Coastal Zone
Information
Center

San Francisco Bay Plan

PART ONE: CONTENTS OF MANAGEMENT PROGRAM

COASTAL ZONE
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General Management Policy Statement; Framework of Program Development and Implementation

The heart of the Commission's management program for San Francisco Bay is the San Francisco Bay Plan (see Appendix IV). In it, the Commission has stated its findings and policies for the conservation, management, and development of San Francisco Bay. The major conclusions, policies, and proposals in the Plan are summarized below:

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1. Major Conclusions and Policies

a. The Bay

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

b. 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.

c. 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.

d. 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.

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-- Developing new recreational opportunities--shoreline parks, marinas, fishing piers, beaches, hiking and bicyling 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.

e. Effects of Bay Filling

Bay filling ~~should be~~ 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 quantities of liquid wastes being poured into it. Filling reduces ~~both~~ the surface area of the Bay, ~~and~~ 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.

f. 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 has already reduced the size of the Bay from about 680 square miles in area to little more than 400. Although some of this 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 free 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.

g. 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 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.

h. Fill Safety

Virtually all fills in San Francisco 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 settling 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 (1) establish safety criteria for Bay fills and structures built on fills, and revise the criteria as necessary; (2) review all except minor projects as to the adequacy of their safety provisions, and recommend changes if necessary; (3) develop an inspection system to insure placement of fills according to approved designs; and (4) 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.

2. Major 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, water-oriented housing.

3. Carrying out the Plan

The Commission also included in the Plan several recommendations to the Legislature for carrying out the 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: (a) 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 (b) coordination with other agencies that either regulate activities outside the Commission's jurisdiction which may have a direct and significant impact on the Bay, or whose own activities may have such impacts.

a. Permit Jurisdiction in the Coastal Zone

Under the McAteer-Petris Act (except as may be affected by the Constitution and applicable Federal laws and regulations), BCDC has permit jurisdiction over ~~the following areas in the BCDC segment of the coastal zone:~~ (1) all areas of the Bay subject to tidal action; (2) all

marshlands lying between the mean high tide line and five feet above mean sea level; (3) the first 100 feet of the shoreline; (4) the salt ponds in the North and South Bays (large areas of open water diked-off from the Bay and used for salt production); (5) managed wetlands located mostly in the Suisun Marsh (wetland areas diked-off from the Bay and used largely for duck hunting and agriculture); and (6) 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.

Also included in the BCDC segment of the coastal zone is the buffer zone around the Suisun Marsh defined in the Suisun Marsh Preservation Act of 1974. (The Suisun Marsh itself is included within the Commission's jurisdiction under the McAteer-Petris Act.) Pending completion of the Suisun Marsh Protection Plan by the Department of Fish and Game and BCDC, all development in the buffer zone is required by the Preservation Act to be consistent with the preservation and protection of the Marsh as a wildlife habitat of nationwide importance.

To enforce the permit requirements of the 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 persists.

b. 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 ensure

consistency with the management program in areas beyond the permit jurisdiction of the Commission. How this management network works is described more fully later in this application.

4. Further Development of the Management Program

The Commission has also adopted a list of "Priority Planning Work Items" to guide the further development of the BCDC management program in the future. This list emphasizes completion of studies currently underway with regard to the Suisun Marsh and permit coordination. It also proposes new efforts in the areas of regional port planning, regional airport planning, water-related industry, marshes, and water-related recreation and public access. The list of Priority Planning Work Items is included in Appendix IV.

Appendix IV also includes the Commission's tentative proposals for use of Section 306 funds. Major elements include commencement of work with the California Coastal Commission on developing a unified coastal zone management program, further development of special area plans with local government, and increased enforcement capability.

The further development of the management program may lead to amendments in the Bay Plan. The Plan was not intended to be changed easily, however, and under the McAteer-Petris Act, amendments to policies or standards in the Plan require a 90-day notice prior to a vote and the affirmative vote of two-thirds of the Commission members.

5. 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 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 is the nationally-acclaimed San Francisco Bay Plan, which is the core of the BCDC management program for the Bay. Its policies and recommendations, which were largely accepted by the Legislature and the Governor in making 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.

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 Plan provides 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 (Section 923.11)

a. The BCDC Segment

For purposes of the Coastal Zone Management Act of 1972, 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.

-- 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;

-- Managed wetlands diked-off from the Bay and used largely for duck hunting and agriculture; and

-- 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 areas within the "marsh zone" and the "buffer zone" in the vicinity of the Suisun Marsh under the Nejedly-Bagley-Z'berg Suisun Marsh Preservation Act of 1974 (see Appendix III). Under the Act, BCDC and the State Department of Fish and Game are responsible for the preparation of the Suisun Marsh Protection Plan. The Department must prepare and submit to the Commission the Fish and Wildlife Element of the Protection Plan. The Commission, with the assistance of the Department, now must prepare the Plan for submission to the Legislature by December 1, 1976. The Legislature then has until January 1, 1978, to act on the recommendations in the Plan. In the meantime, controls imposed by State law in the marsh zone and the buffer zone, administered partly by BCDC and partly by local government, allow only development that is consistent with long-range protection of the Suisun Marsh.

b. Boundaries Outside San Francisco Bay

The coastal zone outside San Francisco Bay is defined in Section 27100 of the California Coastal Zone Conservation Act of 1972 (Proposition 20) as follows:

> "The land and water area of the State of California from the border of the State of Oregon to the border of the Republic of Mexico, extending seaward to the outer limit of the state jurisdiction, including all islands within the jurisdiction of the state, and extending inland to the highest elevation of the nearest coastal mountain range, except that in Los Angeles, Orange, and San Diego Counties, the inland boundary of the coastal zone shall be the highest elevation of the nearest coastal mountain range or five miles from the mean high tide line, whichever is the shorter distance."

This boundary was determined by the voters of the State of California when, through the initiative process, they enacted the California Coastal Zone Conservation Act of 1972.

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 buffer zone around the Suisun Marsh--the wetland areas in the Marsh were placed under the jurisdiction of the Commission in 1969--was also determined by the Legislature in 1974 on the basis of recommendations of the Department of Fish and Game.

The Commission believes that the boundary of the BCDC segment of the coastal zone meets the requirements of the Coastal Zone Management Act 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 the jurisdiction of the California Coastal Zone Conservation 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 being effectively managed by BCDC under the McAteer-Petris Act and the San Francisco Bay Plan.

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 ~~must still~~ 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 now to integrate the two programs or to establish identical boundaries. Instead, the Coastal Commission has made the following recommendations to the Legislature in the Coastal Plan:

> "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."

BCDC supports this approach, as does the State Resources Agency.

This 18-month study would focus on the need for changes, if any, in the BCDC management program in light of the information developed by the Coastal Commission in the course of preparing the Coastal Plan. Also, to the extent that changes appeared to be warranted, the study would also analyze and make recommendations with regard to changes in the institutional relationship of BCDC to the Coastal Commission and in the areas included in the BCDC segment of the coastal zone.

(2) Biological and Physical Considerations

Though the boundary of the BCDC segment now differs from that for the remainder of the coastal zone, the fundamental considerations in determining the BCDC boundary were the biological and physical characteristics of the Bay. During the planning process from 1965 to 1969, the Commission made detailed studies of the Bay and adjacent shorelands. 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 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, the tributaries are treated the same way as the Bay itself.

The extent of the buffer zone around the Suisun Marsh was also determined primarily on the basis of the physical and biological characteristics of the Marsh. Within the buffer zone are the key upland areas which the Department of Fish and Game has determined, at least preliminarily, have high wildlife values themselves and also contribute to the integrity and continued wildlife use of the wetlands within the marsh zone.

(3) Other Considerations

To the extent that factors other than the biological and physical characteristics of the Bay were considered in determining the boundaries of the BCDC segment, it was because 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, Commission control over the first 100 feet has been sufficient to control these areas. This is because the value of most of these sites lies mostly in their shoreline frontage, and 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. And 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.

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 inland boundary of the BCDC segment does not include all areas where uses might be located which 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 expertise 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 programs to meet them administered by the State Air 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 property lies within this segment of the coastal zone.

e. Excluded Federal Lands

~~Subject to the conditions in Section 4 relating to Federal consistency under Section 307 of the Coastal Zone Management Act of 1972, the following areas are not included within the BCDC segment of the coastal zone:~~

In the draft of the management program, the Commission proposed to exclude the following areas from the BCDC segment of the coastal zone pursuant to Section 304(a) of the Coastal Zone Management Act:

-- All lands and waters within the nine Bay Area counties that are subject to the exclusive legislative jurisdiction of the United States; and

-- All lands and waters within the nine Bay Area counties that are owned by, leased by, or in the possession of the United States Coast Guard or the Department of Defense (or any agency thereof), and that are used by the Department of Defense for readily identifiable national defense purposes, or by the Coast Guard to carry out its assigned missions in the areas of operations, marine safety, boating safety, and maritime commerce.

Although this interpretation of Section 304(a) was more liberal than that recommended by the Office of Coastal Zone Management and resulted in the exclusion of nearly all Federal lands of any significance in the BCDC segment of the coastal zone, several Federal agencies, including those whose lands were clearly excluded in the draft management program, continued to interpret the Federal Act as requiring the exclusion of all Federal lands, regardless of jurisdictional status. Because the formal procedures established to resolve this issue could delay approval of the Commission's program for many months, and because the Office of Coastal Zone Management, through the National Atmospheric and Oceanic Administration, has requested the opinion of the Attorney General of the United States on this point, the

Commission has decided, on an interim basis, to adopt the Federal agency interpretation of Section 304(a).

Therefore, all "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" are excluded from the BCDC segment of the coastal zone. On an interim basis, this is interpreted to include all Federal lands, irrespective of ownership and jurisdictional status. However, the Commission reserves the right to modify this interpretation subsequent to the issuance of any opinion on this point by the Attorney General.

f. 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 7, Organizational Networks, 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.

g. The Delta

The Sacramento-San Joaquin Delta is located just east of San Francisco Bay. Freshwater 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 under the McAteer-Petris Act or the Coastal Commission under Proposition 20; 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 and one regional agency also 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 as urgent as elsewhere along the coastline. The State agencies include the State Water Resources Control Board (freshwater inflow and water quality), the Department of Water Resources (levee stability and maintenance, management of water resources), the State Lands Commission ~~(construction of boat docks on State-owned sloughs for recreational development)~~ (management of all public trust lands to ensure highest and best statewide use and benefit), and the Resources Agency (comprehensive State planning for recreation). The regional agency is the Delta Advisory Planning Council created by the counties of Contra Costa, Sacramento, San Joaquin, Solano, and Yolo through a joint powers agreement. The Council coordinates local planning efforts within its jurisdiction which includes, with minor exceptions, the "Legal Delta" (Cal. Water Code, Section 12220). The Council has also recently completed an advisory plan for the Delta.

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 San Francisco Bay, 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 Plan 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 though the use of the Bay Plan as administered by BCDC and other State agencies. 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 (Sections 923.12 and 923.14)

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 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, 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, and 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 present uses 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 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 6, 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 the Bay Plan policies on Water Pollution, page 10, and on Smog and Weather, page 10), 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 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 Pollution Control 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 (Sections 923.12 and 923.16)

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 nationwide 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 Plan Maps and the Plan policies encourage their protection and continuance in their present uses (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 on 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 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 McAteer-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 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 water surface area of the salt ponds and managed wetlands is important to the climate of the Bay Area and to wildlife, and their present uses is entirely consistent with the protection of the Bay as a natural resource, the 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.

Although there are no current proposals for development of either the salt ponds or the managed wetlands, recent events have highlighted the need for possible further consideration of preservation and restoration in these areas. In 1974, Leslie Salt Company, owner of most of the salt ponds in the Bay, closed its Redwood City plant and declared about 2,200 acres of adjacent salt ponds surplus for salt-making purposes. Subsequently, the Trust for Public Lands, a non-profit corporation specializing in land acquisition for public use, obtained an option from Leslie that would allow the "non-salt-making" rights on most of the Leslie ponds to be transferred into public ownership, probably as part of an expanded San Francisco Bay National Wildlife Refuge. ~~The~~ This option~~, and hence~~ has since lapsed, but Leslie Salt had indicated its continuing desire to work in a similar fashion with interested public agencies toward permanent preservation of the salt ponds. Any transfer into public ownership of these areas, however, would probably require certain commitments to be made by BCDC with regard to permissible future uses of the salt ponds. This would probably require BCDC to either undertake, or participate in, relatively detailed planning for the salt ponds, a major element of which would be preservation of existing water surface area and restoration of areas to tidal action wherever possible.

The State Legislature also passed the Suisun Marsh Preservation Act in 1974. A major element of this planning will also be preservation of the existing managed wetlands, 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 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, is currently drafting a plan to carry out this mitigation condition, in which potential sites will be identified.

4. Federal Consultation (Sections 923.15, 923.31 and 923.32)

In developing the BCDC management program for the Bay, the Commission consulted with those Federal agencies then interested in the Bay and Bay planning. These agencies included the Federal Aviation Administration, the Coast Guard, the Environmental Protection Agency, the Federal Housing Administration, the General Services Administration, the Department of Land Management, the Maritime Administration, the Bureau of Mines, the National Park Service, the Bureau of Outdoor Recreation, 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 were 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 had to take national needs into consideration. As a result, Bay and shoreline sites were 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.)

(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 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 Plan encourages the use of the Bay and shoreline for these purposes. Bay-oriented commercial recreation and

(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 Plan policies on Ports (page 19), and by the 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 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 15) 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 Plan did not advocate the closing of any military installation. Rather, the Plan recommended possible alternative uses for these facilities in the event they were ever determined to be surplus to national defense needs.

Since completion of the 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 Plan Maps 10 and 11.

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

The designations on the Plan Maps of important habitat areas and appropriate sites for wildlife refuges, and the 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, 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.

~~(7)~~ (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, page 12. 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, 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 program at this time to meet the specific requirements of the Coastal Zone Management Act and related regulations, and it will ultimately be added to the Bay Plan. 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 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 preserve, protect, develop, and where possible, 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, the heart 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 305(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. In this effort, California asked for and received extensive assistance and cooperation from several Federal agencies in the preparation of the Bay Plan. And in the years since completion of the Plan, 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, 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, the Plan, even though prepared prior to the 'energy crisis,' also identifies 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 Bay Plan policies 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 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)).

"On an interim basis, this exclusion has been interpreted to include all areas subject to the exclusive legislative jurisdiction of the United States. In recognition of the special importance of national defense in California and the Bay Area, BCDC also has determined to exclude from the coastal zone all other lands and waters that are owned by, leased by, or in the possession of the United States Coast Guard or Department of Defense (or any agency thereof), and that are used by the Department of Defense for readily identifiable national defense purposes, or by the Coast Guard to carry out its assigned missions in the areas of operations, marine safety, boating safety, and maritime commerce Federal lands, irrespective of ownership or jurisdictional status. However, the Commission reserves the right to modify this interpretation subsequent to the issuance of any opinion on this point by the Attorney General of the United States.

"Moreover, the Planning for the areas surrounding military and Coast Guard installations Federal lands should be coordinated with local Department of Defense or Coast Guard Federal representatives so that, to the maximum extent practicable, these areas are not used in a manner that would conflict consistent with national needs. And just as military and Coast Guard operations 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 Plan policies to particular circumstances. Nevertheless,

continued cooperation can ensure that the national interest is protected through a uniform application of the Plan's policies throughout the Bay Area by whichever local, State, or Federal agency that has regulatory jurisdiction. Where the Bay Plan would conflict with an overriding national need under circumstances unforeseen when the Plan was being prepared, it may be necessary to amend or, in exceptional circumstances, override the Plan's policies 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 ~~national defense and Coast Guard installations~~ Federal lands are excluded from the coastal zone in the Bay Area on an interim basis, development projects ~~at~~ on these ~~installations~~ lands are not subject to Section 307(c)(2) of the Coastal Zone Management Act, but such projects should be consistent with the BCDC management program to the maximum extent practicable. Furthermore, under Section 307, the final decision, short of litigation, on the extent to which ~~Department of Defense and Coast Guard~~ Federal activities directly affecting the coastal zone will be consistent with the BCDC management program rests with the Federal Government. However, ~~the defense~~ Federal agencies ~~and the Coast Guard and~~, 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 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, 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 voluntarily with regard to projects that would otherwise require BCDC permits.

"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 of 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."

e. The BCDC Management Program and Section 307 of the Coastal Zone Management Act

If the BCDC management program for San Francisco Bay is approved by the Secretary for Commerce, the Commission intends to carry out its responsibilities under Section 307 of the Act (the so-called "Federal consistency" provisions) ~~as follows:~~ using its existing procedures. For several years, the Commission has been requesting Federal agencies to enter into memoranda of understanding (MOU's) with the Commission for projects that would otherwise require permits from the Commission. Originally suggested by the San Francisco District of the Corps of Engineers, the MOU procedure provides a means by which the Commission and Federal agencies can coordinate on specific projects and reach agreement on project details.

Since 1972, the Commission has entered into 24 MOU's with Federal agencies. Among the agencies involved are the U. S. Army, the U. S. Army Corps of Engineers (San Francisco and Sacramento Districts), the U. S. Navy (Western Facilities Engineering Command, Hunter's Point Naval Shipyard, Alameda Naval Air Station, and the Sea Systems Command), the Department of the Interior, and the Department of Commerce (Maritime Administration and the National Marine Fisheries Service).

The Commission has been able to reach agreement on an MOU with all Federal agencies that have participated in the process and believes the process has worked reasonably well for all concerned. In particular, because the MOU comes at the end of the often lengthy Federal project development process, rather than at the beginning, it represents a clear decision point at which the State must decide whether a proposed Federal project is consistent with State objectives. As a result, the Commission believes the process has been instrumental in reducing the potential for Federal-State conflict.

Because the MOU procedure worked well in obtaining voluntary Federal consistency with BCDC objectives, the Commission originally proposed that it be the basis for the procedures the Commission would use to carry out its responsibilities under Section 307 of the Act. Many Federal agencies objected to this proposal, however, including those that had previously participated most often.

In an effort to reach an accommodation with Federal agencies, the Commission suggested several modifications to the process. In particular, the Commission offered to make the MOU procedure inapplicable to all projects on military or Coast Guard installations. This would have meant that MOU's would no longer be requested for most projects for which MOU's had been requested in the past. It became apparent, however, that Federal agencies objected to the entire procedure and did not wish to enter into MOU's on any projects whatever.

At the same time, Federal agencies also took the position that all Federal lands had to be excluded from the coastal zone under Section 304(a) of the Act, which had the effect of significantly reducing the scope of the potential legal requirement for Federal consistency with approved State programs contained in Section 307 of the Act. These same agencies, however, indicated their intention to comply with approved State programs on excluded Federal lands to the maximum extent practicable, whether or not legally required to do so.

Because of the legal uncertainty over the scope of the excluded Federal lands clause in Section 304(a), and because the U. S. Attorney General is expected to render an opinion of this issue shortly, the Commission has decided, on an interim basis, to accede to the Federal agency position with regard to excluded Federal lands. However, the Commission has decided to adhere to its existing procedures with regard to MOU's. This means that in areas within BCDC jurisdiction, the Commission will request MOU's with Federal agencies for all projects (except navigational aids placed by the Coast Guard) that would otherwise require Commission permits, whether or not such areas are included in the coastal zone as defined in Section 304(a).

There are several reasons for this decision. First, the Commission believes that excluding all Federal lands leaves Federal agencies in essentially the same position relative to the Commission that they are now: they are, for the most part, not legally required to adhere to the Commission's management program, but they intend to comply voluntarily to the maximum extent practicable. That being the case, the Commission believes the existing procedures for voluntary compliance should continue to be used.

Secondly, if the Commission were to exclude all Federal lands and eliminate the MOU procedure, the result would less actual Federal consistency than the Commission now obtains informally through existing voluntary procedures, even though Federal consistency is now a requirement of the Coastal Zone Management Act. The Commission does not believe this is what Congress intended, nor is it sensible public policy from any perspective.

Thirdly, the Commission does not believe that the MOU procedure intrudes in any way on Federal sovereignty. It was developed specifically because both BCDC and the affected Federal agencies recognized that BCDC could not require Federal agencies to obtain BCDC permits. Furthermore, the process is voluntary, and to the extent Federal agencies participate, they do so as a matter of comity, and not because of any legal obligation to do so. Moreover, now that the Commission has excluded all Federal lands on an

interim basis from the coastal zone, it should be clear beyond doubt that the MOU process is not a requirement of State law and therefore not analogous to, nor a substitute for, a State permit.

Finally, the Commission does not believe that the Federal agencies objecting to the procedure have suggested a satisfactory alternative. The only proposal in this regard has been that the Commission rely on the A-95 process. The Commission is familiar with the A-95 process, and while it serves the useful and important function of early project notification, it is staff-administered and rarely provides the kind of specific project information immediately prior to project implementation provided by the MOU process. Nor does it allow for adequate participation by the Commission and the public in the decision-making process.

Therefore until the excluded Federal lands issue is clarified, the Commission will observe the following procedures in carrying out its responsibilities under Section 307 of the Coastal Zone Management Act:

(1) As is now the case, the Commission will monitor all Federal activities* that may affect the coastal zone.** The Commission will also review all Federal development*** undertaken in the coastal zone. This monitoring will focus primarily on the area of the nine Bay Area counties and will take place through existing procedures--the A-95 review process, review of Corps public notices, supplemented as necessary with special coordination with individual Federal agencies. The Commission will make every effort to notify Federal

* "Activity" means an activity or program that a Federal agency directly engages in itself for Federal purposes, or pays someone else to engage in, also for Federal purposes. "Activity" does not include federally-assisted activities or programs that are primarily for State and local purposes, which are covered under Section 307(d) of the Coastal Zone Management Act and subparagraph (5) below.

** The "coastal zone" means the BCDC segment of the California coastal zone.

*** "Development" means planning and construction of public works, physical facilities, and installations, or land and real property development (including the acquisition, use, and disposal of real property) undertaken by or for the use of the Federal Government or any of its agencies; or the leasing of real property for Federal use when the use or intensity of use of such property will be substantially altered. This definition is identical to the definition of "development" used in OMB Circular No. A-95.

agencies of potential inconsistencies with the Commission's management program as early as possible in the planning process. At the same time, as is implicit in the statement on National Interest in San Francisco Bay, the Commission also expects each Federal agency proposing to conduct or support an activity that may directly affect the coastal zone, or to undertake any development within the BCDC segment of the coastal zone, to advise the Commission of such activities or developments as early as possible in the planning process. This is also to ensure that any potential conflicts with the Commission's management program can be identified and dealt with early.

(2) ~~As is also now the case~~ In areas within BCDC jurisdiction, Federal agencies will be requested to enter into memoranda of understanding with the Commission with regard to any activity or development ~~within the coastal zone~~ that would other otherwise require a Commission permit. These memoranda of understanding will be ~~processed as if they were Commission permits, including public hearings~~ heard before the Commission where ~~required~~ appropriate, and will be based upon the consistency of the proposed project or activity with the BCDC management program, in particular the McAteer-Petris Act and the San Francisco Bay Plan. If the Commission determines that the proposed activity or development is not fully consistent with the BCDC management program, it will not enter into a memorandum of understanding. In that case, if the Federal agency ~~will be expected~~ disagrees with the Commission's finding but, nevertheless, decides to go forward with the activity, ~~if at all, only after~~ it will be expected to (a) ~~has~~ advised the Commission, in writing, that the project or activity complies with the BCDC management program to the maximum extent practicable, and (b) ~~has~~ set forth, in detail, the reasons why this is so. In the event BCDC seriously disagrees with the Federal agency's determination that an activity or project complies with the management program to the maximum extent practicable, BCDC may request the Secretary of Commerce to mediate the serious disagreement as provided by Section 307(h) of the Act. Memoranda of understanding will not be requested from the Coast Guard prior to placement of aids to navigation.

(3) Memoranda of understanding will not be requested with regard to Federal activities or developments ~~inside or outside the coastal zone~~ that would not otherwise require Commission permits. However, activities conducted or supported by any Federal agency which could directly affect land, water, air, and other coastal resources within the coastal zone, will be expected to conform to the BCDC management program to the maximum extent practicable as required by Section 307(c)(1). The determination as to whether a specific activity could "directly affect the uses of land, water, air, and other coastal resources" will be made by the Commission. The Commission will also determine whether the activity is, or is not, fully consistent with the BCDC management program. If the Commission determines that the activity is not fully consistent with the BCDC management program, and the Federal agency involved ~~will be expected~~ disagrees but, nevertheless, decides to go forward with the project or activity, ~~if at all, only after~~ it will be expected to (a) ~~has~~ advised the Commission, in writing, that the project or activity complies with the BCDC management program to the maximum extent practicable, and (b) ~~has~~ set forth, in detail, the reasons why this is so. In the event BCDC seriously disagrees with the Federal agency's determination that an activity or project complies with the management program to the maximum extent practicable, BCDC may request the Secretary of Commerce to mediate the serious disagreement as provided by Section 307(h) of the Act.

(4) Within the nine Bay Area counties, the following Federal agency licenses and permits ~~to conduct activities affecting land and water uses in the coastal zone~~ will be subject to the certification ~~by the Commission~~ process for consistency with the BCDC management program ~~under~~ contained in Section 307(c)(3) 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

(a) Permits and licenses required under Sections 9, 10, and 11 of the Rivers and Harbors Act of 1899.

(b) Permits and licenses required under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972.

(c) Permits and Licenses required under Section 404 of the Federal Water Pollution Control Act of 1972 and amendments.

Nuclear Regulatory Commission

(a) Permits and licenses required for siting and operation of nuclear power plants.

Department of Interior - Bureau of Land Management; U. S. Geological Survey

(a) Permits and licenses required for drilling and mining on public lands (BLM).

(b) Permits and approvals for exploration and operating plans pertaining to the extraction of leasable minerals (U.S.G.S.).

Department of Transportation - U. S. Coast Guard

(a) Permits for construction of bridges under 33 U.S.C. 401, 491-507, and 525-534.

(b) Permits for deep water ports under the Deep Water Port Act of 1974 (PL 93-627).

Department of Transportation - Federal Aviation Administration

(a) Permits for operation of airports.

Federal Power Commission

~~(a) Permits and licenses required for power plant siting and transmission lines.~~

~~(b)~~ (a) ~~Permits and licenses~~ Certifications required for interstate pipelines.

~~(c)~~ (b) Permits and licenses for construction and operation of facilities needed to import, export, or tranship natural gas or electrical energy.

Within ~~the coastal zone~~ BCDC jurisdiction, a BCDC permit* would be required, or an memorandum of understanding requested, for all of the above activities. Consequently, the issuance of a BCDC permit where one has been applied for, or agreement on an memorandum of understanding, will be deemed to be a determination by the Commission that the proposed activity or project is consistent with the BCDC management program, and no further certification will be required. In those cases where no BCDC permit has been applied for, but where one is required, the Commission will process a certification of consistency contemporaneously with the permit application where a permit is required. The Commission will not ~~certify that an activity or project in the coastal zone~~ review whether a federally licensed or permitted activity within BCDC jurisdiction is consistent with the BCDC management program except in connection with a permit application, if such a permit is required.

Elsewhere in the nine Bay Area counties, certification of the above licenses and permits will be required only in cases where the Commission determines that the activity being licensed or permitted could have a substantial affect on land and water uses in the coastal zone. This determination will be made on a case-by-case basis in the course of the monitoring undertaken pursuant to paragraph (1). It is not anticipated that many licenses and permits outside the coastal zone will require certification. At the same time, those that do will probably be of considerable interest to the public because of the potential impact on the Bay. Consequently, ~~requests for~~ certifications of licenses or permits outside the coastal zone will be processed as much as possible as if they were applications for major permits under the McAteer-Petris Act and the Commission's Regulations, including timely notice and public hearings. If BCDC determines that an activity to be licensed or permitted by a Federal agency is not consistent with the BCDC management program, as required by Section 307(c) of the Act, the Federal agency will not license or permit the activity unless the Secretary of Commerce, 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 BCDC, that the activity is consistent with the objectives of the Coastal Zone Management Act or is otherwise necessary in the interest of national security.

~~* The term "permit" includes a memorandum of understanding.~~

~~(5) In those areas excluded from the coastal zone pursuant to Section 304(a) of the Coastal Zone Management Act, the appropriate Federal agencies will be requested, subject to national security restrictions, to comply with paragraphs (1) through (3) above voluntarily. It is understood that the final decision on the extent to which Federal activities in these areas will be consistent with the BCDC management program rests with the Federal agency having jurisdiction. However, where a Federal license or permit listed in paragraph (4) above is required to conduct any activity in any such area, a certification of consistency will also be required.~~

~~(6)~~ (5) To review applications for Federal assistance under other Federal programs affecting the coastal zone, BCDC will use the Project Notification and Review System of OMB Circular A-95 authorized under Title IV of the Intergovernmental Coordination Act of 1968 and administered in the Bay Area by the Association of Bay Area Governments and statewide by the Office of Planning and Research.

The scope of BCDC review will be limited to ensuring that the proposed project or activity is consistent with the BCDC management program. In the event that the Commission determines that the proposed project or activity 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, BCDC will forward its determination to the appropriate Federal agency ~~through the State or Metropolitan Clearinghouse~~ and, as required by Section 307(d) of the Federal Coastal Act, the Federal agency will not approve the proposed project, except upon a finding by the Secretary of Commerce that the project or activity is consistent with the purposes of the Coastal Zone Management Act or necessary in the interest of national security.

5. Public Participation/Intergovernmental Involvement (Sections 923.31, 923.32, and 923.41)

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

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 repeesentative 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 (now 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 (increased to four by the 1969 amendments to the McAteer-Petris Act), 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 the BCDC's activities to the extent compatible with their legislative duties.)

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. This committee 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 landowner.

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 for 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 of 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.

c. The Planning Process

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 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 Neccessary to Carry Out the Plan

-- Public Facilities and Utilities

-- Waterfront Housing

-- Waterfront Industry

The Commission staff, assisted by special consultants where necessary, prepared a technical, detailed 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 Plan occurring on September 20, 1968.

d. The Permit Process

Another major factor in ensuring maximum intergovernmental and public involvement during development of the 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 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 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.)

Other factors also encouraged public interest and support. The law creating the Commission 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, the Commission produced a short film about its Plan, which was shown widely.

e. Involvement of State, Regional, and Local Government

The Commission maintained close relations with regional and local government throughout the 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 the BCDC to "give consideration to the master plans of cities and counties around the bay"; to "cooperate to the fullest extent possible with the Bay Area Transportation Commission and the Association of Bay Area Governments"; and 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 its 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.

f. State Agencies

All State agencies with a stake in San Francisco Bay were included in the development of the BCDC program. Those with the most direct interest in the Bay were 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 had two appointees.

Many of these agencies, and other agencies as well, played an additional role, 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.

g. 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 7, Organizational Networks.

6. Legal Authorities (Sections 923.17, 923.21, 924.24, 923.25, 923.26, and 923.44) (Except as noted, Authorities cited are in Appendix III)

a. Permit Control in the Coastal Zone

Within the BCDC segment of the coastal zone, the State, through BCDC, controls the permissible land and water uses identified in Section 2, 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 law 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 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 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 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.

(3) Salt Ponds and Managed Wetlands

Under Section 66602.1 of the 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 law and the Plan. Both the law and the 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. Furthermore, 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 law as if they were part of the Bay.

(5) The Suisun Marsh

Under the Suisun Marsh Preservation Act of 1974, (Cal. Fish and Game Code, Sections 1850-1883), the Commission has expanded permit jurisdiction over the key wetland areas of the Suisun Marsh, pending completion of the Suisun Marsh Protection Plan. Under Sections 1860 and 1878 of the Act, BCDC permits are required for any "development" in the wetland areas of the Marsh. A permit can be granted only if the Commission finds that the development is (a) not injurious to health, safety, or welfare

of the general public, (b) of a nature that will not prejudice preparation of the Plan, and (c) consistent with the preservation and enhancement of the Marsh as a wildlife habitat of nationwide importance.

In addition, Section 1879 of the Act places similar restrictions on local government with regard to the kinds of development adjacent to the wetlands of the Marsh.

(6) Permit Conditions

In any area of the Commission's jurisdi tion, 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)).

b. State Regulation of Air and Water Quality in the BCDC Segment

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 7, and with rare exceptions, the Commission pursues air and water quality objectives in the coastal zone through these agencies.

c. 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 jurisdiction through alternative (2) described in Section 923.26 of the regulations. 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 system, 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.

d. 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 15850-15866).

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 were not accepted by the Legislature in 1969, and therefore the recommendations in the Bay Plan relating to acquisition are advisory only.

Nevertheless, since completion of the Bay Plan in 1969, 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 Wildife 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 program.

e. Local Regulations and Uses of Regional Benefit

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 government. 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

* Because they are not essential elements of the Commission's management program, the authorities cited in this subsection are not included in Appendix III.

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 government.

Through the planning process, these uses were determined to be ports, water-related industries, airports, wildlife refuges, water-oriented recreation, 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 regional benefit as determined by the Commission, BCDC could not issue a permit for any development within the first 100 feet of 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 ports 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.

7. Organization Networks (Section 923.22)

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 BCDC permit process. Outside BCDC permit jurisdiction in the Bay Area, 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 participates 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 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. The Corps considers the Plan 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 ~~unless there are overriding factors of the national interest,~~ the Corps will normally grant a permit for projects for which BCDC has ~~granted~~ issued a permit and, 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. In addition, where projects are in areas where the Corps has jurisdiction but BCDC does not, e.g., unfilled areas behind dikes lying below the plane of mean higher high water (other than salt ponds or managed wetlands), the Commission can obtain compliance with the management program by requesting denial, through the Resources Agency, which prepares State comments on all Corps public notices, of Corps permits for undesirable projects.

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.

BCDC and the Corps are also attempting to establish a joint procedure for the processing of permit applications. Under the procedure as envisioned, the Corps and BCDC would jointly solicit comments on projects through the Corps public notice. BCDC and the Corps would also hold joint public hearings where appropriate, with the goal being to have the District Engineer in a position to act on the Corps permit immediately following Commission action on the BCDC permit. If successfully implemented, the joint procedure would simplify the entire process for applicants, shorten the time period required to receive needed authorizations, and encourage greater participation by Federal agencies in the BCDC permit process.

b. Federal Agencies--Secondary Roles

Several additional Federal agencies are playing a secondary role in the further development of the BCDC management program. Along with the Corps of Engineers, the Army and the Navy, subject to national security restrictions, enter into memoranda of understanding with 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 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 on 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 Zone Conservation Commission. The Secretary for Resources is responsible for communicating the Governor's policies and program objectives to the organizations 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 general oversight over both Commissions. This includes serving with BCDC and the Coastal Commission as the lead agency for CZMA purposes.

The Resources Agency is also responsible for preparing the official State comments on Corps permits. In cases where a BCDC permit is required, the Agency transmits BCDC comments on the project to the Corps. This latter function of the Agency is particularly important to BCDC, because the Agency generally objects to the issuance of a Corps permit opposed by BCDC or any other organization within the Resources Agency, and the Corps will not issue a permit over a State objection. Federal deference to the State in Corps permit matters is thus a powerful tool in ensuring consistency with the BCDC management program.

(2) 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, as mandated by the Suisun Marsh Preservation Act (see Appendix III), the Department and the Commission are working closely together to prepare the Suisun Marsh Protection Plan.

(3) 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 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 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 land in and adjacent to San Francisco Bay. As a result, the extent of public rights in over 10,000 acres of privately-owned tidelands in the Bay is currently in litigation, and if these rights are successfully established, it would be 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, 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, with ramifications beyond the coastal zone. Therefore, in its planning for the Bay from 1965 to 1969, 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 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 recognizes the McAteer-Petris Act and the San Francisco Bay Plan as the management program for the BCDC segment of the coastal zone, and considers it 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 (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 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 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. This is because 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 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 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.

Most of the sites suggested for power plants in the Bay Area are "grandfathered" under the legislation creating the Energy Commission. This means that BCDC retains permit jurisdiction over facilities at these locations. However, prior to granting any required permit for power plants in BCDC jurisdiction, the Commission will request the comments of the Energy Commission, and any comments received will be a primary factor in the Commission's permit decision.

In the event "non-grandfathered" power plants are proposed for areas within the Commission's jurisdiction, the Commission proposes to follow the procedures analogous to those tentatively agreed on by the Energy Commission and the California Coastal Zone Conservation Commission and incorporated in the pending coastal legislation. These include BCDC analysis of notices of intent to file applications with the Energy Commission for any site and related facility within the watershed of San Francisco Bay to the eastern limit of BCDC permit jurisdiction. The Bay Commission will provide the Energy Commission with a written report on the suitability of the site and related facility and specifically find whether or not the proposed facility and site is consistent with the Commission's management program for San Francisco Bay. Under the procedures agreed upon by the Energy Commission and the Coastal Commission, the Energy Commission would then address the Bay Commission's findings in the legally-required final report, and adopt

these findings in the final report and in any certificate issued, unless the Energy Commission finds that to do so would result in a greater adverse effect on inland resources than on San Francisco Bay.

~~Because of the newness of the Energy Commission, its role in the BCDC management program is currently being defined and is expected-to-be-primary.~~ The Bay Commission expects to formalize these procedures shortly in a memorandum of understanding with the Energy Commission. ~~The establishment of this relationship~~ This has not been immediately necessary because no major energy projects were pending in the Bay Area, and most of the potential sites for energy facilities in the Bay are already identified in the Bay Plan.

d. State Agencies--Secondary Roles

The following State agencies play a secondary role in the management program:

(1) 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 Navigation and Ocean Development (DNOD) makes loans for recreational harbor development and grants for boat launching facilities, and its activities in the Bay are directly affected by the BCDC management program. DNOD uses the Bay Plan to guide its decisions on the location of boating facilities, and BCDC and DNOD coordinate closely on the design and construction of individual facilities funded by DNOD in the Bay.

(3) 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 freshwater 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 freshwater into the Bay is maintained. The recent amendments to the Bay Plan policies on Freshwater Inflow (Bay Plan, page 12, as amended), which state the Commission's support for the Delta water quality standards set by the State Board, are a direct result of this cooperation.

e. Regional Agencies

The following regional agencies play a primary role in the BCDC management program:

(1) The Association of Bay Area Governments 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 Association of Bay Area Governments also appoints four (three during the planning years from 1965 to 1969) representatives of local government to the Commission~~, and in turn one member of the Commission serves on the Association of Bay Area Governments' task force in charge of water quality planning under Section 208 of the Federal Water Pollution Control Act of 1972~~. The Association of Bay Area Governments will also probably receive a portion of any 306 funds allocated to the Commission to assist in the preparation of a study of debris disposal in the aftermath of a major earthquake. (After the 1906 earthquake and fire, much of the debris ended up in the Bay.)

The Association of Bay Area Governments 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. The Association of Bay Area Governments has received a $4.3 million grant from the Environmental Protection Agency to prepare a plan to meet the requirements of Section 208. An "Environmental Management Task Force" broadly representative of local governments, regional agencies and citizen groups will oversee development of this plan. BCDC has been invited to participate on this task force, and one member of the Commission has been appointed.

(2) 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 Commission. In addition, BCDC and MTC have jointly undertaken a regional ports 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 Pollution Control District (BAAPCD) 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 BAAPCD 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 g., which describes the BCDC management network in operation.

f. 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 government 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 government 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. A special area plan has recently been completed for the San Francisco waterfront and is included in Appendix IV as an amendment to the Bay Plan. Another is underway for a portion of the Richmond waterfront.

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.

g. Operation of the Management Network

The preceding six 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-owned tidelands in substantial parts of the Bay. Similarly, the Department of Transportation works closely with the Commission in planning transportation projects to ensure that they 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 is developing more formal documentation, which will be submitted with the final version of this program to the Department of Commerce.

(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 Pollution Control 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. 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 the 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_2.

Acting on the information contained in the environmental impact report, and in cooperation with the Environmental Protection Agency and the Bay Area Air Pollution Control 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 Pollution Control District, to determine precisely whether or not State and Federal air quality standards can be adhered to in the vicinity of the plants.

(4) Freshwater Inflow

Freshwater 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 freshwater 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 freshwater into the Bay is maintained. The recent amendments to the Bay Plan policies on Freshwater Inflow (Bay Plan, page 12, as amended) are a direct result of this cooperation.

The revised policies state that (a) there should be no harmful impacts on the Bay from diversions of freshwater; (b) the impact of the diversions should be monitored by a State regulatory agency, such as the State Water Resources Control Board to see that no such impacts occur; and (c) an adequate supply of freshwater should be supplied to the Suisun Marsh.

These policies became the basis for the Commission's comments on the draft environmental impact report prepared by the Department of Water Resources on the proposed "Peripheral Canal." Though located outside the Commission's permit jurisdiction, this project is a highly controversial part of the Water Project because it will facilitate additional diversions of freshwater inflow with a potentially substantial, but undetermined, impact on the Bay. Therefore, in commenting on the DEIR, the Commission asked detailed questions in an effort to elicit all possible adverse impacts on the Bay, together with potential alternatives, in the final environmental impact report. These comments have a substantive impact because, under California law, an agency cannot undertake or approve a project that would have a substantial adverse impact where a less damaging alternative is available. (Friends of Mammoth v. Mono County, 8 Cal. 3d 247, 104 Cal. Rptr. 761 (1972); Burger v. Mendocino County, 45 Cal. App. 3d 322, 119 Cal. Rptr. 568 (1975)). The Department of Water Resources is now reevaluating the Peripheral Canal, as well as other aspects of the Water Project.

(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 Seaports Planning 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.

8. Miscellaneous (Sections 923.23 and 923.42)

BCDC and the California Resources Agency will be designated the single State agency which will be fiscally and programmatically responsible for receiving and administering grants under Section 306 to implement this management program. Upon approval of the management program proposed by the California Coastal Commission, that agency would assume those functions.

~~This program is being submitted for preliminary approval, and the certification required under Section 923.42 is not included at this time. The Governor will be requested to designate the Attorney General of the State of California to provide these assurances.~~

9. Segmentation (Section 923.43)

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 Zone Conservation Commission. Consequently, the segmentation that exists is the result of the State's willingness to pioneer in this area.

It is clear from the discussion earlier in this submission that the BCDC management program for the Bay includes "a geographic area on both sides of the coastal land-water interface." With regard to the remaining requirements of Section 923.43, the letter from the California Secretary for Resources, Claire T. Dedrick, to the Secretary of Commerce on January 13, 1976, should provide the necessary evidence that (a) California will exercise policy control over each segment of the California management program prior to, and following integration into a complete State management program; and (b) a timetable and budget have been established for the timely completion of the remaining segment.

PART TWO: APPENDICES

Appendix I

List of Federal Agencies
Comments and Response

Appendix II

Public Hearings

Appendix III

McAteer-Petris Act
Suisun Marsh Preservation Act and Map
Proposition 20 (California Coastal Zone Conservation Act of 1972)
California Environmental Quality Act
The Porter-Cologne Water Quality Control Act
Warren-Alquist State Energy Resources Conservation and Development Act

Appendix IV

San Francisco Bay Plan

Amendments No. 1 and No. 2
Map Amendments
Resolution No. 16: Priority Use Areas
Special Area Plan No. 1: San Francisco Waterfront

Advisory Committee Roster
BCDC Priority Planning Work Items
BCDC Tentative Proposals for Use of Section 306 Funds

Appendix V

Memorandum of Understanding between the San Francisco Bay Conservation and Development Commission and the State Lands Commission
Memorandum of Understanding between the San Francisco Bay Conservation and Development Commission and the California Department of Transportation
Memorandum of Understanding between the San Francisco Bay Conservation and Development Commission and the Bay Area Air Pollution Control District
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 Control Board, San Francisco Bay Region

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