Area. The Bay Plan Policies on Smog and Weather (page 10) therefore state that the remaining water volume and surface area of the Bay should be maintained to the greatest extent feasible, and these policies are taken into consideration in the issuance of every permit.

On other air quality issues, the Commission works with the BAAQMD on a case-by-case basis to ensure that air quality in the BCDC segment of the coastal zone meets State and Federal standards. One example of this coordination is discussed in subsection h, below, which describes the BCDC management network in operation.

g. **Local Agencies**

The past and continuing participation of local government in the Commission's planning and permit decisions has been essential to the Commission's implementation of the BCDC Management Program. A majority of the Commission consists of representatives of local governments: nine county supervisors (one from each Bay Area county); and four members of city councils appointed by the Association of Bay Area Governments. These representatives play a direct role in the Commission's activities.

In addition, because of its limited jurisdiction over the shoreline, the Commission relies on local governments for assistance in implementing the Bay Plan beyond the Commission's permit jurisdiction. This is accomplished in two major ways: (1) through coordination with local governments in the preparation and amendment of their legally-required general plans; and (2) through the preparation of special area plans, which

focus specifically on areas in and adjacent to the Commission's jurisdiction and eventually become part of the Bay Plan. Special area plans have been completed for the San Francisco Waterfront, the South Richmond Shoreline, and the Benicia Waterfront. They are all included in Appendix IV.

Finally, prior to acting on a permit application, the Commission is legally required to solicit the views of each city or county within which the proposed project is located. The Commission gives these views considerable weight and has never granted a permit without a favorable local report.

In the Suisun Marsh, local agencies have primary responsibility for preparing the local protection program required by the Suisun Marsh Preservation Act of 1977 and for administering the State permit system in the secondary management area of the Marsh.

#### **h. Operation of the Management Network**

The preceding seven subsections described the participants in the BCDC management network and the role each participant played. This section will describe, as much as possible by specific examples, how the management network functions, particularly in areas outside the Commission's permit jurisdiction.

##### **(1) Agency Compliance with the Management Program**

All of the agencies that play a primary role in the BCDC Management Program recognize the McAteer-Petris Act and the San Francisco Bay Plan, either formally or informally, as the State's management program for the BCDC segment of the coastal zone. To the extent that they may carry out activities that do not require Commission permits, it has been their practice to comply with the program to the maximum feasible extent. The State Lands Commission, for example, will not lease State lands for purposes that are inconsistent with the Bay Plan, and relies upon the Bay Plan as a basis for the assertion of public rights in privately-claimed tidelands in substantial parts of the Bay. Similarly, the Department of Transportation works closely with the Commission in planning transportation projects and in disposing of surplus land to ensure that its activities are consistent with the Plan.

The willingness of other agencies to comply with the BCDC Management Program is a product of two primary factors: (a) most of the key agencies were either represented on the Commission or played a major role in the planning process, and consequently the Plan is compatible with their objectives; and (b) agencies consider the State Legislature's action in 1969- when it made BCDC a permanent agency with responsibility for carrying out the McAteer-Petris Act and the Bay Plan--a legislative decision to make the BCDC program the State program for the Bay, with a corresponding obligation on other agencies to comply with it. To a great extent, however, this compliance, while effective, has been informal. Consequently, the Commission has developed more formal documentation with the most important of these agencies in the form of the memoranda of understanding found in Appendix V.

(2) **Water Quality**

Although the Commission's permit authority extends to matters of water quality, both the Bay Plan and the McAteer-Petris Act contemplate that water quality matters will be the primary responsibility of the State water quality agencies. However, because the Commission, through permit conditions, can require applicants to take specific measures to improve water quality in the area of a project, the Regional Board and the Commission have been able to achieve more together than either could have separately. One notable example has been a Commission requirement for pumpout facilities in marinas. Although the Regional Board can require certain water quality standards to be met in a marina, it cannot require the installation of pumpout facilities. The Commission, however, at the request of the Regional Board, can and does require these facilities whenever permits are issued for the construction of new marinas or for substantial improvements in an existing one. This has reduced the discharge of raw sewage from berthed vessels, which is a source of contamination in marinas and occurs because of the lack of pumpout facilities for marine holding tanks and similar devices. Furthermore, a standard condition of all BCDC permits is that the permittee obtain and comply with waste discharge requirements set by the Regional Board.

(3) **Air Quality**

The Commission recently worked with the Bay Area Air Quality Management District on a permit that demonstrates how the Commission's management network deals with air quality matters. The permit was for a pipeline from the Long Wharf at Standard Oil of California's Richmond Refinery to the Pittsburg and Antioch power plants owned by the Pacific Gas and Electric Company, and shows how the Commission works with the Bay Area Air Quality Management District. The pipeline was to carry low-sulfur fuel oil from the refinery to the power plants, where it would be used as a boiler fuel to replace natural gas, which could no longer be used for that purpose.

Though a good portion of the pipeline and both power plants were beyond the Commission's jurisdiction, the Commission was the lead agency under State law and therefore responsible for the preparation of an environmental impact report on the project. Acting on the advice of the Attorney General, the Commission determined that the environmental impact report had to cover more than just the construction of a pipeline. Rather, it had to discuss the impacts of both construction of the pipeline and the conversion of the Pittsburg and Antioch power plants from burning primarily natural gas to burning low-sulfur fuel oil. This meant that the primary impacts of the project would be on air quality both inside and outside the Commission's jurisdiction through increased emissions of SO<sub>2</sub>.

Acting on the information contained in the environmental impact report, and in cooperation with the Environmental Protection Agency and the Bay Area Air Quality Management District, the Commission inserted conditions in the pipeline permit limiting its use to the transport of low-sulfur fuel oil, in effect precluding extensive use of high sulfur fuel oil at the plants without a modification of the permit. The Commission also required the Pacific Gas and Electric Company to establish a ground level monitoring program, not otherwise required under the regulations of the Bay Area Air Quality Management District, to determine precisely whether or not State and Federal air quality standards can be adhered to in the vicinity of the plants.

(4) **Fresh Water Inflow**

Fresh water inflow from the Sacramento and San Joaquin Rivers is extremely important to the Bay for a number of reasons, and consequently the Commission has been concerned about potential diversions of fresh water inflow under the California Water Plan through the facilities of the California Water Project, as well as similar Federal projects. While the facilities of the Water Project are not located within the Commission's jurisdiction, the Commission has worked closely with the Department of Water Resources and the State Water Resources Control Board--the State Board regulates water quality in the Delta and thereby the amount of water than can be diverted through the Water Project--to assure that an adequate flow of fresh water into the Bay is maintained. As a result of the Commission's efforts, the State Board's most recent Delta Water Quality Control Plan and Water Rights decision specifically recognize for the first time the need to maintain inflows adequate to protect San Francisco Bay.

(5) **Ports and Airports**

The expansion of ports and airports in the Bay is of considerable concern to the Commission because either could require substantial amounts of Bay fill. At the same time, State and Federal funding for these facilities is coordinated in the Bay Area by the Metropolitan Transportation Commission. Airport expansion also has major implications for regional land use planning, which is the responsibility of the Association of Bay Area Governments. Consequently, the Commission plays a major role in the MTC-BCDC Seaports Planning Advisory Committee, which is responsible for advising the Commission and MTC on a Regional Seaports Plan. This Committee also includes representation from the major Bay Area ports and the Corps of Engineers. When complete, this Plan will ensure that BCDC permit decisions with regard to seaports will all be consistent. The Commission also plays a major role in the ABAG-MTC Regional Airports Planning Committee, which has a composition and responsibility similar to that of the Seaports Committee.

(6) **Suisun Marsh**

State and local agency compliance with the Suisun Marsh Preservation Act of 1977 and the Suisun Marsh Protection Plan is required by the provisions of the Preservation Act.

9. **Shorefront Access and Protection Element**

The Shorefront Access and Protection Element consists of two parts: (a) the existing BCDC planning and regulatory process as it relates to access, both visual and physical, to public beaches and other public shoreline areas, including the policies and provisions of the McAteer-Petris Act and the San Francisco Bay Plan; and (b) the continuing process for updating and refining the shoreline land use and resources inventory upon which the current Bay Plan policies and the Commission's Regulations relating to public access are based, including more detailed guidelines for shoreline access and recreation, data collection, mapping, and analysis of existing and proposed land uses that affect public access to the Bay.

a. **Existing BCDC Process**

(1) **Shorefront Access and Protection Assessment Procedure**

The Commission's existing planning process is the procedure the Commission uses to assess shorefront areas requiring access or protection. Since 1965, when the Commission was first created, a major focus of the Commission's planning activities has been the identification of shorefront areas, including public shorefront areas, requiring access or protection. This process began with the preparation by the Commission of a series of background reports for the San Francisco Bay Plan Covering a variety of subjects. The titles of these reports are listed on pages 39 and 40 of this Management Program. The reports dealt in depth with shorefront access and protection issues, identified areas where access or protection was needed, and contained recommended policies to provide the desired access or protection.

The background reports were the building blocks of the Bay Plan. Finally adopted by the Commission in 1968, the Bay Plan contains policies specifically related to environmental, recreational, historical, esthetic, ecological, and cultural values. These include the Bay Plan Policies on Fish and Wildlife (page 9), Water Pollution (page 10), Marshes and Mudflats (page 11), Recreation (page 23), Preservation of Salt Ponds and Other Managed Wetlands (page 27), and Scenic Views (page 33). They are supplemented by the Bay Plan Maps which show specific geographic areas such as marshes, salt ponds, wildlife areas, and waterfront recreation priority use areas where access or protection is particularly important. For the most part, these areas have been identified as geographical areas of particular concern in the Commission's approved Management Program (see page 21 of the Program).

This is not the limit of the Commission's consideration of these issues, however. Within the context of the Bay Plan Policies and Bay Plan Maps, the Commission can undertake a further, more detailed assessment of shorefront areas within its jurisdiction requiring access or protection in the context of the preparation of special area plans for specific geographic areas within its jurisdiction. The special area planning process is described on page 57 of the approved Management Program and is authorized by Sections 10820 through 10822 of the Commission's Regulations.

The permit process provides, indeed requires, even more detailed assessment of areas requiring shorefront access and protection in the context of specific projects. The McAteer-Petris Act requires the Commission to ensure that any project within its jurisdiction provide maximum feasible public access to the Bay's shoreline consistent with the project. In determining the access to be provided, the Commission must consider the location of the project, the topography of the site, the nature of the proposed use, and the need for access. Furthermore, the McAteer-Petris Act also allows the Commission to insert conditions in permits regulating the uses of land or structures, intensity of uses, and construction methods in order to effectuate both the McAteer-Petris Act and the Bay Plan. This requires the Commission to assess the impacts of projects on environmental, ecological, recreation, historical, esthetic, or cultural values to the extent these values are reflected in the policies of the Bay Plan and the McAteer-Petris Act.

**(2) Definition of the Term "Beach" and an Identification of Public Areas Meeting That Definition**

Section 30211 of the California Coastal Act defines the term "beach" as the "dry sand and rocky coastal beaches to the first line of terrestrial vegetation," and that definition has been incorporated into the California Coastal Management Program which covers the California coastal zone outside the San Francisco Bay segment. The term "beach" is defined the same way for purpose of the BCDC Management Program.

Compared to the remainder of the California coast, there are relatively few areas in the Bay that can be considered beaches in the traditional sense. Consequently, the Commission, in preparing the Bay Plan, did not distinguish between beaches per se and other public areas desirable for waterfront recreation. Instead, the Commission designated all waterfront land needed for recreation by the year 2020 on the Bay Plan Maps. These designations are shown in green on the Bay Plan Maps and labeled "Waterfront Park, Beach." Within the areas so designated are all public access areas within the BCDC segment of the coastal zone that meet the above definition of the term "beach."

**(3) Articulation of State Policies Pertaining To Shorefront Access and Protection**

**(a) Access**

The State policies pertaining to shorefront access are the Bay Plan policies relating to physical and visual access to the Bay. These are the Bay Plan Policies on Public Access (page 29); Appearance and Design (page 31); Scenic Views (page 33); and Recreation (page 23).

**(b) Shorefront Protection**

Other Bay Plan policies represent the State's policies regarding shorefront areas, including public areas requiring protection. These include, but are not limited to, the Bay Plan Policies on Fish and Wildlife (page 9), Water Pollution (page 10), Marshes and Mudflats (page 11), and Salt Ponds and Other Managed Wetlands (page 27).

**(4) Method for Designating Shorefront Areas**

To designate areas, including public areas, requiring shorefront access or protection, the Commission uses (a) the Bay Plan Map amendment procedure provided for in Section 66653 of the McAteer-Petris Act and Sections 10810 through 10812 of the Commission's Regulations; (b) the procedure for designating priority use areas in the Commission's jurisdiction provided for in Section 66611 of the McAteer-Petris Act; and (c) the special area plan procedures provided for in Sections 10820 through 10822 of the Commission's Regulations. In essence, this process permits the Commission to show an area requiring shorefront access or protection on the Bay Plan Map for the area; to designate the area for priority use for water-related recreation if necessary, which permits the Commission to deny permits for uses inconsistent with the designation; and to make more detailed assessments and designations in the course of preparing special area plans for specific geographic areas within the Commission's jurisdiction.



(5) **Identification of Legal Authorities and Funding Programs**

(a) **Outside the Suisun Marsh**

The basic legal authority the Commission relies on to meet management needs to implement this portion of the McAteer-Petris Act outside the Suisun Marsh is the same legal authority that underlies the other portions of the BCDC Management Program: the McAteer-Petris Act (California Government Code Sections 66600 through 66661).

In addition to BCDC's authority to implement the Bay Plan and to require public access as a condition of permits, other State agencies, such as the Department of Parks and Recreation and the Department of Fish and Game, have authority to acquire, develop, and manage shoreline areas around the Bay for public access purposes pursuant to the Bay Plan. Other State agencies, such as the Department of Transportation, the University of California, and the State colleges and universities have or may acquire shoreline parcels that may secondarily provide public access.

The State Lands Commission, which manages the State's extensive tideland holdings, issues permits and leases for use of these lands. The issuance of these instruments is usually conditioned on the provision of public access as part of the public trust provided for in the California Constitution.

The California Public Resources Code (Section 5500 et seq.) provides the authority for the operation of regional parks and open space districts such as the East Bay Regional Park District, Mid-Peninsula Regional Open Space District, and Marin County Open Space District. Each of these agencies owns and manages shoreline parcels for public use. Because of the property tax reductions resulting from the passage of Proposition 13, the acquisition plans of these agencies are currently in doubt, since they rely primarily on property taxes for operating funds.

The various city, county, and regional park districts are eligible for shoreline acquisition and development funding from various sources established by State statute including the State Park Bond Act of 1974 (program deadline is September 15, 1978), the Nejedly-Hart State, Urban, and Coastal Park Bond Act of 1976, the Roberti-Z'berg Urban Open Space and Recreation Act of 1977, and the California Recreational Trails Act, as amended (Section 5070 et seq. Public Resources Code).

The existing State Coastal Conservancy has at its disposal a number of techniques for the preservation of agricultural lands, restoration, enhancement, reservation and protection of coastal resources, and increase of public accessways along the ocean coastline. Legislature to expand the Conservancy to include San Francisco Bay is currently pending.

(b) **Within the Suisun Marsh**

The legal authority for implementing this portion of the Management Program is the Suisun Marsh Preservation Act of 1977 (California Government Code Sections 29000 through 29612).

**b. Update and Refinement**

Realizing that no plan is fixed in time, the authors of the Bay Plan recommended that it should be periodically updated. They also saw the need for more detailed planning for public access. For example, Policy No. 9, under Public Access, states the Commission "should issue more detailed standards and criteria to carry out the intent of the...policies on public access to the Bay...."

In response to this recommendation, the Commission, in January, 1977, authorized the staff to prepare a Public Access Supplement to the Bay Plan. This has now been completed and adopted by the Commission and is included in Appendix IV.

The Public Access Supplement has two major objectives: (1) to facilitate implementation of the Commission's legal responsibility to provide maximum feasible public access to the Bay by providing more specific guidance, consistent with the MAtter-Petris Act and the Bay Plan, to the Commission in permit decisions; and (2) to encourage, also through more specific guidance consistent with the Bay Plan and the Act, local agencies to implement the Commission's Management Program in their plans and applications for acquisition and development-of important shoreline sites.

The selection of the sites has been based upon a resource inventory and analysis process in which the land use, natural and visual resources (factors) related to the shoreline were "inventoried," (i.e., mapped and described, and then analyzed, using criteria developed by the staff, as to their relationship to and effect on public access). The resources inventory and criteria for the analysis were developed based upon (1) the BCDC staff's own permit and planning experience with the shoreline and public access, (2) land use planning standards relating to compatibility of land uses, (3) a bibliography of related source material, and (4) the advice and recommendations of agencies and individuals with expertise in recreation, wildlife, and the Bay.

Using the resources inventory and the analysis criteria developed for each resource, the staff then prepared three "resource analysis maps" (i.e., land use, natural resources, and visual resources) for each geographic area. Each map showed the information developed through the inventory of the resources and the results of applying the analysis criteria. Tentative conclusions as to the public access potential of various shoreline sites in relation to each resource were reached. Next, the three maps were evaluated in relation to one another, and tentative overall findings and conclusions on public access, and an overall resource analysis map were developed for each area.

These tentative overall findings and conclusions were incorporated into staff-prepared preliminary findings and conclusions on public access for each area. These were presented to the public in a series of public meetings in which public comments were requested.

These comments were analyzed by the staff, and based on the comments and further analysis, the staff prepared and presented to the Commission a draft of the first element of the Preliminary Public Access Supplement: "The Bay Shoreline Element - Preliminary Findings and Conclusions." It was followed by staff drafts for the two remaining elements: "Appearance and Design" and "Implementation," which were presented to the Commission for public hearing and Commission consideration. Following the public hearings and Commission consideration of all three elements, they were revised

as necessary by the staff and combined into a Preliminary Public Access Supplement, which was presented to the Commission for public hearing and further Commission consideration.

The completed Supplement was adopted by the Commission on April 5, 1979.

## 10. Shoreline Erosion Element

### a. Background

#### (1) Scope of Problem

Like all large bodies of water, the Bay is subject to wind and wave action. But because the Bay is largely enclosed, this wind and wave action is not as intense as it is in less sheltered, coastal areas where it often causes serious beach and shoreline erosion problems. Indeed it is the sheltered character of the Bay that makes it one of the world's finest natural harbors.

#### (2) Erosion Processes

Even though shoreline erosion in the Bay is not extensive enough to be considered a major problem, there are nonetheless four identifiable erosion processes at work:

- **Wave and Wind Action.** This is the result of prevailing wind patterns that are capable of generating wave heights of 5 to 6 feet during winter storm activity. It is generally limited to a few geographical locations.
- **Tidal Action.** Tidal action affects the entire shoreline and is the major cause of what shoreline erosion there is in the Bay. Since the Bay is generally shallow, tidal fluctuations affect substantial areas. The natural result is a system of mudflats and saltwater marshes that tends to stabilize the shoreline. However, historically extreme high tides, together with winter storm activity, have usually been the most apt to cause the modifications to the shoreline.
- **Man-Related Actions.** Much of the Bay was filled during the first half of this century. Much of the natural shoreline has been altered; extensive salt ponds have been diked-off from tidal action; and stabilized levees now protect substantial urban development.

The major man-related erosion processes are the results of this extensive shoreline alteration. Levees and dikes affect siltation patterns by altering the configuration of the shoreline, its reach, and the natural currents.

There are additional man-related erosion processes associated with the wave action generated by some

marine activity near shore. These actions are confined to specific areas and are generally associated with particular ship traffic.

- **Subsidence.** Withdrawal of ground water from the South Bay aquifers during the last century has induced ground settling or subsidence. This action has increased flood danger to substantial portions of the urbanized area and has increased the importance of the levees that protect this land from tidal action.

**b. The Shoreline Erosion Element**

The Shoreline Erosion Element consists of two parts: (1) the existing BCDC planning and regulatory process as it relates to shoreline erosion issues, including the policies and provisions of the McAteer-Petris Act and the Bay Plan; and (2) a continuing process for updating, and expanding to the extent necessary, current Bay Plan policies and the Commission's Regulations relating to shoreline erosion.

**(1) Existing BCDC Process**

**(a) Assessing the Effects of Shoreline Erosion**

The Commission assesses the effects of shoreline erosion in the Bay by using its existing planning, permit, and management authority. Because shoreline erosion is not a major problem in the Bay, and because where it is a problem it is generally localized, the major tool for dealing with erosion problems, in a planning context, is the special area planning process for a specific geographic area. Thus, for example, if there is an area of the shoreline with an erosion problem, particularly one that might lead to future fill for shoreline protection, the special area plan for the area would assess the cause of the problem and the impacts on the area covered by the plan. Appropriate policies, consistent with the overall policies of the Management Program discussed in subsection (b) (below), would then be incorporated into the special area plan.

Permit decisions provide an opportunity for more detailed examination of shoreline erosion problems in the context of specific projects, particularly if the project is being proposed to minimize or eliminate a shoreline erosion problem. In deciding whether to grant a permit, the Commission considers the extent to which the problem can be dealt with by methods other than further filling of the Bay. To the extent that shoreline protection requiring Bay fill is the only alternative, the Commission requires that the engineering be such that the project provide a long-term solution to the problem. For example, all permits for shoreline "riprap" (shoreline protection material usually consisting of large rocks) include conditions requiring the riprap to be properly engineered to prevent its being undermined and washed away by wind and wave action.

**(b) Articulation of Policies Pertaining to Erosion**

Since the Bay is a tidal estuary, its long, gentle reaches naturally promote the development of extensive salt marshes and mudflats. While these natural ecotones are dynamic systems, changing configuration with seasonal and long-term fluctuations in water conditions, they also act as a natural shoreline erosion control. The policies in the Bay Plan pertaining to these areas effectively assure that this natural shoreline protection mechanism is preserved. The most important of these policies in the Bay Plan are Policy No. 3 on Marshes and Mudflats (page 12), and Policy No. 2 on Salt Ponds and Other Managed Wetlands (page 27).

The Bay Plan policies applicable to shoreline erosion are supplemented by policies directly relating to shoreline erosion developed for the entire State by the Interagency Shoreline Erosion Control Coordinating Group. This group comprises representatives of the following agencies: the State Water Resources Control Board, the Department of Parks and Recreation, the California Coastal Commission, the Department of Fish and Game, the Department of Transportation, the Governor's Office of Planning and Research, the Department of Conservation, the Department of Navigation and Ocean Development, the State Lands Commission, the Department of Water Resources, the Resources Agency, the Coastal Conservancy, and the BCDC. These policies were being developed by this broadly representative group so that they will be observed and implemented in the operations of all the participating agencies.

**(c) Designating Areas for Erosion Control**

Because localized shoreline erosion has not been a wide-spread problem in the Bay, the Commission has seen no need to develop procedures specifically for designating areas for shoreline erosion control. There are, however, existing procedures that would be used if in the future areas were found to need special attention in this regard. These procedures are the Bay Plan Map amendment process provided for in Section 66652 of the McAtter-Petris Act, Sections 10810 through 10812 of the Commission's Regulations, and the special area plan process provided for in Sections 10820 through 10822 of the Commission's Regulations.

The Bay Plan Maps cover all of the Bay. They contain (1) designations of all priority use areas; (2) designations of wildlife areas, tidal marshes, salt ponds and managed wetlands; (3) miscellaneous designations relating to specific geographic areas (e.g., views and vista points); (4) comments; and (5) policy notes that are enforceable by the Commission in the same way as the other policies of the Bay Plan. The Bay Plan Maps can be amended by the Commission after giving adequate descriptive notice of the proposed change and holding a public hearing.

If an area were identified as having a shoreline erosion problem requiring special measures, the Commission would adopt a Bay Plan Map amendment identifying the area and adding a policy note or a comment to the map indicating the special measures to be taken. The latter would be determined based on the general policies of the Bay Plan discussed in subsection (b) above).

The special area planning process could be used either in conjunction with a Bay Plan Map amendment or independently. In either case, the special area plan for the area in question would deal on a geographically specific basis with shoreline erosion problems. If, for example, the Bay Plan Map for the area carried a designation and/or

a policy note indicating an erosion problem in the area, then a major objective of the special area planning process would be the development of policies relating to development that would specifically relate the more general policies discussed above in subsection (b) to the area in question.

If, on the other hand, the Bay Plan Map did not indicate the area had an erosion problem, then a preliminary investigation would be made in the course of the planning process to determine if a shoreline erosion problem existed. If it were determined that shoreline erosion was a problem, then the same process would be followed as in the case where the area had previously been identified on a Bay Plan Map as having a shoreline erosion problem. Furthermore, since special area plans are adopted by the Commission as amendments to the Bay Plan, the policies in the special area plans, including policies that may relate to shoreline erosion, are fully as enforceable as the policies in the Bay Plan or the policy notes on the Bay Plan Maps.

**(d) Procedures for Managing the Effects of Erosion**

In general, the Commission does not consider natural shoreline erosion to be a process that should be interfered with unless it threatens existing development and non-structural solutions are not feasible. The permit process alerts the Commission to the latter situation. When an applicant requests a permit for work to strengthen or repair shoreline protection devices, the application is reviewed in light of the Bay Plan policies discussed in subsection (b), above. Furthermore, as more detailed policies are added to the Commission's Management Program, based on the work of the Interagency Shoreline Erosion Control Coordinating Group, the application will also be reviewed in light of these policies.

In addition, major permits are subject to review by the Commission's Engineering Criteria Review Board, and all permits are subject to review by the Commission's engineering staff. A major objective of that review is to ensure that new protective works are properly designed so as to be as impervious as possible to erosive forces.

**(e) Legal Authority and Funding Programs**

The Commission's legal authority, as cited in Section 7, "legal Authorities," page 45 of the BCDC Management Program, includes planning and regulatory jurisdiction over all development in tidal areas of the Bay and within 100 feet of the shoreline. This jurisdiction is adequate to permit BCDC to manage the effects of shoreline erosion, to the extent necessary, within its jurisdiction.

Funding for a shoreline erosion program is available from a variety of sources. Primary State funding and responsibility for program administration rests with the State Department of Boating and Waterways. In addition, funds are available from the U. S. Army Corps of Engineers. The U. S. Army Corps of Engineers and the East Bay Regional Park District have been cooperating in trying to reduce or eliminate one of the more persistent shoreline erosion problems in the Bay at Alameda Beach. However, most erosion management within BCDC's jurisdiction, whether marsh restoration or riprap repair, is required by conditions in BCDC permits and is paid for by the permit applicant.

(2) **Update and Expansion**

As noted in subsection (b), page 67, BCDC is cooperating with other concerned State agencies in the work of the Interagency Shoreline Erosion Control Coordinating Group. Among other things, this group is charged with reviewing existing State policies pertaining to shoreline erosion and development recommendations for new or revised State-wide policies as necessary. The policies will be consistent with the McAteer-Petris Act and the Bay Plan, and to the extent they are applicable to conditions inside the Bay, they will be incorporated into the BCDC Management Program and will be applied by the Commission in carrying out its planning, permit, and management responsibilities within its segment of the California coastal zone.

**11. Energy Facility Planning Element**

**a. Energy Facility Planning Process**

The BCDC energy facility planning process is based on the statutes under which BCDC operates. These are the McAteer-Petris Act and certain provisions of Assembly Bill 1717, which includes the Suisun Marsh Preservation Act of 1977. It is also based on the policies of the two comprehensive plans that the BCDC is responsible for carrying out (i.e., the San Francisco Bay Plan and the Suisun Marsh Protection Plan), under those statutes.

**(1) Energy Facilities Likely to Locate in or Significantly Affect the Coastal Zone**

The following are the energy facilities likely to locate in or significantly affect the BCDC segment of the coastal Zone: (a) thermal power plants; (b) petrochemical plants; (c) oil and gas tanker construction and repair yards; (d) off-shore oil platform construction and repair yards; (e) petroleum off-loading facilities for bulk and refined petroleum; (f) pipeline terminals for coal slurry; (g) bulk terminals for coal or other solid bulk fuel; (h) pipelines for natural gas exploration, production, or injection; (j) electric power transmission lines; and (k) off-shore oil development.

These facilities were identified by the consultant to the Commission who prepared the background report *Waterfront Industry* for the San Francisco Bay Plan and through preliminary staff analysis of current trends in the energy field.

**(2) Process for Assessing the Suitability of Sites for Energy Facilities**

The process the Commission uses for assessing the suitability of sites for energy facilities has four distinct elements:

- The Commission's regular planning process, which led to the Bay Plan. The Bay Plan contains policies relating to the location of energy facilities in the BCDC segment of the coastal zone and the designation of sites along the shoreline where such facilities should be located if they meet other requirements of the Bay Plan and the McAteer-Petris.
- The Commission's permit process which requires the Commission to make detailed assessments of the

suitability of specific sites proposed for energy facilities other than thermal power plants provide for in determining the consistency of the proposed project with the McAteer-Petris Act, the Bay Plan, the Suisun Marsh Preservation Act of 1977, and the Suisun Marsh Protection Plan.

- The process provided for in the Preservation Act for designating sites that are unsuitable for power plants within the Marsh or elsewhere within the Commission's jurisdiction.
- The thermal power plant siting process provided for in the Warren-Alquist Energy Resources Conservation and Development Act and the McAteer-Petris Act, as both were amended by Assembly Bill 1717.

**(a) The BCDC Planning Process**

The process that led to the creation of the Bay Plan between 1965 and 1969 is described in detail earlier in this Management Program (see pages 39 and 40). Its major elements consisted of a series of background reports, extensive public hearings and public participation in the framing of tentative planning conclusions with regard to the Bay, the incorporation of the tentative conclusions in a Preliminary Bay Plan by the Commission, and submission of the Bay Plan to the State Legislature. The Bay Plan subsequently became the basis for amendments to the McAteer-Petris Act which made the Commission a permanent agency and giving it the authority to implement the Bay Plan.

Many of the background reports dealt with subjects relevant to the siting of energy facilities within the BCDC segment of the coastal zone. These included Economic and Population Growth, Maritime Commerce and Ports, Surface Transportation, Ownership of Bay Lands, Regulation of Development, Geology, Stability of Filled Land, Governmental Machinery Necessary to Carry Out the Plan, Public Facilities and Utilities, and Waterfront Industry.

The most significant of these reports, in relation to the siting of energy facilities, was the report on Waterfront Industry. It contained an assessment of potential sites around the Bay suitable for waterfront industry, which included those energy facilities requiring frontage on navigable waters to receive raw materials and to distribute processed materials by ship. This assessment was reflected in the Bay Plan by designations of specific shoreline sites for priority use by water-related industry, and these designations were later given legal significance by the 1969 amendments to the McAteer-Petris Act. These amendments, among other things, required the Commission to fix and establish the boundaries of the priority use areas and gave the Commission the authority to exclude land uses from these areas that were inconsistent with the priority use designation.

A similar process was followed in the preparation of the Protection Plan, the preparation of which was authorized by legislation passed subsequent to the 1969 amendments to the McAteer-Petris Act. Background reports for the Protection Plan directly relevant to energy facilities planning included Natural Gas Resources of the Suisun Marsh; Water-Related Industry Adjacent to the Suisun Marsh; Suisun Marsh and Upland Resource



Management; and Developing an Implementation Program for the Suisun Marsh Protection Plan.

These reports led to the energy-related policies of the Protection Plan. In addition, the Protection Plan reconfirmed the suitability of certain sites adjacent to the wetlands within the Marsh for water-related industry and a power plant at Collinsville.

**(b) The BCDC Permit Process.**

The McAteer-Petris Act requires the Commission to find that a project is consistent with the Act and the Bay Plan before issuing a permit for a project anywhere within its jurisdiction. In making this determination, the Commission weighs the project against the policies of the Bay Plan. Of particular importance are the following factors: whether the site of the project has been designated for priority use by a water-related industry; whether the proposed facility is a water-related industry; and whether the site is suitable for the facility proposed. If all three conditions are met, and the facility is otherwise consistent with the Act and the Bay Plan, it is entitled to priority at the site and a permit will be granted.

A similar process is followed in the Suisun Marsh under the Preservation Act. There the Commission must find that the project is consistent with the Preservation Act and the Protection Plan before a permit can be issued in the "primary management area" (lands within the Marsh lying below the five-foot contour line). The local government with jurisdiction must make a similar finding before issuing permits within the "secondary management area" (generally the upland grasslands within the Marsh). Those areas within the secondary management area needed for and suitable for water-related industry were designated in the Protection Plan for that purpose. The Preservation Act confirmed these designations and, in addition, made it clear that a portion of the site designated for water-related industry at Collinsville may not be designated as unsuitable for a power plant (see below).

**(c) Designation of Sites Unsuitable for Power Plants**

To resolve possible future conflicts regarding certifications of consistency for thermal power plants under the Federal Coastal Zone Management Act, and to provide uniform procedures for the siting of thermal power plants throughout the California coastal zone, Assembly Bill 1717 amended the Warren-Alquist Energy Resources Conservation and Development Act and the McAteer-Petris Act. Under these amendments, BCDC must designate those areas within its jurisdiction where the location of an electric transmission line or thermal power plant in excess of 50 megawatts would be inconsistent with the provisions of the Preservation Act, the McAteer-Petris Act, the policies of the Suisun Marsh Protection Plan, and the policies of the Bay Plan. Once an area is designed by BCDC, the Energy Commission cannot approve that area for such a facility unless BCDC first finds that the proposed facility "is not inconsistent with the primary uses of such land and that there will be no substantial adverse environmental effects and unless the approval of any public agency having ownership or control of such land is obtained" (Public Resources Code Section 25526(b)).

Certain areas cannot be designated by BCDC as unsuitable for power plants: (1) existing sites for power plants, transmission lines, and areas that will be used for their reasonable expansion; (2) any such site for which a Notice of Intention (NOI) was filled with the Energy Commission before January 1, 1978, and is subsequently approved

by that commission (those sites include the Potrero, Visitacion, and North San Jose sites); and (3) the area east of Collinsville Road that is designated for water-related industrial use in the Protection Plan.

BCDC has to have completed the designation of the areas unsuitable for power plants prior to January 1, 1979, and may amend the designations every two years.

**(d) Thermal Power Plant Siting Process**

In addition to giving BCDC the authority to designate sites within the Marsh and elsewhere within its jurisdiction that are unsuitable for thermal power plants, Assembly Bill 1717 also amended the Warren-Alquist Act to give BCDC a special role, analogous to that of the Coastal Commission, in the thermal power plant siting activities of the Energy Commission. The amendments in Assembly Bill 1717 strengthened BCDC's role in the siting of thermal power plants by requiring the Commission to prepare a special report on any power plant proposed to be located within the Suisun Marsh or in any other area within BCDC's jurisdiction. The report is to include an assessment of the project, including the site proposed, in light of the McAteer-Petris Act and the Bay Plan or the Suisun Marsh Preservation Act and the Suisun Marsh Protection Plan, depending on the location of the project. The report is also to include consideration of and findings regarding reasonable modifications to the site and the project to make it consistent with the applicable laws and plans.

The energy Commission must then include specific provisions in any authorization for a thermal power plant that is the subject of such a report to ensure that the plant is consistent with the applicable laws and plans, unless the energy Commission specifically finds that the adoption of the provisions recommended by the Commission would result in greater adverse effects on the environment or the provisions proposed would not be feasible.

**(3) Identification of State Policy and Other Implementation Means for Managing Energy Facilities and Impacts**

**(a) Policies of the Bay Plan**

The Bay Plan contains general, as well as specific, policies concerning the siting of energy facilities on the shoreline of the Bay.

**(i) Water-Related Industry**

As recently amended by Bay Plan Amendment No. 8-78, the Bay Plan defines water-related industry as those industries which "use water for transportation, thereby gaining significant economic benefits by fronting on navigable water." Such facilities may require a shoreline site for plant construction or for the construction of a berth or pipeline facility.

Because shoreline land suitable for water-related industry will eventually become scarce, such land is reserved for such use as a priority use reservation is enforced through the Commission's permit process.

These facilities require a waterfront location either for (1) a ship berth for off-loading or on-loading of dry bulk cargoes such as coal, (2) pipeline access to the shoreline for liquid bulk cargoes such as crude petroleum, (3) construction and repair of oversized structural steel products that must be shipped out via water such as off-shore drilling platforms, and (4) ship construction and repair yards for oil tankers and barges.

The Bay Plan Maps designate specific shoreline sites for water-related industrial priority uses. Development of these sites is governed by the applicable Bay Plan policies, as well as the provisions of the McAteer-Petris Act. For the area of the Suisun Marsh, applicable policies of the Preservation Act and Protection Plan apply, as well.

Applicable Bay Plan policies concerning water-related industry are Policy Nos. 3, 4, 5, 6, and 7 (see Amendment No. 8-78 to the Bay Plan).

**(ii) Ports**

The Bay Plan Findings on Ports indicate that because the Bay is one of the world's greatest natural harbors and maritime commerce is of primary importance to the entire economy of the Bay Area, adequate modern port terminals and deeper shipping channels will be needed to preserve and enhance the standing of the Bay Area as a major world harbor and to keep pace with changing shipping technology. Of particular importance are the expected growth in the frequency and size of oil tankers and bulk cargo carriers which may require deeper shipping channels than now in the Bay. The Bay Plan Policies on Ports provide for energy-related port facilities. The most important to these Bay Plan Policies are Nos. 3, 4, 5, and 6.

**(iii) Other Energy Facilities**

The Bay Plan also contains policies relating to electric transmission lines, power plants, pipeline terminals and distribution facilities (page 29), and oil and gas extraction (page 32).

**(b) Bay Plan Map Designations**

Bay Plan Map No. 2, see Appendix IV, is a composite of the maps and designates those specific sites on the shoreline reserved for, among other priority uses, water-related industry and port facilities, as well as tanker shipping channels and a proposed supertanker terminal.

**(c) Suisun Marsh Protection Plan**

The Protection Plan policies relate to the Suisun Marsh area of San Francisco Bay and are a more specific application of the regional policies of the Bay Plan intended to supplement those policies where appropriate because of the unique characteristics of the Suisun Marsh. The policies of both the Bay Plan and the Protection Plan apply in the areas covered by the latter, except where the two may conflict. In that case, the more specific policies of the Protection Plan control.

The Protection Plan, including its policies relating to planning for energy facilities, is included in Appendix IV. These policies cover natural gas resources of the Marsh, facilities and utilities, and water-related industry. The policies on natural gas resources recognize that transportation of natural gas by underground pipeline is the most

economical and safest method of gas transportation in the Marsh area and permits construction of such pipelines if they meet standards specified in the Protection Plan. Gas wells and ancillary facilities are also permitted if they meet certain safeguards, also specified in the Protection Plan. Other Protection Plan Policies on Natural Gas deal with when drilling should occur, how abandoned wells should be sealed, and how to encourage the use of depleted gas fields for storage.

The policies on facilities and utilities set up guidelines for the construction of electric power transmission lines to minimize interference with wildlife, particularly migrating waterfowl, and permit underground pipelines, wires, and cables if no alternative route is available and standards specified in the Protection Plan are met. There are also guidelines barring construction of new roadways and rail lines within the Marsh which would form barriers to movement of wildlife, except for roadways and rail lines necessary to service water-related industrial development at the Collinsville site designated for that purpose. The Protection Plan also contains policies relating to water-related industry. These policies set up guidelines for the development of water-related industry in the Collinsville area.

**(d) Suisun Marsh Protection Plan Map**

The Suisun Marsh Protection Plan Map indicates that area of the shoreline reserved for water-related industrial use which would include the energy facilities discussed previously in the subsection concerning the Bay Plan Policies on Water-Related Industry.

**(4) Coordination and Cooperation with Local, State, and Federal Agencies**

**(a) Refinement and Updating of Energy Facility Siting Program**

As part of the Commission's ongoing planning process, energy facility siting policies are continually refined and updated. Currently, the Commission is in the process of refining its policies on thermal power plant and electric transmission line siting, oil tanker safety, and water-related industry. The commission will use the same process for this effort that it uses in all of its planning activities.

This process is described in detail in the BCDC Management Program and is specifically designed to encourage the widest possible participation by other agencies and the public in the Commission's planning activities. It includes preparation by the staff of reports containing background information on the subjects involved and tentative conclusions, usually in the form of proposed amendments to the Bay Plan. In the case of the thermal power plant siting study, these conclusions will be expressed in the form of tentative map designations. Both the reports and the tentative conclusions are then widely distributed to the public and to local, State and Federal agencies for review and comment. At least one public hearing, and usually more, is held on the background information and the tentative conclusions. The reports and the conclusions are then revised by the staff based on public and agency reaction and on the reaction of the Commission. If necessary, the revised reports and conclusions are also distributed for further review and comment and additional public hearings are held before the reports and conclusions are finally adopted by the Commission.

(b) **Coordination with Other Agencies  
Involved in Energy Facility Planning**

In addition to the Commission's general planning and permit process, which are designed to foster coordination and cooperation with local, State and Federal agencies in general, certain State and Federal agencies play a more specific role in the energy-related aspects of the Commission's management activities.

(i) **State Energy Resources Conservation  
and Development Commission**

Under the Warren-Alquist Act, the energy Commission has responsibilities generally including: the consolidation of "the State's responsibility for energy resources; encouraging, developing and coordinating research and development into energy supply and demand problems; regulating electrical generating and related transmission facilities; formulating a range of measures to reduce wasteful, uneconomical, and unnecessary use of energy, thereby reducing the rate of growth of energy consumption; prudently conserving energy resources, and assuring State-wide environmental, public safety, and land use goals; and comprehensively analyzing the supply and demand for all forms of energy and the economic and environmental impacts of alternative Federal and State energy policies.

In both the permit and the planning processes, the Commission utilizes assistance from the energy Commission in determining the need for thermal power plants locating in BCDC's jurisdiction (Public Resources Code Section 25508). In addition, BCDC has a special role in the Notice of Intention and Site Certification proceedings before the Energy Commission. This role was described previously in the section headed "Process for Assessing the Suitability of Sites for Energy Facilities," (see page 69). Under California Government Code Section 66645, the Commission has a major role in the siting of thermal power plants when a site is proposed within the Suisun Marsh or elsewhere within the Commission's jurisdiction. In such cases, the commission is required to determine whether the proposed thermal power plant would be consistent with the Suisun Marsh Preservation Act of 1977 and the Suisun Marsh Protection Plan, or the McAteer-Peris Act and the Bay Plan, as the case may be. The commission is also required to indicate the degree to which the proposed site and the thermal power plant could reasonably be modified so as to be consistent with the foregoing.

This determination is conveyed to the Energy Commission. If the Energy Commission decides to authorize the thermal power plant, it is required to include specific provisions to meet the requirements of the Preservation Act and the Protection Plan, or the McAteer-Petris Act and the Bay Plan, unless the Energy Commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effect on the environment or that the provisions proposed in the report would not be feasible.

Widespread public notice of BCDC participation in the siting activities of the Energy Commission is provided by BCDC. In addition public hearings are held on the legally required report by BCDC to the Energy Commission before it is adopted by BCDC. All deliberations of the energy Commission are open to the public and the energy Commission holds numerous public hearings are held at all phases in its siting process.

**(ii) California Public Utilities Commission**

The California Public Utilities Commission has utility rate regulatory authority and retains regulatory authority over a number of thermal power plants that were under development before the Warren-Alquist Act established the Energy Commission. It is also responsible for assuring the financial stability of utilities while protecting consumer interests. The California Public Utilities Commission is also responsible for coordinating with State agencies for the purpose of providing unified testimony to Federal agencies on energy facilities, and to provide a conflict-resolution mechanism if agreement cannot be reached. The California Public Utilities Commission also forecasts supply and demand for gas and determines the California position on major gas projects in proceedings before the Federal Power Commission.

**(iii) Resources Agency**

The Resources Agency has coordinating responsibilities for activities of the agencies within it—including the BCDC, the Energy Commission, the Air Resources Board, and the State Water Resources Control Board. A member of the staff of the Secretary for Resources is a member of the Commission.

**(iv) State Lands Commission**

The State Lands Commission is responsible for the leasing of State-owned lands and waters for petroleum and geothermal development where such development is appropriate. A member of the State Lands Commission or of the Lands Commission's staff is a member of the Commission.

**(v) Division of Oil and Gas**

The Division of Oil and Gas, which is part of the Resources Agency and regulates the drilling of oil and gas wells in California, is required to carry out its responsibilities in conformity with the Suisun Marsh Preservation Act of 1977 and the Suisun Marsh Protection Plan (Public Resources Code Section 29302).

**(vi) Federal Agencies**

In considering the national interest and public welfare aspects of proposed energy facilities that would be located in or have an impact upon the coastal zone, the BCDC considers the policy positions and reports of all appropriate Federal agencies, including:

Office of the President  
Department of Energy  
Department of Commerce  
Department of Interior  
Federal Energy Regulatory Commission  
General Accounting Office  
Office of Technology Assessment

The Commission has and will continue to consider the national interest in all aspects of its planning and permit activities. Even though the national interest in coastal zone management was largely undefined at the time the commission

pioneered coastal zone management in San Francisco Bay, the Commission made every effort to see that those Federal agencies interested in the Bay at that time were involved in the planning process. This involvement took the form of Federal membership on the Commission, Federal agency review of all background reports, and active solicitation of Federal comments on matters pending before the Commission. This process culminated in the nationally acclaimed Bay Plan, which fully provides for facilities, including energy facilities, that are in the national interest. These facilities are described more fully on pages 25 through 28 of the amended Management Program.

This process will continue to be followed by the Commission in all planning and regulatory matters, in addition to consideration of the policy positions and reports of the Federal agencies mentioned above. Specifically, the national interest will be considered in the preparation of all background reports to the commission relating to planning for energy facilities within the BCDC segment of the coastal zone; in the staff recommendations and Commission consideration of all applications for permits for such facilities; and in all reports prepared pursuant to Section 66645 of the McAtteer-Petris Act relating to the siting of thermal power plants within BCDC jurisdiction. In determining the national interest to be considered, the Commission will consider the public welfare in energy facility planning and siting, which includes the national interest; the policy positions of Federal agencies with respect to energy facility planning and siting; and public testimony. The Commission also believes that its past commitment to the national interest is evidenced by its designation and continued reservation of key shoreline sites for high priority use by water-related industry. As noted earlier, such industries include a wide variety of energy facilities that are of national importance.

The Commission also wishes to point out, however, that the national interest is at best difficult to define; it is especially difficult for a state to define and the Commission does not believe it should be a state's responsibility to do so; and the national interest is not necessarily synonymous with the missions of individual Federal agencies. The Commission, therefore, expects Federal agencies to present to the Commission a coordinated, consistent statement of the national interest in matters in which they believe there is a national interest.

**(b) Other Commission Activities Reflecting  
Coordination and Cooperation with Other Agencies**

**(i) Outer Continental Shelf Lease Sale No. 53**

In November, 1977, the United States Department of the Interior called for nominations for the general Pacific Outer Continental Shelf (OCS) Lease Sale No. 53 off the central and northern California coast. The deadline for nominations was extended by the Secretary of the Interior to July, 1978. Announcement of tracts chosen for exploration is scheduled for the fall of 1978. Although the Lease Sale area is not within BCDC's jurisdiction, the impacts of OCS Lease Sale No. 53 development on San Francisco Bay and shoreline are potentially significant. Of particular concern is the potential increase in frequency of oil tanker and barge traffic in the Bay, as well as on-shore impacts including new and expanded oil refining facilities. As part of its on-going planning process to evaluate energy facilities affecting the Bay, the Commission will participate in the Federal environmental assessment process analyzing the impacts of OCS Lease Sale No. 53 on development in the Bay and on the shoreline.

**(ii) Tanker Safety Study**

The Commission is participating in a State of California Interagency Tanker Task Force which consists of all State agencies involved with in planning for or regulating petroleum transfer activities in California. The Task Force is charged with investigating the existing State role and how it should be strengthened with respect to: (1) tanker operations, (2) terminal and port operations, and (3) oil spill clean-up and liability.

**(iii) BCDC Review of Local Protection Program**

BCDC will, on a continuing basis, review and monitor energy facility impacts in the course of preparing the Suisun Marsh Local Protection Program. After certification of the Local Protection Program, the Commission will retain appeal authority over the area of the Marsh, and until certification of the Local Protection Program, will be applying the McAteer-Petris and Preservation Acts, Bay and Protection Plans policies to the Marsh area.

**(iv) BCDC Review of Environmental Impact Reports and Environmental Impact Statement**

Under the California Environmental Quality Act (CEQA), as amended, and the Federal National Environmental Protection Act (NEPA), the Commission will analyze and comment on environmental impacts of energy facilities proposed for the Bay.

**(5) Legal Authority**

**(a) McAteer-Petris Act**

The McAteer-Petris Act fully recognizes the importance of energy facilities locating in the BCDC segment of the coastal zone and identifies those facilities that are water-oriented as having a priority use of the shoreline. Section 66602 of the Act provides, in part, that:

“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 power plants requiring large amounts of water for cooling purposes; that the 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....” (Emphasis added.)

Furthermore, the McAteer-Petris Act recognizes that some fill of water areas (San Francisco Bay) is permissible for certain water-oriented energy facilities. Section 66605(a) of the McAteer-Petris Act provides, in part that:



“The Legislature further finds and declares 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 (such as ports, water-related industry, airports, bridges, wildlife refuges, water-oriented recreation and public assembly, water intake and discharge lines for desalination plants and power generating plants requiring large amounts of water for cooling purposes)....” (Emphasis added.)

The specific water-oriented energy facilities that qualify as port and water-related industrial uses for which the Commission has determined: (1) have priority use of the shoreline; (2) reserved key sections of the shoreline for such uses; and (3) allow some fill of the Bay for such uses as is set out in more detailed in the Policies and Maps of the Bay Plan.

The Commission exercises its control over the siting of energy facilities and the protection of energy facility reserved shoreline sites through its permit process. Section 66632(a) of the McAteer-Petris Act provides, in part, that:

“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 if the commission’s jurisdiction shall secure a permit from the commission....”

Energy facilities may be authorized to locate in the Commission’s jurisdiction if they meet the requirements of both the provisions of the McAteer-Petris Act and the policies of the Bay Plan. The Commission’s procedures authorizing, modifying, or denying the siting of an energy facility is its permit process.

**(b) Suisun Marsh Preservation Act of 1977**

The Preservation Act implements the policies and map designations of the Suisun Marsh Protection Plan. The Commission is given the primary State responsibility for the implementation of the Preservation Act and the Protection Plan. To achieve maximum responsiveness to local conditions, the Preservation Act places great reliance on local governments and local land use planning procedures with enforcement through the preparation of and certification by BCDC of a Local Protection Program. The LPP must be consistent with the provisions of the Preservation Act and the policies of the Protection Plan.

The Protection Plan contains specific policies on energy facilities, including (1) natural gas extraction, storage and transmission; (2) electric transmission line location; and (3) natural gas and petroleum related product pipeline location and construction. In addition, the Protection Plan reserves land fronting on deep water for use by water-related industries and sets out construction and use conditions and performance standards to protect adjacent environmentally sensitive areas.

The Commission enforces the Protection Plan policies through the local protection program requirements and the permit process established in the Preservation Act. A marsh development permit is required for any development within the Marsh.

## **12. Miscellaneous**

The California Coastal Commission has been designated the single State agency that will be fiscally and programmatically responsible for receiving and administering grants under Section 306 to implement the BCDC Management Program.

## **13. Segmentation**

BCDC believes that the coastal management situation in California is unique, and that approval of a segmented program in California is not only appropriate, but essential. California has been in the forefront of coastal zone management efforts nationwide, first with the San Francisco Bay Conservation and Development Commission and later with the California Coastal Commission. Consequently, the segmentation that exists is the result of the State's willingness to pioneer in this area.

When the approved version of the Management Program was submitted the California Coastal Commission had not received approval under Section 306 of the Coastal Zone Management Act. Since that time, the California Coastal Commission's program for its segment of the coastal zone has been approved, and the Coastal Commission has been designated the State coastal zone management agency for Section 306 purposes.

One of the conditions of approval of the California program was that the Coastal Commission and BCDC would conduct a joint review of the BCDC program to see how the programs of the two agencies could be related. This study was also required by the California Coastal Act of 1976.

That study has now been completed, and its relevant portions are described elsewhere in this amended program document. It has also been submitted to the Legislature in June, 1978, and to the Office of Coastal Zone Management. It contained a number of recommendations for meeting the requirements of the Federal Act for a "single unified program," and these are now being implemented.

**PART TWO: APPENDICES**  
(not included)