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SAN FRANCISCO BAY

MANAGEMENT PROGRAM

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MANAGEMENT PROGRAM FOR

SAN FRANCISCO BAY

by

The San Francisco Bay Conservation

and

Development Commission

and

the

Resources Agency

State of California

April 1976

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STATE OF CALIFORNIA EDMUND G. BROWN JR., Go

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
VAN NESS AVENUE
SAN FRANCISCO, CALIFORNIA 94102
PHONE: 557-3686

November 16, 1976

TO: All Participating Federal Agencies and Interested Persons
FROM: Charles R. Roberts, Executive Director

SUBJECT: BCDC Management Program for San Francisco Bay

1. The BCDC Management Program

Accompanying this memorandum is the BCDC Management Program for San Francisco Bay as approved by the Commission on July 15, 1976. The underlined portions represent additions to the previously circulated draft of the program; the ~~lined out~~ portions represent deletions. If you received the draft management program in a binder with appendices, the approved version should now be inserted in its place.

2. Additional Material

The following material also accompanies this memorandum:

a. The Governor's transmittal letter. This should be placed at the front of the material in the binder, so that it immediately precedes the approved management program after insertion.

b. An addendum to the management program containing official changes since approval on July 15, 1976. The addendum should be inserted after page 58 of the management program, just before the appendices.

c. A list of Federal agencies given an opportunity to participate in the development of the Commission's management program; a summary and analysis of Federal comments and the Commission's response; a supplemental summary and analysis of Federal comments and the Commission's response; and copies of the letters received from Federal agencies commenting on the BCDC program. This material should be inserted in the space provided for Appendix I in the binder containing the draft.

d. A summary of the public hearing on the program. This material should be inserted in the space provided for Appendix II in the binder containing the draft.

e. The newly-enacted California Coastal legislation and the Warren-Alquist State Energy Resources Conservation and Development Act. This coastal legislation should be inserted after Proposition 20, and the Warren-Alquist Act should be added at the end of the legal material in Appendix III in the binder containing the draft. A new cover sheet for Appendix III is also included.

f. Memoranda of Understanding (MOU's) between BCDC and the following agencies: the State Lands Commission; the California Department of Transportation; the Bay Area Air Pollution Control District; the State Water Resources Control Board; and the California Regional Water Quality Control Board for the San Francisco Bay Region. This material should be added as Appendix V at the end of the appendices included in the binder containing the draft program. A cover sheet is also enclosed.

U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Coastal Zone Management Program Approval
San Francisco Bay Conservation and Development Commission
Environmental Impact Statement
Notice of Negative Declaration

The Office of Coastal Zone Management (OCZM) of the National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, has received an application from the San Francisco Bay Conservation and Development Commission (BCDC) requesting consideration for approval by the Secretary of Commerce of their Coastal Zone Managment Program as a segment for the ultimate program for the State of California, under Section 306 of the Coastal Zone Management Act of 1972 (CZMA). After a thorough review of the application and the accompanying environmental impact assessment, the OCZM has concluded that due to the unique nature of the BCDC program, an environmental impact statement is not necessary. The impacts of Secretarial approval upon the BCDC program will be limited to their obtaining the following:

- A Section 306 Grant - This grant would help fund the continued implementation of the BCDC program. Such funds will be used for two purposes: first, to update the San Francisco Bay Plan (adopted in 1969), which is the heart of the BCDC program; and second, to provide for more systematic enforcement.

- Federal Consistency Powers - Sections 307(c) and (d) of the CZMA stipulate that certain Federal actions and activities must be consistent with approved state management programs. During implementation of their plan, the BCDC developed working agreements and cooperative relationships with several Federal agencies, which will acquire a legal basis with program approval. As a practical matter, however, these Federal consistency powers should not alter BCDC's current mode of operation.

The Council on Environmental Quality (CEQ) guidelines require impact statements for "major Federal actions significantly affecting the quality of the human environment." Implementation of the BCDC program itself has had a significant impact upon the Bay, its uses, and surrounding population. Using the CEQ guidelines as a basis, however, Secretarial approval will not have a significant impact. Significant actions include those:

- "The environmental impact of which is likely to be highly controversial." The BCDC was formed in 1965 with the passage of the McAteer-Petris Act. After twenty-three technical reports and twelve weeks of public hearings, the Commission submitted its completed Bay Plan, which was approved by the legislature in 1969. Because the Bay Plan has been successfully administered for seven years, Federal approval will make only an incremental impact in its operation.

- "That degrade the quality of the environment." Section 66001 of the McAteer-Petris Act declares that "uncoordinated, haphazard filling in San Francisco Bay threatens the Bay itself and is therefore inimical to the welfare of both present and future residents of the area surrounding the Bay." The BCDC was created to control impacts to the environment and has a successful record to date. The average amount of fill per year has decreased from 2300 acres prior to 1965 to 29 acres since implementation of the Bay Plan in 1969.

- "That curtail the range of beneficial uses of the environment." The McAteer-Petris Act (Section 66600) begins with the following statement: "The legislature hereby finds and declares that the public interest in the San Francisco Bay is in its beneficial use for a variety of purposes." Thus, the BCDC was created to maintain a range of beneficial uses.

- "That serve short-term, to the disadvantage of, long-term environmental goals." Section 66602 of the McAteer-Petris Act finds that "The San Francisco Bay Plan should make provisions for adequate and suitable locations for all such (water-oriented) uses thereby minimizing the necessity for future bay fill." Thus, it is the mission of the BCDC to plan for these long-term needs.

Even without an environmental impact statement on the BCDC program, a major goal of NEPA - the consultation process - will be achieved. Consultation is basic to the development of a CZM program. Section 306(c)(1) of the Act calls for "the opportunity of full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, public and private."

Coordination on the Federal level is most important. Section 307(b) states, "The Secretary shall not approve the management program submitted by a state pursuant to Section 306 unless the views of Federal agencies principally affected by such program have been adequately considered." Distribution of the draft program to these agencies also insures their ability to review and comment upon the proposal.

Lastly, the BCDC program is but one segment of the whole California program. When the California Coastal Zone Conservation Commission (CCZCC) finishes its program, the two segments will be integrated together. According to Department of Commerce policy, an environmental impact statement for the entire program will be prepared at that time.

In conclusion, the OCZM files this negative declaration, not as a matter of general policy, but because of the unique nature of the BCDC Coastal

Zone Management program, including the following reasons:

- BCDC was created to further the protection of the environment;
- The BCDC program has been in full operation for seven years;
- BCDC's history in controlling fill and insuring public access has been exemplary; and
- An environmental impact statement will subsequently be prepared for the State of California, of which BCDC is a segment.

T. P. Gleiter
Assistant Administrator for Administration

Dr. Robert M. White
National Oceanic and Atmospheric Administration
U. S. Department of Commerce
Washington, D. C. 20240

Dear Dr. White:

On behalf of the State of California, I am pleased to transmit California's management program for San Francisco Bay prepared by the San Francisco Bay Conservation and Development Commission (BCDC). As you probably know, California was one of the pioneers in coastal zone management in creating BCDC, and we think BCDC's success has been a major factor in encouraging other coastal zone management efforts, such as the California Coastal Zone Conservation Commission and the Federal Coastal Zone Management Act.

The BCDC program for the Bay described in this document meets the intent and requirements of the Coastal Zone Management Act (CZMA). I therefore request that the BCDC program be approved as a segment of the California coastal zone management program under Section 306 of the CZMA. I believe that approval of the program for the BCDC segment prior to approval of the remainder of the California program is justified because the Bay continues to be subject to the same unique demands that led to the creation of BCDC in 1965.

I have reviewed the BCDC management program for San Francisco Bay, and as Governor, I approve the program and certify to the following:

1. The State, through BCDC and the cooperation and coordination of other governmental agencies, has the required authorities and is presently implementing a management program for the segment of the California coastal zone comprising San Francisco Bay and its adjacent shorelands.

2. The State has established, and is operating, the necessary organizational structure to implement the BCDC management program for the BCDC segment of the coastal zone.

3. The California Coastal Zone Conservation Commission is the single designated agency to receive and administer grants for implementing the management program for the BCDC segment of the coastal zone.

4. The State, through BCDC, has the authority to control land and water uses, control development, and to resolve conflicts among competing uses within the BCDC segment of the coastal zone.

5. The State presently uses the method listed in Section 306 (e)(1)(B) of the CZMA for controlling land and water uses in the BCDC segment of the coastal zone.

6. The State has sufficient power to acquire lands, should that become necessary or desirable to carry out elements of the BCDC management program.

7. The State laws cited in the BCDC program have been enacted into law. The San Francisco Bay Plan, which is the core of the Commission's management program for the Bay, is directly enforceable under the provisions of the McAteer-Petris Act.

8. The State's air and water pollution control programs, established pursuant to the Federal Water Pollution Control Act of 1972 and the Federal Clean Air Act, insofar as these programs pertain to the coastal zone, have been made a part of the State's coastal zone management program. The regulations relating to these programs have been incorporated into the BCDC management program and are the water pollution and air pollution control requirements applicable to the BCDC management program, except to the extent that BCDC and the agency administering these requirements agree on more stringent requirements.

9. The BCDC management program for San Francisco Bay is now an official program of the State of California, and the State, acting by and through BCDC and the other State, regional, and local agencies identified in the program, will continue to meet the intent of the Coastal Zone Management Act of 1972.

10. The State has provided for the ultimate integration of the BCDC program with the management program for the

remainder of the California coastal zone. Under the terms of the legislation making the Coastal Commission a permanent agency, BCDC and the Coastal Commission are to present recommendations to the Legislature no later than July 1, 1978, on the integration of the two programs.

Sincerely,

EDMUND G. BROWN, JR.
Governor, State of California

MANAGEMENT PROGRAM

FOR

SAN FRANCISCO BAY

BY

THE SAN FRANCISCO BAY CONSERVATION

AND

DEVELOPMENT COMMISSION

AND

THE

RESOURCES AGENCY

STATE OF CALIFORNIA

July 15, 1976

The San Francisco Bay Conservation and Development Commission (BCDC) consists of 27 members, who represent Federal, State, and local governments and the general public. The Commission membership is as follows:

PUBLIC REPRESENTATIVES

Harry A. Bruno, appointed by the Governor
Joseph C. Houghteling, appointed by the Governor
Mrs. Ralph N. Jacobson, appointed by the Governor
Earl P. Mills, appointed by the Speaker of the Assembly
Ms. Elizabeth Osborn, appointed by the Senate Rules Committee
Mrs. Dean A. Watkins, appointed by the Governor

FEDERAL REPRESENTATIVES

Paul DeFalco, Jr., representing the Environmental Protection Agency
Col. Henry A. Flertzheim, Jr., representing the U. S. Army Corps of Engineers

STATE REPRESENTATIVES

Mrs. Joseph D. Cuneo, representing the Regional Water Quality Control Board
Donald L. Lollock, representing the Resources Agency
Sid McCausland, representing the Department of Finance
William F. Northrop, representing the State Lands Commission
Ruel A. Speck, representing the Department of Transportation

LOCAL REPRESENTATIVES

COUNTY (appointed by County Board of Supervisors)

Supervisor Warren N. Boggess, Contra Costa County
Supervisor Richard Brann, Solano County
Supervisor Sam Chapman, Napa County
Supervisor Fred F. Cooper, Alameda County
Supervisor George T. DeLong, Sonoma County
Supervisor Quentin L. Kopp, San Francisco County
Supervisor Thomas S. Price, Marin County
Supervisor Geraldine F. Steinberg, Santa Clara County
Supervisor John M. Ward, San Mateo County

CITY (appointed by the Association of Bay Area Governments)

Councilman Albert Aramburu, Tiburon
Mayor James E. Balentine, Newark
Dianne Feinstein, San Francisco
Councilman Frank H. Ogawa, Oakland

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

Senator Peter H. Behr
Assemblyman John J. Miller

MANAGEMENT PROGRAM FOR SAN FRANCISCO BAY

Introduction

This is an application to the Secretary of Commerce for approval of the San Francisco Bay Conservation and Development Commission's (BCDC) management program for San Francisco Bay, under Section 306 of the Coastal Zone Management Act of 1972. It is divided into two parts. The first part describes, in general terms, the BCDC management program, including the San Francisco Bay Plan, which is the heart of the BCDC management program. It also describes the BCDC management program in more detail in terms of the requirements established by the Office of Coastal Zone Management for approval of segmented coastal zone management programs under Section 306 of the Coastal Zone Management Act. Part Two comprises several appendices and includes the San Francisco Bay Plan, copies of documents necessary for BCDC to meet Federal requirements, the text of relevant State laws, and other material.

Approval of the BCDC management program is a necessary prerequisite for BCDC to receive a Federal grant under Section 306 of the Coastal Zone Management Act to assist in carrying out the BCDC management program for the Bay. These funds will be used to expand BCDC's efforts in several key areas. These include:

-- Development jointly with the California Coastal Zone Conservation Commission of proposals for integrating the BCDC program for the Bay with an approved Coastal Commission program for the remainder of the coast into an overall California coastal zone management program.

-- Development of regional public access and recreation plans to provide more specific guidelines for the location and development of future shoreline public access and recreation areas.

-- Development of "special area plans" for specific shoreline and water areas within the Commission's jurisdiction. This is a major tool for implementing the Bay Plan in cooperation with local governments.

-- Increased surveillance and enforcement capability to monitor compliance with the now numerous outstanding BCDC permits and to prevent violations of the BCDC law.

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

APPROVAL OF THE SAN FRANCISCO BAY
COASTAL ZONE MANAGEMENT PROGRAM (CALIFORNIA SEGMENT)

The Coastal Zone Management Act of 1972, as amended, hereinafter referred to as the CZMA, authorizes the Secretary of Commerce to make annual grants to any coastal state for the costs of administering a management program, if the program is approved in accordance with Section 306 of the CZMA.

The functions of the Secretary of Commerce under the CZMA have been delegated to the Administrator of the National Oceanic and Atmospheric Administration (NOAA) under Department of Commerce Organization Order 25-5A. The functions have in turn been redelegated to the Assistant Administrator of NOAA for Coastal Zone Management under NOAA circular 76-82 and 76-83.

Sections 306(a), (c), (d), (e) and (h) of the CZMA requires that certain findings be made by the Secretary of Commerce prior to approval of a segment management program. The Assistant Administrator for Coastal Zone Management, acting for the Secretary, hereby sets forth the findings on the San Francisco Bay Coastal Zone Management Program (the Program), which is a segment of the State of California Coastal Zone Management Program, as defined in Section 306(h) of the CZMA. These findings should be understood as constituting only part of the other review, comment, participation and technical requirements of the CZMA that have been met by the Program through its planning processes. Demonstration that these and other requirements of the CZMA have been met is contained in the program document. This document is referenced in the following findings, as appropriate.

Findings Pursuant to Section 306(a) of the CZMA:

The Secretary finds that the program meets the requirements of Section 305(b).

In accordance with the provisions of Section 306(a)(1) of the CZMA, the Secretary finds that the Program meets the requirements of Section 305(b), with the exception of subsections 305(b)(7), (8) and (9), which requirements do not need to be met until October 1, 1978, or until the Program segment is integrated with the California program segment, whichever occurs later.

(1) The management program includes an identification of the boundaries of the coastal zone subject to the management program. (305(b)(1)).

The boundary includes: all areas of the Bay subject to tidal action, from the south end of the Bay to the Golden Gate, and to the Sacramento River, including all sloughs, marshlands lying between mean high tide and

five feet above mean sea level, tidelands and submerged lands; the first 100 feet of shoreline inland from the line of highest tidal action or from a line 5 feet above mean sea level in marsh areas, whichever is higher; large areas of open water diked off from the Bay and used largely for duck hunting and argiculture; 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; and those areas defined as marsh zone and buffer zone in the vicinity of the Suisun Marsh.

With the exception of the Suisun Marsh area, this boundary is defined in Section 66610 of the McAteer-Petris Act of 1965, as amended (California Government Code, Section 66600, et seq), hereinafter referred to as the Act, establishing the Bay Conservation and Development Commission (BCDC or the Commission). The boundary is based on biological and physical considerations analyzed during the period 1965-1969, precedent to the establishment of the Commission's area of jurisdiction. The areas of the Suisun Marsh contained in the coastal zone are defined in the Nejedly-Bagley-Z'berg Suisun Marsh Protection Act of 1971.

The zone excludes "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."

As a segment of the California Coastal Zone, BCDC will exercise policy control over its jurisdiction and its management program prior to integration into a complete state management program. The BCDC boundary includes a geographic area on both sides of the coastal land and water interface.

> (2) The management program includes a definition of what shall constitute permissible land uses and water uses, within the coastal zone, which have a direct and significant impact on the coastal waters. (Sec. 305(b)(2)).

The program includes a definition of land and water uses subject to planning and management. Any use which involves fill, extraction of materials or any substantial change in use of any water, land or structure within the Commission's jurisdiction, is subject to the Program. The determination of permissible uses is based on an assessment that any of the above activities in or near the Bay will have a direct and significant impact on coastal waters.

> (3) The management program includes an inventory and designation of areas of particular concern within the coastal zone. (Sec. 305(b)(3)).

In developing the Bay Plan, the Commission inventoried and considered all 8 categories required by the applicable NOAA regulation (FR 1687, 1/9/75). The Bay Plan maps contain the specific locational designations for the following types of areas: Bay marshland; other areas important to fish and wildlife, such as shellfish beds and important habitats; sites deemed best

suited for commerce and recreation, including future marinas, fishing piers and other water-related recreational facilities; managed wetlands, particularly in the vicinity of the Suisun Bay; and salt ponds in North and South Bays. In addition, the Bay Plan designates generalized subsidence and fault zones susceptible to flooding and earthquake hazards as areas of particular concern. State policies governing these areas are contained in the Bay Plan policies and the Policy Notes on the Plan Maps.

(4) The management program includes an identification of the means by which the State proposes to exert control over land and water uses, including a listing of relevant constitutional provisions, laws and regulations. (Sec. 305(b)(4)).

The principal means by which the State proposes to exert control over permissible land and water uses in San Francisco Bay and its adjacent shoreline is the McAteer-Petris Act. This legislation established the Commission, gave it exclusive permit authority within the San Francisco Bay segment of the California coastal zone, and authorized BCDC the power to issue cease and desist orders to enforce the permit requirements.

The Act authorizes BCDC to issue regulations to enable it to carry out its functions. Since its creation in 1965, the Commission has issued a sizeable number of procedural and interpretative regulations to implement its basic statutory authority.

Inasmuch as the Commission has been exercising its permit powers for a number of years, a body of case law has been built up around its permit hearings and decisions. These quasi-judicial decisions form an important part of the Commission's experience in administering the Act.

The Suisun Marsh Preservation Act of 1974 (California Fish and Game Code, Sections 1850-1883) enables BCDC to exercise expanded permit jurisdiction over the key wetland areas of the Suisun Marsh, pending completion of the Suisun Marsh Protection Plan and action thereon by the State Legislature.

The state relies on the California Constitution, Article 1, Section 19, and certain implementing statutes (California Civil Procedures Code, Sections 1240.010 and 1240.110) - the state's power of eminent domain - to acquire property where necessary to carry out its management program. This authority also meets the requirements of Section 306(d)(2) of the CZMA.

The state will augment BCDC's permit authority by coordination with state and local 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. These coordinate agencies, in turn, administer certain state environmental and energy laws which will specifically serve to augment the permit jurisdiction of BCDC. One such complementary authority is the Porter-Cologne Water Quality Control Act (California Water Code, Sections 13020 et seq). This Act granted the Regional Water Quality Control Board and the State Water Resources Control Board exclusive statutory authority over water quality in the state. The Program

includes the requirements of the Porter-Cologne Water Quality Control Act as the water quality element of the BCDC management program.

Another key state statute that will be exercised in implementation of the Program is the California Environmental Quality Act (California Public Resources Code, Division 13, Sections 21000 et seq). This Act requires the preparation of environmental impact reports (EIRs) by the state and local agencies for projects that may have significant effects on the environment, including zoning changes, amendments to general plans and specific development proposals along the shoreline. BCDC will review these reports to assure that parcels which may affect the coastal resources are used for purposes consistent with priority use designations.

Energy facility siting for the Bay coastal zone is addressed by both BCDC and the Energy Resources Conservation and Development Commission, established by the Warren-Alquist Energy Resource Conservation and Development Act of 1972, as amended (California Public Resource Code, Section 25000 et seq.).

Most of the sites suggested for power plants in the Bay area are "grandfathered" under this Act, meaning that BCDC retains permit jurisdiction over facilities at these locations, based in part upon comments received of the Energy Commission. For "non-grandfathered" power plants, the BCDC provides the Energy Commission with a written report on the suitability of any site and related facility and findings on the consistency of the proposed facility with the Commission's policies. If, after meeting with BCDC to correct any non-compliance compliance cannot be achieved, the Energy Commission can approve the facility only if it determines that the facility is required for public convenience and necessity, and that there are not more prudent and feasible means of achieving such convenience and necessity.

(5) The management program includes broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority. (Sec. 305(b)(5)).

Priority uses for areas within the Commission's jurisdiction are identified in the Bay Plan and Plan Maps. These priority uses include, in appropriate locations as noted on the Plan Maps: airports, roads, bridges, marinas, water-related recreation, Bay-oriented commercial development, and Bay-oriented public assembly. On the shoreline, in priority use areas, only uses consistent with the priority use designation are permissible. Outside the priority use areas, priority is afforded those shoreline uses that (a) do not adversely affect the Bay and shoreline, and (b) provide the maximum feasible public access. In salt ponds and managed wetlands, the Bay Plan policies give priority to protection and continuance of present uses (duck hunting and agriculture for the managed wetlands, and salt production for salt ponds). In the Bay marshland and other areas important to fish and wildlife designated as areas of particular concern, protection of these areas is required.

(6) The management program contains a description of the organizational structure proposed to implement such program, including the responsibilities and inter-relationships of local, area-wide, state, regional, and interstate agencies in the management process. (Sec. 305(b)(6)).

BCDC has exclusive authority to implement the coastal zone management program within its area of jurisdiction, with the exception of administering the air and water quality standards. (These latter program elements are the responsibility of other state agencies, as discussed below.)

BCDC was established in 1965 as a department within the State Resources Agency. The 27-member Commission has been in operation since that time and has continuously exercised its permit authority in the Bay Area pursuant to the Act and the San Francisco Bay Plan which was adopted by the Commission in 1968 and subsequently enacted by the California legislature in 1969.

As indicated above, the Commission is empowered to issue or deny permits after public hearings, for any proposed project within its jurisdiction and issue cease and desist orders to enforce the Act's permit requirements. Further BCDC is authorized to adopt amendments to or repeal all or any part of the Bay Plan after public hearings and adequate notice.

The Executive Director of BCDC, who is in charge of administering the affairs of the Commission, has the authority to issue permits in cases of emergency or for minor improvements. The Director may also issue 30-day cease and desist orders to carry out the Act's permit requirements.

The agencies who manage the two excepted elements of the management program are the State Water Resources Control Board, the Regional Water Quality Control Board for the San Francisco Region, and the Bay Area Pollution Control District.

BCDC will also cooperate with certain other state agencies, who have authorities in the coastal zone. Many of these agencies, such as the Departments of Conservation, Fish and Game, Parks and Recreation, State Lands Commission and the Energy Commission, are within the umbrella organization of the Resources Agency. These coordinate agencies will, therefore, be subject to the stated policy of the Resources Agency (as expressed in a 3/19/76 letter from the Secretary of Resources) to conduct their activities to the maximum extent feasible in accordance with the BCDC management program. Still other agencies with whom BCDC will continue to cooperate, such as the Department of Transportation, the Association of Bay Area Governments, the Metropolitan Transportation Commission and the State Office of Planning and Research, are outside of the Resources Agency. BCDC will formalize its working arrangements with these agencies by written agreement or memoranda of understanding.

Findings Pursuant to Section 306(c) of the CZMA:

> (1) The state has developed and adopted a management program for this segment of the California coastal zone in accordance with rules and regulations promulgated by the Assistant Administrator on behalf of the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, local governments, regional organizations, port authorities and other interested parties, public and private, which is adequate to carry out the purposes of this title and is consistent with the policy declared in Section 303 of the Coastal Zone Management Act.

This program has been developed in accordance with and meets the requirements of the applicable rules and regulations (15 CFR Parts 920 and 923) promulgated on behalf of the Secretary. These regulations are derived from and supplement the findings of the CZMA. By virtue of the fact that the Assistant Administrator is able to make the findings herein, the program has been developed and adopted in accordance with relevant rules and regulations.

Extensive notice to the public and governmental agencies regarding the content of this program was provided during the course of development of the Bay Plan, with opportunity provided for full participation by relevant Federal agencies, local governments, regional organizations, port authorities and other interested parties, public and private.

During the process of developing the Bay Plan (during the period 1965-1968), 23 technical reports on various resources and use considerations were prepared as were background reports and possible planning conclusions. These were made available to the public and specifically were reviewed by an advisory committee made up of citizens representing various Bay-related interests such as public utilities, conservation, transportation, ports, recreational boating, and design.

Prior to formal consideration by the Commission, final reports and tentative planning conclusions and recommendations were widely distributed to Federal, state and local agencies and to the public at large for review and comment. The tentative planning conclusions were subject to at least 75 public meetings conducted by the Commission. This same procedure was followed in the next step of the program-development of a preliminary plan. The preliminary Plan recommendations were reviewed by the advisory committee and were widely distributed to interested parties. The Commission held at least 25 public hearings at various points around the Bay prior to final adoption of the Plan on September 20, 1968.

Full participation by local governments and regional organizations was further insured by the composition of the Commission itself. Of the 27 BCDC members, 12 were county or city officials, including 3 appointed by the Association of Bay Area Governments.

State agencies were involved through representation on the Commission and/or through preparation of background reports or as key reviewers of background reports prepared by the BCDC staff. The following agencies with the most direct interest in the Bay were represented on the Commission: The Resources Agency, the Department of Transportation, the Department of Finance, the State Lands Commission, and the Regional Water Quality Control Board.

During preparation of the Bay management program, the Commission consulted extensively with numerous Federal agencies with interests or activities affecting the Bay segment. These agencies included, but were not limited to, the Federal Aviation Administration and the Coast Guard within the Department of Transportation; the Environmental Protection Agency; the Federal Housing Administration within the Department of Housing and Urban Development; the General Services Administration; the Maritime Administration within the Department of Commerce; the Bureau of Land Management, the Bureau of Mines, the National Park Service, the Bureau of Outdoor Recreation, the Bureau of Reclamation, and the Fish and Wildlife Service within the Department of the Interior; the Army Corps of Engineers and the Departments of the Army and the Navy.

Further details regarding opportunities for full participation are contained in the program document in the sections entitled Public Participation/Intergovernmental Involvement and Federal Consultation.

Through the policies and implementing authorities of both the Bay plan and the Bay segment management program, the San Francisco Bay program is consistent with and enhances the national policies of Section 303 of the CZMA by (1) providing for the preservation, protection, development, and where possible, the restoration or enhancement of the resources of San Francisco Bay and adjacent shorelands, (2) developing and implementing a management program designed to achieve wise use of coastal land and water resources with full consideration having been given to ecological, cultural, historic, aesthetic and economic development values, (3) providing a means (through the Federal consistency procedures) for continued cooperation and participation of Federal agencies with state and local governments involved in the administration of the Program, (4) encouraging the participation of the public, of Federal, state, and local governments and of regional agencies in the development of this program, and (5) encouraging cooperation, through the continued implementation of and adherence to this management program, of various state and regional agencies, particularly regarding environmental problems.

(2) The state has:

(a) coordinated its program with local, and area-wide plans applicable to areas within the coastal zone existing on January 1, 1976, the year in which the segment management program was submitted, which plans have been developed by a local government, an area-wide agency designated pursuant to regulations established under Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency or interstate agency.

Since its inception, the Program has been predicated on extensive coordination with existing local and area-wide plans. Section 66631 of the Act required that the Commission shall "to the fullest extent possible, coordinate its planning with planning by local agencies" and "cooperate to the fullest extent possible with the Association of Bay Area Governments."

Prior to submission of the management program to NOAA, the Commission circulated the program through A-95 state and local clearinghouses. There were no objections to the program nor were conflicts with local or area-wide plans raised by the reviewers.

> (b) established an effective mechanism for continuing consultation and coordination between the Bay Commission and with local governments, interstate agencies, regional agencies and area-wide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of the CZMA. This consultation mechanism provides notice to local governments of any management program decision that would conflict with any local zoning ordinance, decision or other action, provides for a 30-day comment period provided an affected local government takes no action that would conflict with the management program decision during this same time period, and further provides for a public hearing on comments by affected local governments.

Constant and continuing consultation and coordination between the Commission and local units of government has been and will continue to be maintained through inter-related permitting responsibilities. If a project requires a local permit as well as one from the Commission, the applicant is required (pursuant to Section 66632(b) of the Act) to obtain the local permit from the appropriate city council or county board of supervisors before going to BCDC. A local agency may deny the application or approve it and file a report with BCDC within 90 days. The Commission, in ruling on an application, is directed by Section 66632(c) of the Act to give "full consideration" to the report of the local government.

Continuing coordination is further assured by utilization of the A-95 clearinghouse review procedure, by review of Environmental Impact Reports pursuant to the California Environmental Quality Act, and Environmental Impact Statements pursuant to the National Environmental Policy Act, and by the requirement for the Commission to hold public hearings prior to adoption of amendments to the Bay Plan and Plan Maps. Finally, the first year administrative grant and work program contain matters involving other state agencies, local governments, area-wide and regional agencies and Federal agencies.

Changes in the Bay Plan or Plan Maps, including changes in policies, standards or map designations, would constitute major management program decisions which could conflict with local zoning ordinances, decisions or actions. These changes would constitute amendments to the Bay Plan and, as such, would be subject to the provisions of Section 66652 of the Act. These provisions provide for either a 90-day or a 30-day notice period (depending on the nature of the proposed amendment) prior to the holding

of a public hearing. No action will be taken by the Commission to implement a proposed amendment until after the public hearing has been held, the views expressed have been considered and a majority of Commission members has voted affirmatively on the amendment.

(3) The Commission has held public hearings in the development of the management program.

In addition to the numerous public hearings held during the course of developing the Bay Plan, a formal public hearing on this management program was held in Fairfield on April 15, 1976. While adequate notice of 30 days was provided, a malfunction in reproduction equipment delayed distribution of the program document. To compensate for this delay, comments on the document were accepted up to May 5, 1976.

(4) The management program and any changes thereto have been reviewed and approved by the Governor.

On December 31, 1976, Governor Edmund G. Brown, Jr., approved the Program for the San Francisco Bay and certified that it meets the requirements of the CZMA.

(5) The Governor of California has designated a single agency to receive and administer the grants for implementing the management program.

In his letter of December 31, 1976, approving the BCDC management program, Governor Brown certified that:

"The California Coastal Zone Conservation Commission is the single designated agency to receive and administer grants for implementing the management program for the BCDC segment of the coastal zone."

The California Coastal Zone Conservation Commission, now named the California Coastal Commission, was given this responsibility under the California Coastal Act of 1976. (Section 30330). The administrative grant to be awarded pursuant to the findings contained herein to the California Coastal Commission will be subcontracted to the BCDC which agency will implement the management program for the Bay segment.

(6) The state is organized to implement the management program required under paragraph 306(b)(1) of the Act.

The organization of BCDC, as described in detail above, was prescribed in its enabling law, the McAteer-Petris Act. The Commission has been in existence since 1965 operating pursuant to the requirements of this Act and the Bay Plan. Experience has proven that it can implement the permit system to regulate development in the Bay Area, which is its major management tool. Other state agencies are used as necessary as described above.

(7) The state has the authorities necessary to implement the program, including the authority required under Subsection 306(d) of the CZMA.

The central authority by which BCDC acts to implement its management program is the permit power given to the Commission in the Act. As indicated previously, BCDC has been exercising this authority since its establishment in 1965.

The authorities to administer land and water regulations, control development in compliance with the Program, and to resolve conflicts are discussed more fully in the findings made pursuant to Section 306(d).

(8) The Bay segment management program provides for adequate consideration of the national interest involved in planning for, and in the siting of facilities (including energy facilities in, or which significantly affect, such segment's coastal zone) which are necessary to meet requirements which are other than local in nature. The Commission has the means to give consideration to any applicable interstate energy plan or program.

In its planning for the Bay, the Commission has made extensive efforts to consider the national interest in the siting of facilities. California asked for and received extensive assistance from various Federal agencies in the development of the Bay Plan. In the years since adoption of the Plan, the Commission has developed and maintained ongoing cooperative relationships with those Federal agencies whose activities have related most directly to the Bay.

The Program neither arbitrarily excludes nor unreasonably restricts the siting of facilities in the national interest. To the contrary, the management program addresses national interest siting considerations in a positive manner. The management program, and in particular the policies of the Bay Plan, recognizes national defense and security as important aspects of the national interest. The Plan identifies waterfront sites suitable for energy-related facilities, such as power plants, refineries, and national energy needs. At the time sites for energy facilities were designated, such designations were made on the basis of the best available information as to both resource capabilities and future demand for facilities. There were not then and are not now applicable interstate energy plans or programs to which consideration could be given. However, the Program recognizes that coastal management is a dynamic and continuing process that will require revision and update. Should interstate energy plans be developed that apply to this segment, such plans can and will be considered in future revisions to the Program.

The Bay Plan policies and maps also reflect the ever-increasing popularity of the Bay area as a national tourist and recreation resource by giving a high priority to facilities for recreational and other public-oriented uses. Other facilities of national importance, such as ports, airports, military bases, Coast Guard facilities, navigational channels, and wildlife refuges have been fully considered and included, as appropriate, in the Bay Plan.

(9) The management program makes provision for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological or esthetic values.

The Bay Plan identifies four types of areas to be preserved or restored. These include the Bay itself, for which the Plan policies state the open water of the Bay should be preserved to the maximum extent feasible and, therefore, filling should be limited to the minimum necessary for high-priority, water-oriented uses specified in the McAteer-Petris Act and the Bay Plan. The Act and the Plan place special emphasis on the preservation of existing marshlands and adjacent mudflats. Fill can be permitted only for purposes of providing substantial public benefits and then only if there is no reasonable alternative. Plan policies on salt ponds and other managed wetlands 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. A major element of the planning for the Suisun Marsh will be the preservation of existing managed wetlands and, where possible, restoration of diked-off areas to either tidal action or greater productivity. Finally, as part of the permit process, the Commission has been requiring that diked-off areas be restored to tidal action as mitigation for large-scale fills.

Findings Pursuant to Section 306(d) of the CZMA:

The State, acting through its chosen agency or agencies, including local governments, area-wide agencies designated under Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, regional agencies, or interstate agencies, has authority for the management of the coastal zone in accordance with the management program. Such authority includes the power:

(1) to administer land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses; and,

(2) to acquire fee simple and less than fee simple interest in lands, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

Inherent in BCDC's permit authority is the authority to administer land and water use regulations within the coastal zone. The power to issue regulations was granted to BCDC in its enabling act and the Commission has exercised this authority since the time of its establishment.

BCDC controls development in the coastal zone through a permit system. Under the Act, the Commission can only issue a permit for a project within its jurisdiction if it finds that the project is either (1) necessary to the health, safety or welfare of the public in the entire Bay area; or, (2) consistent with the provisions of the Act and the Bay Plan.

The power to resolve conflicts among competing uses is also inherent in the permit process. These permits can only be approved upon a finding of consistency with the Act and the Bay Plan. The Plan itself established specific policies for permissible land and water uses in the Bay area.

The authority at this time is not necessary to achieve conformance with the management program. However, the Commission does have available to it the state's property acquisition and condemnation authorities pursuant to the State Constitution, Article I, Section 19, and certain implementing statutes (discussed more fully in the findings pursuant to subsection 305(b)(4). The approval letter from Governor Brown indicates that the State would exercise these authorities should that become necessary or desirable to carry out elements of the BCDC management program.

Findings Pursuant to Section 306(e) of the CZMA:

(1) The program provides for the following general technique for control of land and water uses within the coastal zone:

(B) Direct state land and water use planning and regulation.

The approval letter from Governor Brown states that BCDC is using the technique listed in Section 306(e)(1)(B) of the CZMA for controlling land and water uses within the coastal zone. BCDC is directly involved in the establishment of detailed land and water use regulations which are then applied to individual cases through the permit process. Local governments may adopt their own zoning ordinances but within the BCDC coastal zone, the Commission in effect can overrule the local regulation by denying a permit unless the development is consistent with the management program.

(2) The program provides for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit.

The management program encompasses a number of techniques for assuring that local regulations do not unreasonably restrict or exclude land and water uses of regional benefit. In the first place, the Bay Plan and Maps specifically designate proposed sites for identified uses

of regional benefit, including ports, water-related industries, airports, wildlife refuges, water-oriented recreation and water-oriented public assembly. The siting is done in a manner to allow for an adequate number of alternative locations for these uses. At the time the Bay Plan was adopted by the Commission and enacted by the State Legislature as the official regional plan for the Bay Area, local zoning regulations were found to not unreasonably restrict or exclude the Plan's designated sites for uses of regional benefit.

The program also provides a mechanism for assuring that local zoning regulations will not in the future unreasonably restrict or exclude land and water uses of regional benefit. Through its permit authority, BCDC can directly override local zoning decisions which approve development inconsistent with the Bay Plan's regional use designations. The Commission is bound by the mandates of the McAteer-Petris Act to only grant a permit for a project that is in conformance with the terms of the Act and the Bay Plan. This permit process will, in effect, assure that no use other than a regional one will be approved for a location appropriately sited on the Bay Maps for a regional facility. This veto power is strong enough to assure that local governments will not unreasonably impede the provision of regional facilities.

In addition to BCDC's permit controls, there is another method of direct state control over regional facilities. The State Energy Resources Commission has the final determination in the siting of energy facilities in the coastal zone.

Finally, the program contains a mechanism through which BCDC will be notified of changes in local plans and ordinances that may be inconsistent with the Bay Plan designations. Pursuant to the State Environmental Impact Report (EIR) review process, under the California Environmental Quality Act, BCDC is informed of, and comments on, amendments to local plans and zoning ordinances. At the present time, no changes in local zoning regulations have been presented that would adversely affect the provision of uses of regional benefit.

Findings Pursuant to Section 306(h) of the CZMA:

The State of California adequately provides for the ultimate coordination of the two segments of its management program into a single, unified program and this unified program will be completed as soon as is reasonably practicable.

Pursuant to Section 30410(a) of the California Coastal Act of 1976, the California Coastal Commission (which is the lead agency for administration and implementation of the remaining segment of the California management program as well as the lead agency to receive and administer grants for the Program) and the BCDC are directed to conduct a joint review to determine how the program administered by BCDC shall be related to the coastal management program for the rest of the California coast administered by the California Coastal Commission. Both Commisions are directed to present jointly their recommendations to the California legislature not later than July 1, 1978.

This approval of the Bay segment is based and contingent upon the ultimate approval by the Secretary of Commerce, or her designee, of the action by the State of California to coordinate the segments of the management program into a single, unified program.

As part of their first administrative grant and work program, BCDC has included a work task to identify institutional and substantive differences between the two segmented programs and to recommend alternative approaches to integration for consideration by the two Commissions. This study will include analysis of differences in boundaries, policies and institutional arrangements.

Findings Pursuant to Section 307(f) of the CZMA:

> The requirements of the Federal Water Pollution Control Act, as amended, and the Clean Air Act, as amended, are incorporated into the Bay segment management program and are the water pollution control and air pollution control requirements applicable to the Program.

The air and water quality standards established by the Federal Water Pollution Control Act and the Clean Air Act are part of the Program and are administered by the State Air Resources Control Board, the Bay Area Air Pollution Control District, and the State and Regional Water Quality Control Boards. These agencies have the primary responsibility under state environmental laws to enforce the Federal standards in their respective jurisdictions.

Federal Comments

Prior to making the findings contained herein, the Assistant Administrator, on behalf of the Secretary, adequately considered the views of Federal agencies principally affected by the Program.

On May 5, 1976, NOAA distributed copies of the draft Program to principally affected Federal agencies. The original 45-day comment period was further extended to June 30, 1976. Comments were received from a number of Federal agencies. The comments of these agencies and the Commission's response are contained in Appendix I of the program document. Changes to the final program resulting from these comments are reflected throughout the final program document.

On November 29, 1976, NOAA again distributed copies of the final Program to principally affected Federal agencies. As of January 28, 1977, official comments had been received from the Department of Defense, the Department of the Interior, the Department of Commerce, the Federal Power Commission, and the Department of Transportation. The majority of comments on the final Program involve questions relating to the use of Memoranda of Understanding (MOUs) as part of the Federal consistency procedures, and the applicability of Section 307(c)(3) of the CZMA to Federal applicants for licenses and permits. In individual responses to Federal agencies, NOAA has made the following points:

(1) As explicitly noted in the Program, the MOU process is voluntary. To the extent that two of the primary purposes of the Federal consistency provisions of the CZMA are to foster and encourage cooperation between Federal and state entities as well as to improve land and water use management of coastal areas through adherence, by all levels of government, to approved coastal management programs, then it is to be hoped that Federal agencies will utilize voluntarily those procedures (in this case, MOUs) which a state anticipates will be most effective in administering their approved coastal management program.

(2) At the time the Program was being developed, the final NOAA rules and regulations governing Federal consistency procedures did not (and still not not) exist. In the absence of specific regulations, the BCDC has developed a procedure that the Secretary finds consistent with the intent of Section 307 of the Act.

(3) Whatever procedure Federal agencies adopt with respect to notification regarding activities and projects subject to the provisions of subsections 307(c)(1) and (2) of the CZMA, such procedures should provide BCDC with (a) notification of both the determination of whether or not a proposed project or activity will directly affect the San Francisco Bay area coastal zone, and whether or not (and how) the proposed project or activity is consistent, to the maximum extent practicable, with the approved management program; (b) notification at the earliest possible opportunity during the planning of proposed projects and activities; and (c) adequate information in the notification to enable BCDC to assess the two determinations noted in (a) above.

(4) Following issuance of final NOAA regulations covering Section 307 of the CZMA, BCDC will refine the consistency procedures and in particular will remove any ambiguity in the present procedures with respect to the applicability of subsection 307(c)(3) consistency requirements to Federal applicants for Federal licenses or permits. In the interim, Federal applicants for Federal licenses or permits will not be required to obtain state certification approval pursuant to the requirements of subsection 307(c)(3), but the activities or projects for which such Federal licenses or permits are sought are subject to the notification requirements of subsections 307(c)(1) and (2) of the CZMA.

(5) For activities and projects that come within the purview of subsection 307(c)(1) and (2) of the CZMA, the Federal agency proposing the project or activity makes the consistency determination, but adequate and timely notification, as discussed in (3) above, must be provided BCDC. For licenses and permits subject to the provisions of subsection 307(c)(3) and for Federal assistance to state and local governments within the purview of subsection 307(d) of the CZMA, BCDC makes the final consistency determination.

The Assistant Administrator has considered and responded to the views expressed by principally affected Federal agencies. This consideration has led to a determination that the views expressed by principally affected Federal agencies do not constitute serious disagreement nor do they suffice to deny approval of the Program.

Having made the findings set forth above, and having determined that the San Francisco Bay Coastal Zone Management Program meets the requirements of the Coastal Zone Management Act of 1972, as amended, and its implementing regulations, this segment of the California coastal management program is hereby approved on behalf of the Secretary of Commerce. This approval is based upon a finding that the two segments of the California coastal management program will be integrated according to the timetable established in the California Coastal Act of 1976. It shall be reviewed upon completion of this timetable and submission and review of a plan for the coordination and integration of the various segments of the California coastal zone.

Feb 16, 1977
Date

Robert W. Knecht
Robert W. Knecht
Assistant Administrator
for Coastal Zone Management
National Oceanic and Atmospheric
Administration

BCDC USE OF SECTION 306 FUNDS, FEDERAL FISCAL YEAR 1977

1. General Program Support----------$ 55,961.

Under this category, 306 funds will be devoted to a number of areas that the Commission has not been able to address because of limitations on State funding. These areas include:

a. Update of BCDC Planning and Management Library

An adequate library and information storage system are essential to coastal zone management. For several years, however, BCDC has been unable to systematically shelve and catalog the vast quantity of material received from various sources. This problem has now become acute and the Commission proposes to devote a portion of its 306 grant to developing an adequate and up to date planning library. The project will consist of an initial assessment and organization of existing material, and a projection of future needs.

Cost----------$ 5,200

b. Equipment

For some time, it has been apparent that several pieces of office equipment would boost both the productivity and efficiency of the Commission staff. These include a collator, an automatic folder, and an automatic typewriter.

Cost----------$ 4,256

c. Bay Plan Reprinting

The Bay Plan was printed in 1969 prior to the legislative action making BCDC a permanent agency. A few of the recommendations in the Plan were not adopted by the Legislature, and since 1969 there have also been a few amendments to various portions of the printed Plan. Budget constraints, however, have precluded a complete reprinting of the Plan, and this is now long overdue. Furthermore, it would be desirable to reprint the updated Plan in loose-leaf form to make it easier to incorporate future changes.

Cost----------$ 14,121

d. Accounting and Monitoring

The existing BCDC administrative staff consists of one professional and one secretarial staff member. Proposed to be added is one additional junior level accountant and a clerk-typist to assist in the record-keeping related to the Section 306 grant.

Cost----------$ 18,523

e. Legislative Analysis and Monitoring

BCDC has, for the first time, adopted a legislative program, which includes BCDC-sponsored legislation relating to the protection and preservation of the Suisun Marsh. This program will be pursued during the 1977 session of the Legislature. In addition, there are more bills than usual pending that could affect BCDC, such as

proposed changes in the State permit process and a number of so-called "sunset laws." In order to keep abreast of both the Commission's own legislation and legislation that could affect BCDC, a legal counsel will be added to the staff. A portion of this individual's time would be spent in Sacramento working closely with the Coastal Commission representative there, and the remainder would be spent at the BCDC office.

f. Travel

At present, out-of-state travel at State expense is largely precluded by limits on State funds. As a result, it has been very difficult for members of the BCDC staff to attend coastal zone management conferences and similar events when they are not held in California. Consequently, there is a need for Federal funds to be available to permit BCDC to participate in such conferences, and the funds requested under this subcategory will be used for that purpose.

Cost----------$ 2,500

2. Permits and Enforcement----------$ 22,867

Section 306 funds will be used under this category for the personnel and supplies necessary to assure that there is full compliance with the Commission's management program and with the terms and conditions of Commission permits. Specific tasks to be undertaken include: (1) organization of an efficient enforcement program; (2) identification of alleged violations of the BCDC law; (3) coordination of enforcement activities with other concerned agencies; (4) preparation of reports and recommendations; (5) preparation of evidence substantiating possible violations; and (6) monitoring of compliance with enforcement actions.

Cost----------$ 22,867

3. Refinement of the BCDC Management Program and Development of New Program Elements----------$ 95,819

The BCDC management program for San Francisco Bay is now over 10 years old. While the basic thrust of the program remains unchanged, it is clear that refinement is needed. Section 306 funds sought under this category will be used for this purpose. Furthermore, work should begin on the Energy Facilities Siting, Public Access, and the Shoreline Erosion elements required to be in place by June 30, 1978.

a. Special Area Planning and Network Management

BCDC Regulations establish procedures for developing and adopting "special area plans." These plans are intended to be developed in cooperation with local governments and are a significant way that the general, regional policies in the San Francisco Bay Plan are carried out. One such plan has recently been completed for the San Francisco waterfront, and others underway for a portion of the waterfronts of the cities of Richmond and Benicia. Furthermore, special area plans have been suggested for the Redwood City area and the Oakland Estuary, and it appears that this planning process will pay an increasingly larger role in the Commission's management program.

Related to special area planning and the need to see the Bay Plan policies carried out at all levels of government is the operation of the Commission's management network. Needed here is additional staff to improve the monitoring of activities of Federal, State, and local agencies affecting the Bay so that these activities will be consistent with the Commission's management program to the maximum extent practicable

Cost----------$ 27,151

b. Public Access and Recreation Planning

Section 306 funds under this subcategory will be used first to update and refine the shoreline land use and resource inventory on which the original Bay Plan was based, primarily for the purpose of developing more detailed guidelines for shoreline public access and recreation. Included will be data collection, mapping and analysis of those existing and proposed uses that do, or would, affect public access and recreational planning for the shoreline. Similar information with regard to natural features and conditions will also be developed.

Based upon this inventory and analysis, recommendations will be developed for more specific guidelines on both the nature and location of public access at various locations around San Francisco Bay. From this information will also be developed recommendations to the Commission for updating and refining the park designations and recreation policies in the Bay Plan. An operating definition of the work "beach" will also be developed.

This effort will culminate in a study by an outside consultant of various means of implementing both the public access and recreation recommendations, including consideration of the possible source of funding for shoreline acquisitions.

Cost----------$ 33,399

c. Shoreline Erosion

The California Department of Navigation and Ocean Development, which has the principal responsibility under State law for shore protection, is currently carrying out a state-wide shoreline erosion study for the Coastal Commission as part of the latter's effort to meet the 1976 amendments of the Coastal Zone Management Act. The scope of this study will be expanded to include San Francisco Bay through the use of a portion of this 306 grant.

Cost----------$ 10,000

d. Energy Facilities Siting

Also to meet the requirements of the 1976 amendments to the Coastal Zone Management Act, BCDC will begin work on the development of an energy facilities siting element for the BCDC Management Program. This work will include the addition to the staff of an energy specialist, a survey of the available information on regional, state and national energy needs, and the development of a work program for actual preparation of the element.

Cost----------$ 25,269

4. Development of a Unified State Coastal Zone Management Program------$ 15,000

Both BCDC and the California Coastal Commission recognize the need for an integrated coastal zone management program for California. As a result, a specific provision was included in the California coastal legislation requiring BCDC and the State Coastal Commission to conduct an 18-month study with the objective of developing the best way to integrate the two programs. This study will address, among other things, the significance of the differences in the boundaries of the two segments of the coastal zone and the differences in policies under which each agency operates. The boundary analysis will also include the question of the extent of BCDC jurisdiction over diked wetlands adjacent to coastal waters. From this will emerge tentative recommendations to the Legislature for consideration by two Commissions.

The Section 306 funds will be used to fund one-half the expense of a consultant study of the two programs to provide background material on which to base staff analysis and recommendations.

Cost----------$ 15,000 (1/2 of total cost)

Recapitulation

1.	General Program Support	$ 55,961
2.	Permits and Enforcement	22,867
3.	Refinement of the BCDC Management Program	95,819
4.	Development of an Integrated State Coastal Zone Management Program	15,000
		$189,647

State Match (20%): In-kind services having a value of $47,412.

STATE OF CALIFORNIA EDMUND G. BROWN JR., Governor

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
30 VAN NESS AVENUE
SAN FRANCISCO, CALIFORNIA 94102
PHONE: 557-3686

March 16, 1977

Mr. Bob Knecht
Office of Coastal Zone
Management
Coastal Zone 6, Room 304
Page Building 1
3300 Whitehaven Street, N. W.
Washington, D. C. 20235

Dear Bob:

This letter will confirm on behalf of the Commission the relationship between Section 306(e)(2) ("uses of regional benefit") of the Coastal Zone Management Act and the Commission's management program for San Francisco Bay.

As we noted in the management program, local governments in the Bay Area have not attempted to exclude arbitrarily or unreasonably those uses of regional benefit identified in the BCDC management program. On the contrary, because of the highly urbanized character of the Bay Area and the contribution these uses usually make to local tax bases, there has historically been considerable competition among local governments for such uses. Some salient examples are the rivalries between the port of San Francisco, Oakland, and Richmond, and between the airports in Oakland and San Francisco. The Commission's role therefore has been more to resolve competing claims among various local governments to uses of regional benefit so that the uses are located and distributed in a way that minimizes adverse impacts on the BCDC segment of the coastal zone.

This role is reflected in the preparation of the Bay Plan between 1965 and 1969. As part of that process, the Commission surveyed the plans, programs, and land use controls of local jurisdictions around the Bay to ensure that the designations of uses of regional benefit--the high-priority, water oriented uses identified in the Plan--were consistent with local plans, programs, and land use controls. Furthermore, this process was repeated in 1970 and 1971, as the Commission fulfilled the requirements of one of the 1969 amendments (Section 66611) to the McAteer-Petris Act to define the legal boundaries of the priority use areas in the Plan.

To our knowledge, these local plans, programs, and land use controls, with two exceptions, remain consistent with the priority use designations, indicating that the BCDC process for dealing with uses of regional benefit continues to function satisfactorily.

The two exceptions are Richmond and Benicia, where special area plans are currently underway to resolve possible conflicts between a priority designation in the Bay Plan and the desire of the local government to use a portion of the port area for a marina. This desire, by the way, materialized subsequent to completion of the Bay Plan and the setting of the boundaries of the priority use areas. Thus far the special area planning process indicates that marina uses in both these areas can be accommodated without difficulty.

We hope this letter resolves any remaining concerns with regard to the BCDC management program.

Cordially,

Charles R. Roberts

CHARLES R. ROBERTS
Executive Director

CRR/st

STATE OF CALIFORNIA EDMUND G. BROWN JR., Governor

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
30 VAN NESS AVENUE
SAN FRANCISCO, CALIFORNIA 94102
PHONE: 557-3686

March 16, 1977

Mr. Bob Knecht
Office of Coastal Zone
Management
Coastal Zone 6, Room 304
Page Building 1
3300 Whitehaven Street, N. W.
Washington, D. C. 20235

Dear Bob:

Enclosed are three copies of the Memorandum of Understanding between the State Water Resources Control Board, the Regional Water Quality Control Board, and BCDC. This is the last of the MOU's that are part of the management program and should be inserted in Appendix 5 of the program, just after the MOU between BCDC and the Bay Area Air Pollution Control District.

Very truly yours,

Mike

MICHAEL B. WILMAR
Deputy Director

MBW/st

RECEIVED
FEB 4 1977
SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

MOU 76-8

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

WHEREAS, under the provisions of the McAteer-Petris Act, the San Francisco Bay Conservation and Development Commission (hereinafter "BCDC") is charged with the management of San Francisco Bay and its adjacent shorelands, and in particular with preparation, implementation, enforcement, and periodic review of the San Francisco Bay Plan; and

WHEREAS, BCDC has submitted its management program for San Francisco Bay to the Secretary of Commerce for approval under Section 306 of the Federal Coastal Zone Management Act of 1972 as a segment of the California coastal zone management program; and

WHEREAS, if the BCDC management program for San Francisco Bay is approved by the Secretary of Commerce, BCDC will be the State agency responsible under the Federal Act for management of that segment of the California coastal zone comprising San Francisco Bay and its adjacent shorelands (the area of existing BCDC permit jurisdiction); and

WHEREAS, under the Porter-Cologne Water Quality Control Act, as amended, the State Water Resources Control Board (hereinafter "the State Board") and the nine regional water quality control boards are responsible for preserving and enhancing the quality of California waters (including the waters within the BCDC segment of the coastal zone) and assuring their conservation and most efficient use; and

WHEREAS, under the Porter-Cologne Water Quality Control Act, as amended, the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter "the Regional Board") has jurisdiction over the State waters and waters of the United States within the BCDC segment of the California coastal zone; and

WHEREAS, the broad objective of the State and Regional Boards' water quality control programs is to achieve and maintain the highest possible water quality in State waters consistent with their use; and

WHEREAS, the San Francisco Bay Plan Policies on Water Pollution (page 10) state that water quality in all parts of the Bay should be sufficiently high to permit water contact sports and to provide a suitable habitat for all indigenous and desirable forms of aquatic life, and assume this will be achieved, in time, as the result of measures taken in response to requirements and enforcement proceedings of the State and Regional Boards; and

WHEREAS, the Bay Plan Policies on Fresh Water Inflow (page 12, as amended January 4, 1973) recognize that the standards set by the State Board in Decision 1379 (the Delta Decision) will help maintain adequate fresh water inflow into the Bay, and these policies further recommend that the impact of diversions of fresh water inflow into the Bay should be monitored by a State regulatory agency, such as the State Board; and

WHEREAS, the Coastal Zone Management Act mandates that the requirements established by the State and Regional Boards pursuant to the Federal Water Pollution Control Act, as amended, be incorporated into the BCDC management program;

THEREFORE, BCDC, the State Board and the Regional Board mutually agree as follows:

1. For purposes of the Federal Coastal Zone Management Act of 1972, the State Board and the Regional Board recognize the BCDC Management Program, dated

July, 1976, as the State management program for the BCDC segment of the California coastal zone, which comprises San Francisco Bay and its adjacent shorelands (the area of existing BCDC permit jurisdiction), and will comply with, and exercise their regulatory authority to assist in carrying out, the BCDC Management Program to the maximum feasible extent.

2. BCDC recognizes that the State Board and the Regional Board are the State agencies with primary responsibility for the coordination and control of water quality in San Francisco Bay. BCDC further recognizes that the State Board has primary responsibility for the administration of water rights pursuant to applicable law.

3. As required by Section 307(f) of the Coastal Zone Management Act, BCDC agrees to incorporate into any Management Program for the San Francisco Bay the appropriate provisions of any water quality control plan or policy adopted or approved by the State Board pursuant to provisions of the California Water Code. Such plans and policies shall serve as the water quality management segment of the BCDC program or plan.

4. In carrying out its management program for the Bay, BCDC will, to the maximum feasible extent, exercise its powers and responsibilities under the McAteer-Petris Act to further the water quality objectives of the State and Regional Boards, including observing the following special procedures:

(a) BCDC will forward to the Regional Board for review and comment copies of all applications requiring a public hearing before BCDC. Except in unusual circumstances, the Regional Board will comment on such applications within 21 days, and copies of all such comments will be distributed to BCDC members prior to a vote on the application. To the maximum extent feasible, BCDC will incorporate recommendations of the Regional Board into any permit issued by BCDC, or into any resolution denying such a permit.

(b) As a standard condition in all BCDC permits, BCDC will require compliance with the requirements of the Regional Board.

5. BCDC may participate in all proceedings of the State and Regional Boards relating to water quality in San Francisco Bay or in the Delta. In the event BCDC participates in any such proceedings, it shall be afforded full opportunity to present evidence and examine and cross-examine witnesses.

6. This memorandum of understanding shall become effective upon execution by all parties thereto.

STATE WATER RESOURCES CONTROL BOARD

Executed on _____ By: Bill B. Dendy

BILL B. DENDY
Executive Officer

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

Executed on February 2, 1977 By: Frederick H. Dierker

FREDERICK H. DIERKER
Executive Officer

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

Executed on _____ By: Charles R. Roberts

CHARLES R. ROBERTS
Executive Director

State of California
GOVERNOR'S OFFICE
SACRAMENTO 95814

EDMUND G. BROWN JR.
GOVERNOR

916/445-2843

DEC 31 1976

Dr. Robert M. White
National Oceanic and Atmospheric
Administration
U. S. Department of Commerce
Washington, D.C. 20240

Dear Dr. White:

On behalf of the State of California, I am pleased to transmit California's management program for San Francisco Bay prepared by the San Francisco Bay Conservation and Development Commission (BCDC). As you probably know, California was one of the pioneers in coastal zone management in creating BCDC; and we think BCDC's success has been a major factor in encouraging other coastal zone management efforts, such as the California Coastal Zone Conservation Commission and the Federal Coastal Zone Management Act.

The BCDC program for the Bay described in this document meets the intent and requirements of the Coastal Zone Management Act (CZMA). I therefore request that the BCDC program be approved as a segment of the California coastal zone management program under Section 306 of the CZMA.

I have reviewed the BCDC management program for San Francisco Bay, and as Governor, I approve the program and certify to the following:

1. The State, through BCDC and the cooperation and coordination of other governmental agencies, has the required authorities and is presently implementing a management program for the segment of the California coastal zone comprising San Francisco Bay and its adjacent shorelands.

2. The State has established, and is operating, the necessary organizational structure to implement the BCDC management program for the BCDC segment of the coastal zone.

3. The California Coastal Commission is the single designated agency to receive and administer grants for implementing the management program for the BCDC segment of the coastal zone.

4. The State, through BCDC, has the authority to control land and water uses, control development, and resolve conflicts among competing uses within the BCDC segment of the coastal zone.

5. The State presently uses the method listed in Section 306 (e) (1) (B) of the CZMA for controlling land and water uses in the BCDC management program.

6. The State has sufficient power to acquire lands, should that become necessary or desirable to carry out elements of the BCDC management program.

7. The state laws cited in the BCDC program have been enacted into law. The San Francisco Bay Plan, which is the core of the Commission's management program for the Bay, is directly enforceable under the provisions of the McAteer-Petris Act.

8. The State's air and water pollution control programs, established pursuant to the Federal Water Pollution Control Act of 1972 and the Federal Clean Air Act, insofar as these programs pertain to the coastal zone, have been made a part of the State's coastal zone management program. The regulations relating to these programs have been incorporated into the BCDC management program and are the water pollution and air pollution control requirements applicable to the BCDC management program, except to the extent that BCDC and the agency administering these requirements agree on more stringent requirements.

9. The BCDC management program for San Francisco Bay is now an official program of the State of California; and the State, acting by and through BCDC and the other state, regional, and local agencies identified in the program, will continue to meet the intent of the Coastal Zone Management Act of 1972.

10. The State has provided for the ultimate integration of the BCDC program with the management program for the remainder of the California coastal zone. Under the terms of the legislation making the Coastal Commission a permanent agency, BCDC and the Coastal Commission are to present recommendations to the Legislature no later than July 1, 1978 on the integration of the two programs.

Sincerely,

EDMUND G. BROWN JR.
Governor

ADDENDUM

TO

MANAGEMENT PROGRAM

FOR

SAN FRANCISCO BAY

BY

THE SAN FRANCISCO BAY CONSERVATION

AND

DEVELOPMENT COMMISSION

STATE OF CALIFORNIA

November 16, 1976

The following revisions have been made by the Commission in the management program since its adoption on July 15, 1976:

1. Boundaries of the Coastal Zone

On page 9 of the Program, delete the quoted definition of the boundaries of the coastal zone outside San Francisco Bay and substitute the following:

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

This boundary was determined by the State Legislature on the basis of the recommendation of the California Coastal Zone Conservation Commission after four years of study culminating in the California Coastal Plan, and it appears in Section 30103 of the newly enacted coastal legislation.

2. Determination of the Boundaries of the BCDC Segment of the Coastal Zone

On page 10, last line of the first paragraph, add the following sentence: "This recommendation was accepted by the Legislature and the newly enacted coastal legislation requires BCDC and the Coastal Commission jointly to undertake such a study. The deadline for submission of the study to the Legislature is July 1, 1978."

3. Excluded Federal Lands

On pages 13 and 14, the following paragraph should be substituted for the paragraph beginning at the bottom of page 13 and carrying over to page 14:

> "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. In the meantime, the Office of Coastal Zone Management requested an opinion from the U. S. Attorney General in an attempt to clarify this point.

"That opinion has now been rendered. While the Commission does not fully agree with the conclusions therein, the Commission will abide by that opinion in the administration of its management program until such time as it is overturned in court or Section 304(a) is changed by Congress. 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. According to the Attorney General of the United States, this means all lands owned by the United States."

4. The Delta

On page 14, seventh line from the bottom, delete the words "Proposition 20" and add the words "the newly enacted coastal legislation."

5. Planning for Federal Activities

On page 25, the first full paragraph, beginning with the word "On," should be deleted in its entirety, and the following language substituted: "This exclusion has been interpreted by the Attorney General of the United States to mean all lands owned by the United States. The Commission will abide by this opinion in the administration of its management program until such time as it is overturned in court or Section 304(a) is changed by Congress."

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

a. On page 28, fifth line of the second paragraph, add the following sentence after the sentence ending with the word "Act": "This interpretation has now been largely confirmed by the United States Attorney General."

b. On page 28, delete the first sentence of the third paragraph, and substitute the following sentence: "In light of the Attorney General's opinion interpreting the scope of the excluded Federal lands clause in Section 304(a), the Commission has decided to exclude from the BCDC segment of the coastal zone all lands owned by the United States."

c. On page 28, fourth paragraph, fifth line, add the following after the word "program": "(except to the extent that their activities affect areas included within the coastal zone)."

d. On page 29, second full paragraph, first line, delete the words "until the excluded Federal lands issue is clarified."

e. On page 30, delete the second to last sentence in subsection (2).

f. On page 31, delete the last sentence in subsection (3).

7. State Agencies--Primary Roles

On pages 50 and 51, delete the paragraph beginning at the bottom of page 50 and continuing over to the top of page 51 and substitute the following paragraph:

> "In the event 'non-grandfathered' power plants are proposed for sites affecting San Francisco Bay, the Commission will follow the procedures prescribed in Chapter 6 of the Warren-Alquist Energy Resource Conservation and Development Act (the Warren-Alquist Act). 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 any site and related facility proposed for this area and specifically find whether or not the proposed facility and site would be consistent with the Commission's management program for San Francisco Bay. As required by Sections 25512 and 25514 of the Warren-Alquist Act, these findings and conclusions will be included in the Energy Commission's preliminary report on the notice of intent and in the final report on the conformity of alternative sites and related facilities designated in the notice.
>
> "The Warren-Alquist Act further provides that when an application is filed for certification of a site and related facility, and the site and related facility are not in compliance with the McAteer-Petris Act and the Bay Plan, the Energy Commission must meet with BCDC to attempt to correct the non-compliance. If compliance cannot be achieved, the Energy Commission can approve the facility only if it 'determines that the facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving such convenience and necessity.'"

8. Miscellaneous

On page 57, delete the entire remaining paragraph under Section 8 and substitute the following:

> "The California Coastal Commission has been designated the single State agency that will be fiscally and programatically responsible for receiving and administering grants under Section 306 to implement this management program."

9. Appendix I: Summary of Federal Comments and Response

In the Commission's general response to the many Federal comments relating to the excluded Federal lands issue, there are several statements premised on the fact that the Attorney General had not rendered his opinion on this issue. Now that the Attorney General's opinion is out, anything in the Commission's response that is inconsistent with the statements in this addendum on this issue should be disregarded.

Also the phrase on page 3 of the Commission's response, second full paragraph, lines six and seven, "to obtain a certification from the Commission" should be deleted, and the following substituted: "to obtain the Commission's concurrence in their certification."

MANAGEMENT PROGRAM

FOR

SAN FRANCISCO BAY

BY

THE SAN FRANCISCO BAY CONSERVATION

AND

DEVELOPMENT COMMISSION

AND

THE

RESOURCES AGENCY

STATE OF CALIFORNIA

July 15, 1976

The San Francisco Bay Conservation and Development Commission (BCDC) consists of 27 members, who represent Federal, State, and local governments and the general public. The Commission membership is as follows:

PUBLIC REPRESENTATIVES

Harry A. Bruno, appointed by the Governor
Joseph C. Houghteling, appointed by the Governor
Mrs. Ralph N. Jacobson, appointed by the Governor
Earl P. Mills, appointed by the Speaker of the Assembly
Ms. Elizabeth Osborn, appointed by the Senate Rules Committee
Mrs. Dean A. Watkins, appointed by the Governor

FEDERAL REPRESENTATIVES

Paul DeFalco, Jr., representing the Environmental Protection Agency
Col. Henry A. Flertzheim, Jr., representing the U. S. Army Corps of Engineers

STATE REPRESENTATIVES

Mrs. Joseph D. Cuneo, representing the Regional Water Quality Control Board
Donald L. Lollock, representing the Resources Agency
Sid McCausland, representing the Department of Finance
William F. Northrop, representing the State Lands Commission
Ruel A. Speck, representing the Department of Transportation

LOCAL REPRESENTATIVES

COUNTY (appointed by County Board of Supervisors)

Supervisor Warren N. Boggess, Contra Costa County
Supervisor Richard Brann, Solano County
Supervisor Sam Chapman, Napa County
Supervisor Fred F. Cooper, Alameda County
Supervisor George T. DeLong, Sonoma County
Supervisor Quentin L. Kopp, San Francisco County
Supervisor Thomas S. Price, Marin County
Supervisor Geraldine F. Steinberg, Santa Clara County
Supervisor John M. Ward, San Mateo County

CITY (appointed by the Association of Bay Area Governments)

Councilman Albert Aramburu, Tiburon
Mayor James E. Balentine, Newark
Dianne Feinstein, San Francisco
Councilman Frank H. Ogawa, Oakland

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

Senator Peter H. Behr
Assemblyman John J. Miller

MANAGEMENT PROGRAM FOR SAN FRANCISCO BAY

Introduction

This is an application to the Secretary of Commerce for approval of the San Francisco Bay Conservation and Development Commission's (BCDC) management program for San Francisco Bay, under Section 306 of the Coastal Zone Management Act of 1972. It is divided into two parts. The first part describes, in general terms, the BCDC management program, including the San Francisco Bay Plan, which is the heart of the BCDC management program. It also describes the BCDC management program in more detail in terms of the requirements established by the Office of Coastal Zone Management for approval of segmented coastal zone management programs under Section 306 of the Coastal Zone Management Act. Part Two comprises several appendices and includes the San Francisco Bay Plan, copies of documents necessary for BCDC to meet Federal requirements, the text of relevant State laws, and other material.

Approval of the BCDC management program is a necessary prerequisite for BCDC to receive a Federal grant under Section 306 of the Coastal Zone Management Act to assist in carrying out the BCDC management program for the Bay. These funds will be used to expand BCDC's efforts in several key areas. These include:

- -- Development jointly with the California Coastal Zone Conservation Commission of proposals for integrating the BCDC program for the Bay with an approved Coastal Commission program for the remainder of the coast into an overall California coastal zone management program.

- -- Development of regional public access and recreation plans to provide more specific guidelines for the location and development of future shoreline public access and recreation areas.

- -- Development of "special area plans" for specific shoreline and water areas within the Commission's jurisdiction. This is a major tool for implementing the Bay Plan in cooperation with local governments.

- -- Increased surveillance and enforcement capability to monitor compliance with the now numerous outstanding BCDC permits and to prevent violations of the BCDC law.

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San Francisco Bay Plan

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PART ONE: CONTENTS OF MANAGEMENT PROGRAM

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:

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.

-- 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."

c. 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 new 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
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Advisory Committee Roster
BCDC Priority Planning Work Items
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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

ADDENDUM

TO

MANAGEMENT PROGRAM

FOR

SAN FRANCISCO BAY

BY

THE SAN FRANCISCO BAY CONSERVATION

AND

DEVELOPMENT COMMISSION

STATE OF CALIFORNIA

November 16, 1976

The following revisions have been made by the Commission in the management program since its adoption on July 15, 1976:

1. Boundaries of the Coastal Zone

On page 9 of the Program, delete the quoted definition of the boundaries of the coastal zone outside San Francisco Bay and substitute the following:

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

This boundary was determined by the State Legislature on the basis of the recommendation of the California Coastal Zone Conservation Commission after four years of study culminating in the California Coastal Plan, and it appears in Section 30103 of the newly enacted coastal legislation.

2. Determination of the Boundaries of the BCDC Segment of the Coastal Zone

On page 10, last line of the first paragraph, add the following sentence: "This recommendation was accepted by the Legislature and the newly enacted coastal legislation requires BCDC and the Coastal Commission jointly to undertake such a study. The deadline for submission of the study to the Legislature is July 1, 1978."

3. Excluded Federal Lands

On pages 13 and 14, the following paragraph should be substituted for the paragraph beginning at the bottom of page 13 and carrying over to page 14:

> "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. In the meantime, the Office of Coastal Zone Management requested an opinion from the U. S. Attorney General in an attempt to clarify this point.

"That opinion has now been rendered. While the Commission does not fully agree with the conclusions therein, the Commission will abide by that opinion in the administration of its management program until such time as it is overturned in court or Section 304(a) is changed by Congress. 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. According to the Attorney General of the United States, this means all lands owned by the United States."

4. The Delta

On page 14, seventh line from the bottom, delete the words "Proposition 20" and add the words "the newly enacted coastal legislation."

5. Planning for Federal Activities

On page 25, the first full paragraph, beginning with the word "On," should be deleted in its entirety, and the following language substituted: "This exclusion has been interpreted by the Attorney General of the United States to mean all lands owned by the United States. The Commission will abide by this opinion in the administration of its management program until such time as it is overturned in court or Section 304(a) is changed by Congress."

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

a. On page 28, fifth line of the second paragraph, add the following sentence after the sentence ending with the word "Act": "This interpretation has now been largely confirmed by the United States Attorney General."

b. On page 28, delete the first sentence of the third paragraph, and substitute the following sentence: "In light of the Attorney General's opinion interpreting the scope of the excluded Federal lands clause in Section 304(a), the Commission has decided to exclude from the BCDC segment of the coastal zone all lands owned by the United States."

c. On page 28, fourth paragraph, fifth line, add the following after the word "program": "(except to the extent that their activities affect areas included within the coastal zone)."

d. On page 29, second full paragraph, first line, delete the words "until the excluded Federal lands issue is clarified."

e. On page 30, delete the second to last sentence in subsection (2).

f. On page 31, delete the last sentence in subsection (3).

7. State Agencies--Primary Roles

On pages 50 and 51, delete the paragraph beginning at the bottom of page 50 and continuing over to the top of page 51 and substitute the following paragraph:

> "In the event 'non-grandfathered' power plants are proposed for sites affecting San Francisco Bay, the Commission will follow the procedures prescribed in Chapter 6 of the Warren-Alquist Energy Resource Conservation and Development Act (the Warren-Alquist Act). 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 any site and related facility proposed for this area and specifically find whether or not the proposed facility and site would be consistent with the Commission's management program for San Francisco Bay. As required by Sections 25512 and 25514 of the Warren-Alquist Act, these findings and conclusions will be included in the Energy Commission's preliminary report on the notice of intent and in the final report on the conformity of alternative sites and related facilities designated in the notice.
>
> "The Warren-Alquist Act further provides that when an application is filed for certification of a site and related facility, and the site and related facility are not in compliance with the McAteer-Petris Act and the Bay Plan, the Energy Commission must meet with BCDC to attempt to correct the non-compliance. If compliance cannot be achieved, the Energy Commission can approve the facility only if it 'determines that the facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving such convenience and necessity.'"

8. Miscellaneous

On page 57, delete the entire remaining paragraph under Section 8 and substitute the following:

> "The California Coastal Commission has been designated the single State agency that will be fiscally and programatically responsible for receiving and administering grants under Section 306 to implement this management program."

9. Appendix I: Summary of Federal Comments and Response

In the Commission's general response to the many Federal comments relating to the excluded Federal lands issue, there are several statements premised on the fact that the Attorney General had not rendered his opinion on this issue. Now that the Attorney General's opinion is out, anything in the Commission's response that is inconsistent with the statements in this addendum on this issue should be disregarded.

Also the phrase on page 3 of the Commission's response, second full paragraph, lines six and seven, "to obtain a certification from the Commission" should be deleted, and the following substituted: "to obtain the Commission's concurrence in their certification."

APPENDIX I

List of Federal Agencies Comments and Response

LIST OF FEDERAL AGENCIES

LISTING OF FEDERAL AGENCIES

Regional Director
Bureau of Reclamation

Chief, Western Field Operations Center
Bureau of Mines

Regional Director, Region V
Office of Inspection and Enforcement
Nuclear Regulatory Commission

Facilities Planner
General Services Administration

Commanding Officer, Western Division
Naval Facilities Engineering Command

Regional Director
Economic Development Administration

State Conservationist
Soil Conservation Service

U. S. Attorney
Department of Justice

Regional Field Representative
Mass Transportation Administration

Regional Director
National Park Service

Chief, Intermountain Field Operations Center
Bureau of Mines

Assistant Director
U. S. Geological Survey

Director
U. S. Geological Survey
Western Oil and Gas Office

Regional Director
Department of Health, Education and Welfare

Regional Administrator, Region IX
Department of Housing and Urban Development

Pacific Southwest Planning Officer
Department of the Interior

Manager, Pacific OCS Office
Department of the Interior

Regional Director
U. S. Fish and Wildlife Service
Department of the Interior

Special Assistant to the Secretary
Department of the Interior

Director, Bureau of Land Management
Department of the Interior

Supervisor, River Basin Studies Office
U. S. Fish and Wildlife Service
Department of the Interior

Director, Bureau of Outdoor Recreation
Department of the Interior

San Francisco National Wildlife Refuge

Golden Gate National Recreation Area

Department of Transportation

Air Force Regional Civil Engineers

National Marine Fisheries Service

Regional Forester
Department of Agriculture
Forest Service

Division Engineer, South Pacific Division
Army Corps of Engineers

District Engineer, San Francisco District
Army Corps of Engineers

Regional Director, Western Region
Department of Commerce
Maritime Administration

Acting Manager
Energy Research and Development Administration

Administrator
Federal Energy Administration

Regional Administrator
General Services Administration

Regional Administrator
Environmental Protection Agency

Federal Power Commission

Commander
Twelfth Naval District

COMMENTS AND RESPONSE

SUMMARY AND ANALYSIS OF FEDERAL COMMENTS; COMMISSION RESPONSE

Two issues were raised by nearly all Federal agencies: (1) the degree to which Federal lands should be excluded from the BCDC segment of the coastal zone; and (2) the Commission's proposed approach to carrying out its responsibilities under Section 307 of the Act, the so-called "Federal consistency" provisions. These issues are therefore analyzed and responded to first.

Following the discussion of excluded Federal lands and Federal consistency is a summary and analysis, on an agency-by-agency basis, of comments made by individual Federal agencies, together with the Commission's response. Some agency comments, however, are not included in this section. To the extent agency comments related to excluded Federal lands or Federal consistency, they have been analyzed and responded to in the general discussion of these issues. Furthermore, comments suggesting minor changes in wording in the management program have not been included where the Commission has been able to incorporate the suggested changes into the final draft of the program.

Common Issues

1. Excluded Federal Lands

Under the Coastal Zone Management Act, "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" must be excluded from the coastal zone. However, there is considerable disagreement over what Federal lands must be excluded from the coastal zone under this provision of the Act. It is clear that lands subject to the "exclusive legislative jurisdiction of the United States"--so-called Federal enclaves--must be excluded. But these form only a small part of all Federal holdings, and most Federal agencies are taking the position that all Federal lands must be excluded.

Some time ago, in an attempt to clarify this issue, the Office of Coastal Zone Management requested an opinion from the Attorney General of the United States on this point. This opinion has not yet been rendered, and in the interim, Federal agencies are continuing to insist that the Commission exclude all Federal lands from the BCDC segment of the coastal zone.

Commission Response: Because the formal procedures established to resolve the issue of excluded Federal lands could delay approval of the Commission's management program for many months, and because the Office of Coastal Zone Management has requested an opinion of the Attorney General of the United States clarifying this point, the Commission has decided, on an interim basis, to exclude from the BCDC segment of the coastal zone all 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 U. S. Attorney General. The reasons for this decision are more fully set forth in the discussion of excluded Federal lands contained in the management program and beginning on page 13.

2. Federal Consistency

Section 307 of the Coastal Zone Management Act requires certain Federal actions to be consistent, to varying degrees, with approved State programs:

-- Section 307(c)(1) requires "each Federal agency conducting or supporting activities directly affecting the coastal zone...[to] conduct or support those activities in a manner which is, to the maximum extent practicable consistent with approved State management programs." (Emphasis added.)

-- Section 307(c)(2) requires "any Federal agency which shall undertake any development project in the coastal zone...[to] insure that the project is, to the maximum extent practicable consistent with approved State management program." (Emphasis added.)

-- Section 307(c)(3) requires "any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of a State" to obtain a certification from the State that the activity is consistent with a State's approved coastal zone management program. If the State fails to certify that the activity is consistent with the approved program, the Federal licensing or permitting agency cannot issue the permit or license unless the Secretary of Commerce subsequently finds that "the activity is consistent with the objectives of the Coastal Zone Management Act or is otherwise necessary in the interest of national security."

In the initial draft of the management program, the staff proposed that the Commission continue to use its existing procedures for dealing with Federal agencies to carry out the Commission's responsibilities under Section 307 of the Act. These procedures consisted of voluntary memoranda of understanding with Federal agencies on projects within BCDC jurisdiction that would otherwise require BCDC permits. (Under the Constitution, a State or any State agency, cannot require Federal agencies to obtain State permits unless expressly authorized to do so by Congress.) The staff also interpreted "any applicant" in Section 307(c)(3) as including Federal agency applicants for Federal permits, and that therefore Federal permit applicants would require State certification.

Although all Federal agencies indicated their intent to comply with the BCDC management program to the maximum extent practicable on excluded Federal lands, whether legally required to do or not, several agencies objected to use of the memoranda of understanding process to carry out the provisions of Section 307. These agencies included many of those that have entered into memoranda of understanding with the Commission on a regular basis in the past. Many of these same agencies also objected to the Commission's requiring

Federal agency applicants for Federal permits to obtain State certification prior to issuance of a Federal permit.

Commission Response: The Commission believes the memoranda of understanding procedure--a voluntary procedure which Federal agencies participate in as a matter of comity--is a reasonable way of carrying out the Commission's responsibilities under Section 307 of the Coastal Zone Management Act. This is especially true now that all Federal lands have been excluded, on an interim basis, from the BCDC segment of the coastal zone, which significantly reduces the potential legal responsibility of Federal agencies under the consistency provisions of the Coastal Zone Management Act. Therefore, in areas within BCDC jurisdiction (whether or not technically excluded from the coastal zone), the Commission will continue to request that Federal agencies enter into memoranda of understanding with regard to any activity or development within BCDC jurisdiction that would otherwise require a Commission permit. The reasons for this decision are fully discussed in the section of the management program entitled "The BCDC Management Program and Section 307 of the Coastal Zone Management Act," beginning on page 27.

The Commission also believes that the phrase "any applicant" in Section 307(c)(3) includes Federal agency applicants for Federal permits. This interpretation is concurred in by the Office of Coastal Zone Management. Therefore, the Commission will expect Federal agency applicants for a Federal permit to conduct an activity affecting land or water uses in the BCDC segment of the coastal zone to obtain a certification from the Commission that the activity is consistent with the Commission's management program.

Agency Comments

1. Comments of Department of Defense, (Office of the Assistant Secretary)

   a. The listing of shoreline priority uses does not include uses for national security purposes.

Commission Response: National security purposes were not included among the listing of shoreline priority uses because the priority use designations have a particular legal significance with regard to the extent of the Commission's permit jurisdiction. The Commission does not have permit jurisdiction over national security installations, and therefore to include them as priority uses would be misleading. However, these uses clearly have a high priority within the coastal zone, which the Commission believes is fully and adequately expressed in the statement on the National Interest in San Francisco Bay beginning on page 22 of the management program.

   b. "In discussing permissible uses in the national interest, the question of 'permissible uses' is associated with national defense facilities which confuses the concept."

Commission Response: The point of this comment is not entirely clear. However, by including national defense facilities as permissible uses, the Commission meant only to indicate that it recognized their importance and the necessity of their being located in the BCDC segment of the coastal zone. The Commission did not mean to imply that the Commission could or would require permits for such facilities.

c. "Language [on pages 21 and 22] inferring [sic] that BCDC rather than a Federal agency, could ultimately advocate the advisability of closing any military installaton must be clarified."

Commission Response: The program states "the Plan did not advocate the closing of any military installation." While the Commission has not in the past advocated the closing of any military installation, and is not doing so presently, the Commission believes it has the right to do so if necessary as part of its coastal zone management responsibilities. Obviously the final decision in such matters would rest with the Federal agency having jurisdiction.

d. "The statement [on page 25,,paragraph (3) of the April 6th draft] that the Commission will determine whether or not a Federal activity or development is consistent with the Commission's goals could place the [Department of Defense] in a position of appeal. The [Department] insists on a reversal of these roles as a proper reflection of the Federal Act."

Commission Response: The proposed consistency procedures have been revised to state that the Commission will determine whether or not a Federal activity or development is fully consistent with the Commission's management program. This means nothing more than that the Commission will interpret its own management program, which the Commission believes is its proper role under the Federal Act. The Federal agency involved is, of course, free to decide that it is complying to the maximum extent practicable and go forward with the activity or development despite the Commission's views. In the latter situation, the Commission' ultimate recourse would be to Federal court.

(Department of the Navy, Western Division, Naval Facilities Engineering Command)

a. "This Command suggests the word 'will' be substituted for 'may' in [line 8 on page 26] to provide for definite accommodations to situations of conflict between overriding national needs and particular provisions of the plan. This change would be consistent with the language preceding, which stipulates that the situation is a 'conflict both on [sic] overriding national need.' What other alternative is there?"

Commission Response: The reference here is to an amendment to the Bay Plan. Even though provisions of the Plan will have to be overridden in cases where they clearly conflict with a national need under circumstances unforeseen when the Plan was being prepared, this does not necessarily mean a Plan amendment would be required. Therefore, the statement uses the word "may" rather than "will."

2. Comments of the Department of the Interior

a. "Both the proposed CZM program and the BCDC plan present conclusions with little or no discussion on how the procedures were utilized to meet the requirements of the program elements. Additionally, an environmental assessment was not provided, particularly for such major plan proposals as port expansion noted for Benicia, Oakland, Redwood City, Richmond, and San Francisco; deepened shipping channels between the Golden Gate to the Delta and to Oakland, Redwood City, Richmond, and San Francisco; new shoreline parks, beaches, marinas, fishing piers, etc.; future airport developments; protecting and adding to prime wildlife areas; and encouraging private investments in shoreline developments."

Commission Response: In developing the Bay Plan, the Commission prepared lengthy, technical background reports which formed the foundation for the conclusions in the Bay Plan. These reports included environmental assessments of the major Plan proposals. The proposals for port expansion, for example, were limited to locations where any additional fill required would have the least adverse impact on the Bay. Copies of these reports have been submitted to the Office of Coastal Zone Management, but were not included as appendices to the program because of their size. In addition, each proposal in the Plan would be fully evaluated again when and if a permit application were submitted.

The Commission has determined that approval of the Commission's management program for San Francisco Bay by the Secretary for Commerce will not have a significant effect on the environment. This is because the BCDC program will continue whether or not approved by the Secretary, and the impacts of the BCDC program on the environment have already been felt. The Office of Coastal Zone Management and the Council on Environmental Quality concur in this interpretation.

b. "Our second major concern is exclusion of the Sacramento-San Joaquin Delta in California's CZM plan....

"Most importantly in terms of the CAMA [sic], use of Delta waters, particularly the further withdrawal of such waters for irrigation and drinking water as contemplated by several active BCDC proposals [sic], will directly and significantly affect the characters

of San Francisco Bay and adjacent bodies of water. Clearly the land and water uses of this area can directly and significantly impact San Francisco Bay and should, therefore, be included within the State's Coastal Zone Management Program."

Commission Response: The Commission believes that the State's position with regard to inclusion of the Delta in the State's coastal zone management program has been adequately set forth and justified in the section of the management program dealing with the Delta, which begins on page 14. The remainder of this comment appears to be based on misinformation with regard to the source of proposals to divert freshwater from the Delta. The Commission staff has discussed this with local representatives of the Department of the Interior, and it is the Commission's understanding that this comment will probably be significantly revised.

c. "Another problem with the proposed coastal zone boundary relates to the treatment of areas landward of dikes which are not being used as salt ponds or are not classed as 'managed wetlands' and used largely for duck hunting and agriculture. These areas are excluded from the proposed coastal zone, except for a 100-foot strip adjacent to the mean high water line. Thousands of acres of diked tidelands fall into the excluded category which primarily serve agricultural purposes or as open space and wildlife habitat....Comprehensive regional plans are lacking for these areas and, as a result, there is little or no administrative force to protect them for the benefit of the public....

"Corrollary [sic] to this general concern is the fact that authorities and policies of BCDC as stated in the CZM program are inconclusive with respect to the status of diked salt ponds which may be discontinued for salt production use in the future."

Commission Response: The Commission believes it should be pointed out that the diked areas of greatest ecological significance to the Bay--the salt ponds and the managed wetlands--are included within the BCDC segment of the coastal zone. The Commission also believes, as stated in the management program, that it can adequately influence the use of diked lands outside the Commission's jurisdiction to the extent that such uses relate to the management of the BCDC segment of the coastal zone. However, the Commission agrees that more detailed planning for these areas would be desirable, particularly if pending proposals to reduce the extent of Corps jurisdiction over such areas pass Congress. In the Suisun Marsh, such planning is already underway as part of the Suisun Marsh Protection Plan.

The Commission does not agree that its authorities and policies are "inconclusive with respect to the status of diked salt ponds which may be discontinued for salt production use in the future." The McAteer-Petris Act

and the Bay Plan charge the Commission with keeping these areas in their present uses as long as possible. Dewatering of any salt pond requires a Commission permit. Both the Act and the Plan provide that if use of these areas for salt production is no longer feasible, and development is proposed, dedication or public purchase should be encouraged to preserve water areas. If any areas are authorized to be developed, the development should provide maximum public access to the Bay consistent with the proposed project and should retain the maximum amount of water surface area consistent with the proposed development.

d. "There should be better coordination between the proposed CZM program and certain units of the Department of the Interior."

Commission Response: The Commission believes that coordination with units of the Department of the Interior, especially the U. S. Fish and Wildlife Service, is extremely important. Units of Interior have participated in the development of the Bay Plan and are now participating in the development of the Suisun Marsh Protection Plan. To the extent coordination has not been "as complete and clear as desirable," the Commission believes it is because of the extremely short deadlines the Commission must work under in acting on permits. (A BCDC permit must be acted upon by the Commission within 90 days of filing or the permit is automatically granted.) The Commission has found that units of the Department of the Interior have not found it easy to meet these deadlines. However, the Commission is currently exploring the possibility of developing a joint permit procedure with the Corps of Engineers. If implemented, this could make it easier for Interior units to make their views known to the Commission in a timely fashion.

The Commission acknowledges that some of the requests of the U. S. Fish and Wildlife Service have not been acted upon. This is primarily because the requests--for example, a special area plan for Richardson Bay--have been beyond the resources of the Commission. The added funding provided by the Coastal Zone Management Act may make it possible to undertake some of these projects in the future.

e. "The Management Program should address in more detail the policies for the inventory, protection, and conservation of historic and cultural resources...."

Commission Response: The management program and the Bay Plan are regional in scope, and it is not feasible to address these issues in detail for each area of the Bay and shoreline. However, both the McAteer-Petris Act and the California Environmental Quality Act require these issues to be addressed in detail in the context of each BCDC permit application.

f. "The Fish and Wildlife Service is concerned about the lack of consideration given to endangered species of fish and wildlife in BCDC's proposed CZM program."

Commission Response: The McAteer-Petris Act, the Bay Plan, and the BCDC management program place a high priority on the protection of rare and endangered species within the BCDC segment of the coastal zone. Each permit application is analyzed by the Department of Fish and Game, which advises the Commission on the presence of rare or endangered species. A primary factor in the Commission's reluctance to allow any development in Bay marshes is the need to preserve these areas as habitat for rare and endangered species.

3. Comments of the Department of Transportation

a. "It is our view that the BCDC plan, proposed as an entirely separate entity from another California Coastal Zone Commission, is not merely a segment of a single, overall California plan in accordance with Section 306(h) of the CZM Act; but rather one of two separate Coastal Zone Commissions in the same State....Approval of two separate plans for California will defeat efforts to achieve regional consistency."

Commission Response: The Commission believes that the case for approving the BCDC management program as a segment of the California program has been adequately stated in the section of the management program dealing with segmentation, which begins on page 9. Moreover, the Commission proposals for dealing with the excluded Federal lands and Federal consistency questions, which have generated most Federal concern, have been closely coordinated with the California Coastal Commission. For all practical purposes they are identical.

b. "We are aware that the Coast Guard has commented on several drafts of the BCDC Management Plan....With the exception of the concession to delete specific Coast Guard properties from the coastal zone, no changes or recommendations offered by the Coast Guard have found their way into the plan."

Commission Response: The Commission has carefully considered each of the Coast Guard's comments. To the extent these comments dealt with excluded Federal lands and Federal consistency, the Commission has addressed these issues as noted previously. On the question of whether it is appropriate for the Commission to continue to request memoranda of understanding from the Coast Guard, the Coast Guard and the Commission evidently disagree. However, the Commission has specifically noted that memoranda of understanding will not be requested of the Coast Guard prior to the placement of aids to navigation. In addition, the Commission has revised the statement on the National Interest in San Francisco Bay to specifically note that the Coast Guard's use of the Bay and shoreline to carry out its assigned missions has a high priority.

SUPPLEMENTAL SUMMARY AND ANALYSIS OF FEDERAL COMMENTS; COMMISSION RESPONSE

Additional Agency Comments

1. Comments of the Department of Commerce (Maritime Administration)

a. "In provision (3) on page[s] [30 and 31], Federal activities that would not normally require a BCDC permit [and therefore no memoranda of understanding] are dealt with. Because this provision could substantially affect MarAd's Suisun Bay Reserve Fleet site activities that heretofore were conducted under MarAd interests only conditions, MarAd has some reservations regarding the wording of this provision under which Federal agencies are 'expected to' have all their activities conform to the management program and to explain, in writing, when they are inconsistent, why this is so. The 'activities' which fall under this provision are not defined and could be interpreted to be almost anything. Hence, it is recommended that wording be included in the management program stating that:

(1) BCDC will meet with interested Federal agencies to jointly develop standards which will define the activities for which consistency will be necessary and to establish guidelines for judging consistency.

(2) Federal agencies will then apply these standards and guidelines to their own activities to determine their consistency."

Commission Response: First the Commission expects nearly all MarAd activities of significance to the BCDC management program would come within the scope of the memoranda of understanding (MOU) procedures. To the extent that separate MOU's might be unnecessarily burdensome, the Commission would consider, as it has in the past with other agencies, entering into a general MOU for MarAd's routine maintenance activities. Secondly, given the number of Federal agencies and potential activities that might be involved in areas outside BCDC permit jurisdiction, the Commission chose to approach Federal

consistency in these areas on a case-by-case basis. Federal agencies should therefore make every effort through the A-95 and other Federal-State coordination processes to keep the Commission informed of activities within the nine Bay Area counties that may affect land and water uses within BCDC permit jurisdiction. If an agency has done so, it may assume, unless advised to the contrary, that the Commission considers these activities consistent with the BCDC management program.

b. "Civil works projects of the U. S. Army Corps of Engineers are vital to the maintenance of our ports, harbors, and navigable waterways. These are not excluded projects or activities and will, therefore, have to be consistent with the management program. If the consistency requirements and procedures hinder and delay the Corps of Engineers in conducting these projects, the movement of waterborne commerce could be affected."

Commission Response: The Commission has used the MOU process for several years with the San Francisco District of the Corps and believes it expedites Federal projects.

c. "Neither the BCDC Bay Plan nor the California Coastal Zone Plan have detailed inventories of maps of Federal property in the coastal zone. Such inventories and/or maps would be helpful in clarifying exactly which Federal facilities will be included in the coastal zone."

Commission Response: The Commission found that in inventorying Federal lands, many Federal agencies were not sure what lands they possessed, the nature of the tenancy, or the precise boundaries. Because of these uncertainties, the Office of Coastal Zone Management (OCZM) authorized the Commission to describe the excluded lands generally, rather than by specific parcels. This should create no particular problems since all Federal lands are excluded on an interim basis.

d. "The Maritime Administration is the Federal Port Controller during national emergencies. However, the BCDC management program does not allow for any waiver or consideration of streamlining its consistency provisions during national emergencies. MarAd's authority and activities as Federal Port Controller would increase and some recognition of our role and the special situation a national emergency would create should be provided for in the BCDC management program."

Commission Response: The Commission believes that a national emergency requiring MarAd to assume its responsibilities as Federal Port Controller would be sufficient grounds for MarAd to decline to participate in the MOU process. The Federal Act requires Federal consistency only "to the maximum extent practicable" and in such a situation, MOU's would probably be inappropriate.

2. Comments of the Department of Housing and Urban Development

a. "Conceptually...the BCDC coastal zone cannot stand alone independent of statewide perspective, review, and appeals procedures for coastal zone matters...."

Commission Response: The Commission believes that the case for approving the BCDC management program for the Bay as a segment of the overall coastal zone management program for California has been adequately explained in the management program. Of particular importance is the fact that the coastal zone management situation in California is unique and stems from the creation of both BCDC and the Coastal Commission prior to implementation of the Coastal Zone Management Act of 1972.

b. "The BCDC proposal does not provide for an appropriate state agency either to review BCDC decisions with respect to development permits when an affected party claims that the permit decision is inconsistent with established criteria, or to overturn the BCDC decision when such claim is found to have merit."

Commission Response: BCDC is a State agency and all BCDC permits are issued or denied on the basis of the established criteria in the McAteer-Petris Act and the San Francisco Bay Plan. The Commission does not believe the Coastal Zone Management Act requires that there be a State agency to review BCDC permit decisions, and in any event, this is not a prerequisite to approval of the BCDC program at this time as a segment of the California program.

c. "The BCDC proposal would seem to allow local governments to pass zoning ordinances that restrict development more severely than the BCDC coastal zone proposal would, and the proposal fails to provide a procedure whereby BCDC or another appropriate agency reviews and overturns local government decisions when they unreasonably restrict development."

Commission Response: This is correct. The Commission does not believe that anything to the contrary is either essential to sound coastal zone management or required by the Coastal Zone Management Act.

d. "The BCDC proposal does not treat 'uses of regional benefit' appropriately....New housing developments in some cases should be considered 'uses of regional benefit' under paragraph 923.2 of the NOAA/OCZM regulations. However, BCDC on pages [43 and 44] has confined uses of regional benefit to 'ports, water-related industries, airports, wildlife refuges, water-oriented recreation and water-oriented public assembly,' and appears to have oriented its planning processes to ensure that these (but not other uses) 'are not unreasonably excluded' by local governments from the BCDC area."

Commission Response: The Commission does not agree that it has not treated "uses of regional benefit appropriately." However, the remainder of this comment is essentially correct. The uses of regional benefit in the Bay Plan and the BCDC management program were identified by the Commission after three years of study which culminated in the Bay Plan. Housing was not included because the Commission concluded that (a) there was no need for further Bay fill for housing, and (b) the State's interest in the shoreline band lay in reserving key sites for the high-priority, water-oriented uses identified in the Plan to reduce pressures for further fill. This should not be interpreted to mean that housing would not be considered a use of regional benefit under all circumstances. It means only that the Commission reached much the same conclusion with regard to housing within BCDC's jurisdiction as did the Department of Housing and Urban Development elsewhere in its comment letter: from a Bay Area coastal zone management perspective, additional housing should not be built in the Bay, and need not necessarily be built in the shoreline band.

e. "The most serious deficiency in the BCDC proposal for coastal zone management is in regard to the treatment of flood hazards....Although there is some general discussion of flood hazard in both the management program and the San Francisco Bay Plan, neither emphasizes the facts that flood hazard reduction is an integral part of any Coastal Zone Management Program and the National Flood Insurance Program (NFIP) represents the on-going mechanism for dealing with the hazard....The BCDC proposal gives no reference to either the specific regulatory standards of the NFIP or to the areas of the Bay which have been identified by the Federal Insurance Administration as flood-prone nor does it discuss the role of the NFIP in flood hazard reduction in the Bay Area."

Commission Response: Flooding and other natural hazards, and their consequent damage are matters of great concern to the Commission. Each permit issued by the Commission is reviewed from the standpoint of both flood and seismic hazards. Furthermore, with the approval of a management program for the Bay under the Coastal Zone Management Act, a new relationship of local, State, and Federal agencies is evolving. One object of this relationship must be pursuit of compatible and unitary flood plain and hazard area management plans, policies, and regulations. Clearly the regulatory standards of the NFIP and the activities of the Flood Plain Management Division of the Federal Insurance Administration must be integral parts of this effort.

3. Comments of the Federal Energy Administration

a. "The Management Program...states '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 transportation, such as power plants, petroleum off-loading facilities, pipelines and utility routes.' Further clarification is required here to determine

the volume of petroleum off-loading facilities and pipelines that could be accommodated and specifically whether a BCDC plan would accommodate petroleum facilities to supply other areas of the country, as well as the Bay Area."

Commission Response: The Commission is unable at this time to make a precise estimate of the volume of petroleum off-loading facilities that could be accommodated in the Bay Area. But the Commission believes that the more salient question is what volume of petroleum off-loading facilities and pipelines should be accommodated in the Bay. In this regard, petroleum off-loading facilities and pipelines to supply other areas of the country could be accommodated under the Bay Plan, but whether they should be is the more critical question. Much more information needs to be developed on both State and national needs before either of these questions can be answered intelligently. The Commission is therefore following closely the work of both the Federal-State Task Force for the FEA-sponsored study on Alaskan oil disposition, and the Office of Planning and Research Outer Continental Shelf Onshore Impact Study.

b. "The program says [on pages 23 and 24] 'and recognizing its responsibility to the rest of the Nation and [sic] its planning for the Bay, California, through the Commission, has made every effort to consider the national interest in the siting of facilities.' It would be useful to expand this section to describe just what efforts have been made to consider the national interest in the siting of petroleum and gas facilities in the Bay Area, especially those which would supply other areas of the country in addition to the Bay."

Commission Response: In developing the priority use concept and identifying the uses that should have priority for waterfront locations, the Commission attempted, to the extent feasible, to consider both State and national needs. As a result, both petroleum and gas facilities are permissible uses in priority use areas under the Bay Plan and the McAteer-Petris Act. Obviously, changing technology and the energy crisis have raised questions (such as those relating to Liquefied Natural Gas and Very Large Crude Carrier terminals and to OCS development) that could not have been foreseen at the time the Plan was being prepared. To the Commission's knowledge, these questions have not yet been answered definitively at either the State or national level, primarily because of the lack of full information noted in the preceding response. But coastal zone management programs are not static, and as more reliable information is developed in these areas, the Commission in cooperation with the FEA and other Federal and State agencies will modify the BCDC program as required by State and national needs.

UNITED STATES DEPARTMENT OF AGRICULTURE

SOIL CONSERVATION SERVICE

Washington, D. C. 20250

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CZM Information

TMA RG BM TP

Mr. Robert W. Knecht
Assistant Administrator for
Coastal Zone Management
National Oceanic and Atmospheric Administration
3300 Whitehaven Street, NW.
Washington, D.C. 20235

Dear Mr. Knecht:

The San Francisco Bay Conservation and Development Commission (BCDC) Coastal Management Program has been reviewed by agencies in the Department of Agriculture in response to your May 5 transmittal. We have no comments to make and have no objection to the approval of this program under Section 306 of the Coastal Zone Management Act.

Sincerely,

William M. Johnson "Acting"

R. M. Davis
Administrator

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Rockville, Md. 20852

Date : May 5, 1976

Reply to Attn. of:

To : Federal Agency Representatives for Coastal Zone Management

From : Office of Coastal Zone Management Richard R. Gardner

RECEIVED JUN 25 1976

Subject: Bay Conservation and Development Commission (BCDC) Coastal Management Program

Transmitted herewith are copies of the San Francisco Bay Conservation and Development Commission (BCDC) Coastal Management Program which has been submitted to NOAA for approval in accordance with the provisions of the Coastal Zone Management Act of 1972. This transmittal initiates the formal 45 day review period for Federal agency comments. Although the review period ends on June 18, 1976, we respectfully request that any Federal agency which finalizes their review prior to that date please forward your comments to OCZM (with a copy to BCDC, Attn: Mike Wilmar) at your earliest convenience.

Copies of this program document were distributed directly to most regional Federal officials on April 15 for their informal comments, so hopefully your regional officials already will be familiar with its contents. Furthermore, you will notice that no environmental impact statement is attached. It is the position of OCZM, in consultation with the Council on Environmental Quality, that an EIS is not required for this particular segment. The Bay Plan has been successfully administered for seven years and has had a positive and significant impact upon the Bay, its uses and surrounding population. However, using CEQ guidelines as a basis, we do not feel that Secretarial approval will have an impact of such significance that an EIS is warranted. This position is detailed further in the attached Negative Declaration. Additionally, it should be noted that a discussion of BCDC will be included in California's overall program document, including the EIS, when submitted later this summer.

Secretarial approval of the BCDC management program will enable the Commission to receive 306 monies in order to expand their efforts in several major areas such as enforcement, capability, development of "special area plans," and formulation of regional public access plans to mention a few. OCZM is hopeful that you will concur that Secretarial action is not only warranted but will prove to be an important aspect of the national Coastal Zone Management Program.

Finally, please be advised that we have available in-house some forty (40) copies of rather detailed legal appendices. If your legal counsels desire copies, please notify us and we'll be happy to forward you one. We simply do not feel that it is necessary for every program to have this rather lengthy legal attachment. Thank you for your cooperation in this matter.

Attachment

TA

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Rockville, Md. 20852

JUN 25 1976

June 10, 1976

MEMORANDUM FOR: Richard W. Black
Acting Director
Office of Ports and Intermodal Development
Maritime Administration

FROM: for Robert W. Knecht
Assistant Administrator for Coastal Zone Management

SUBJECT: Extension of Maritime Administration Period of Review for the Bay Conservation and Development Commission (BCDC) CZM Program

Your request for an extension of time to review the proposed BCDC management program until June 30, 1976, is granted. We strongly urge, however, that MarAd's comments be forwarded directly to BCDC as well as to this Office no later than that date. Otherwise, adequate consideration by BCDC and this Office of MarAd's views may be thwarted.

I would also take this opportunity, even without the benefit of the full facts of the situation in hand, to voice concern over one part of your memorandum. You state that BCDC intends "to monitor and otherwise intrude into Federal operation and management of certain U. S. Government installations and facilities. . . ." Preliminary to a full assessment of the issues, this statement appears to be unduly adversary. The Coastal Zone Management Act, under which BCDC is seeking approval, fully envisions an enhancement of state authority and capability to manage its coastal resources and any adverse effects upon them. Presumably, this involves the monitoring of activities, including those carried out by Federal agencies, as an integral part of the management program.

The "Federal consistency" provisions of the Act provide the explicit bases for such monitoring and evaluation by the states. And, while some Federal agencies may consider their obligations under the Act an "intrusion" into their activities, we would consider such an attitude contrary to the Congressional policy that declares it national policy: "for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate . . . in effectuating the purposes of this title. . . ."

We will be happy to discuss with you the specific issues associated with the BCDC program after your and other comments are received and analyzed.

cc: RWK, GD, RG, TMA file, Chron
TAlexander/ab

UNITED STATES DEPARTMENT OF COMMERCE
Maritime Administration
Washington, D.C. 20230

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May 28, 1976

MEMORANDUM FOR: Assistant Administrator
for Coastal Zone Management

SUBJECT: San Francisco Bay Conservation and Development Commission (BCDC) Coastal Zone Management Program

The purpose of this memorandum is to request that the Maritime Administration's 45-day period for reviewing the subject BCDC Management Program for San Francisco Bay, originally to end on June 18, 1976, be extended to June 30, 1976.

This request is made because of the significant revisions being made with respect to "The National Interest in San Francisco Bay" portion of the BCDC Management Program which affects some 10 or more pages of that review document. Moreover, the Maritime Administration's Western Region Office and a number of other Federal agencies including Navy, Coast Guard, and Corps of Engineers, are involved with BCDC in resolving issues concerning the State plan to monitor and otherwise intrude into Federal operation and management of certain U.S. Government installations and facilities, including the Maritime Administration's National Defense Reserve Fleet site in Suisun Bay, California.

Accordingly, we would appreciate the additional time requested to review the BCDC Management Program in order to allow for any further revisions in the BCDC review document.

Richard W. Black

RICHARD W. BLACK, Acting Director
Office of Port and Intermodal Development

Enclosures

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Rockville, Md. 20852

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JUN 25 1976

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MAIL ROOM

Date : June 18, 1976

Reply to Attn. of: EM3

To : Robert W. Knecht
Director, Office of Coastal Zone Management

CZM
Information

From : Edward S. Epstein
Associate Administrator for EM&P

Subject: Review of the Bay Conservation and Development Commission (BCDC) Coastal Management Program

Reference: Your memorandum of June 11, 1976, "Response to NOAA Review of Cuebra Segment"

After reviewing the subject Coastal Management Plan, we do not find any areas of EM conflict. However, using your above referenced memorandum of 11 June as guidance, we do offer the following recommendations for considerations by the BCDC.

As noted in my memorandum of 4 March 1976, our position is that the Regional Water Quality Control Board and the State Water Resources Control Board should consider a water quality monitoring program for the San Francisco Bay area. Its purpose should be to periodically measure the total pollutant input and the resultant effects on the Bay. The design and implementation of this program could be done in coordination with the various Federal agencies (EPA, NOAA, COE, etc.) along with state and private interest groups that have responsibilities or interests in this area.

cc: D. H. Wallace
Mike Wilmar

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Rockville, Md. 20852

Date : March 4, 1976

Reply to Attn. of: EM3

To : David H. Wallace
Associate Administrator for Marine Resources

From : Edward S. Epstein
Associate Administrator for EM&P

Subject: Review of Discussion Paper on BCDC's Proposed Coastal Zone Management Paper

In response to your request for comments on the subject BCDC Coastal Zone Management Plan, we offer the following suggestions on the water quality aspects for your consideration.

1. We feel that a CZM plan for the San Francisco Bay area should include a water quality monitoring program. This is so even though they reference the California Water Quality Control Board. This monitoring program should consider the total pollutant input from all sources and their cumulative effects on the Bay ecosystem. In this way, harmful trends in the Bay water quality could be noted and proper action taken to avert serious problems. This monitoring program should be carried out in conjunction with other monitoring programs, both state and Federal, that are planned or ongoing outside the Bay area. This would allow the detection of harmful trends in offshore areas caused by pollutants being carried out in the Bay proper.

2. Page 2, Section e. There are effects of filling in the Bay, other than those mentioned both direct and indirect which should be taken into consideration. Some of these are:

- The introduction of additional pollutants from the fill should be calculated into the total pollutant load going into the Bay from all sources.

- Filling certain areas of the Bay may have undesirable effects on the circulatory patterns, thereby affecting such things as flushing rates, etc.

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SURVEY
Rockville, Md. 20852

C52

MAR 3 1976

TO: David H. Wallace
Associate Administrator for Marine Resources

FROM: Allen L. Powell
Director
National Ocean Survey

SUBJECT: Review of Discussion Paper on BCDC's Proposed Coastal Zone Management Paper (Your memo, same subject, dated 2/17/76)

Nothing is contained in the subject report that could be interpreted as a major policy issue that may affect NOS.

On the other hand, implementation of the San Francisco Bay Plan probably will introduce changes to our (1) nautical and aeronautical charts, (2) Coast Pilots, (3) tidal current charts and tables, and (4) bench mark, triangulation, and traverse station locations in the area. Resultant boundary determinations will require input from the tidal datum program. Finally, any airport modifications and changes in approaches will require revision of NOS obstruction charts and aeronautical charts covering the project area.

3. NOAA has the responsibility for development of localized ocean services. For the Bay these services include development of analysis and prediction methods for such parameters as circulation, water levels, and winds. All of these are dependent upon the configuration of the Bay and its environs so that NOAA should be informed of all such changes. NOAA must also consider how we will meet these responsibilities which impact safe and efficient use of the area.

We thank you for the opportunity to review this draft CZM Plan.

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Rockville, Md. 20852

RECEIVED

Date : June 18, 1976

Reply to Attn. of:

To : Robert W. Knecht
Director, Office of Coastal Zone Management

From : Edward S. Epstein
Associate Administrator for EM&P

Subject: Review of the Bay Conservation and Development Commission (BCDC) Coastal Management Program

Reference: Your memorandum of June 11, 1976, "Response to NOAA Review of Cuebra Segment"

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cc: D. H. Wallace
Mike Wilmar

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Southwest Region
300 South Ferry Street
Terminal Island, California 90731

Date : June 1, 1976 FSW25/JJS

To : Dale Evans, Chief, Environmental Assessment Division, F34

From : Gerald V. Howard, Regional Director, Southwest Region, FSW

Subject: Bay Conservation and Development Commission (BCDC), Coastal Zone Management Program

We have reviewed the subject BCDC Program and find that it, like the Initial Management Program Draft which we reviewed in February, recognizes the habitat value of San Francisco Bay to aquatic resources. The policies for wetland preservation and fill restriction in the Bay are in basic accord with the habitat protection goal of the National Marine Fisheries Service.

Since the memorandum from F3 dated May 11, 1976 transmitting our copy of the subject management program, there have been substantial revisions (see attached) to the National Interest Sections of the document. We are not in complete agreement with those revisions, and the specific comments which follow outline our areas of concern. (All comments are referenced by page number and section to the attached revisions.)

Specific Comments

Page 3, para. 1 - The advisability of striking the words "readily identifiable" preceding the words "national defense purposes" is questionable. Allowing such wide and unchecked latitude in defining national defense could unjustifiably threaten valuable habitats within the San Francisco Bay.

Page 4, para. 1 - The Department of Defense, as indicated by the proposed deletion, will no longer enter into memoranda of understandings with BCDC. The reasons for that determination, as well as the potential impact of BCDC's decreased capability for protecting Bay resources should be presented.

Page 5, Sections 2 and 3 - Both of these Sections indicate that the final decision as to the degree of Federal compliance with BCDC's management plan for the Bay is up to the Federal agency involved. Perhaps some avenue for BCDC appeals should be written into the program at this point.

Page 7, Sections 5.a-e - These Sections relegate Federal consistency with the State management program to a voluntary status. This could severely weaken the ability of BCDC to protect valuable Bay habitats. Once again we suggest that BCDC be given appeal privileges in cases of potentially significant resource use conflicts.

Attachment

UNITED STATES DEPARTMENT OF COMMERCE
Maritime Administration
Washington, D.C. 20230

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June 30, 1976

MEMORANDUM FOR: Robert W. Knecht
Assistant Administrator for Coastal Zone Management

Subject: MarAd Review Comments on the San Francisco Bay Conservation and Development Commission (BCDC) Coastal Zone Management Program

In response to Office of Coastal Zone Management memoranda of May 5 and June 10, 1976, on this matter, the subject BCDC/CZM Program has been reviewed by the Maritime Administration (MarAd) and the following comments are submitted for your consideration.

The policies developed in the BCDC/CZM Program with respect to ports are based on the premise that San Francisco Bay is one of the world's great natural harbors, and maritime commerce is of primary importance to the entire economy of the Bay Area. Future port planning, development, and other water-related industry needs have been given a high priority with provision for an overall regional port development plan to help guide major expansion of port facilities to the year 2020. Consequently, we find that there appear to be no significant adverse effects of the proposed management program upon the existing or planned port and marine terminal facilities in the San Francisco Bay Area.

Regarding the "National Interest in San Francisco Bay" portion of the BCDC management program, there are some provisions for carrying out BCDC's responsibilities under Section 307 of the Coastal Zone Management Act which are of interest and deserve some comment. These provisions begin on page 22 of the BCDC document.

It appears that the essence of the BCDC viewpoint is that BCDC should have some form of jurisdiction over all Federal lands in the coastal zone, even though these lands are excluded from the coastal zone by Section 304 (a) of the Coastal Zone Management Act of 1972. However, it should be assumed that the BCDC statement, which excludes all lands used for national defense and "areas subject to the exclusive legislative jurisdiction of the United States", will be the only excluded areas. In keeping with this interpretation, BCDC specifically excludes "lands and waters in the possession of the U.S. Coast Guard or Department of Defense (or any agency thereof)."

From this, MarAd assumes that its National Defense Reserve Fleet (NDRF) area located in Suisun Bay, which is tributary to the upper San Francisco Bay Area,

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is not considered by BCDC as coming under the Federal lands exclusion provision of Section 304 (a).

Under provision (2), on page 25 of the BCDC document, memoranda of understanding (MOU's) are requested for Federal activities which would normally require a BCDC permit. This does not appear to substantially change present practices except to make MOU's a more formal specified part of a Federal action.

In provision (3), on page 25, Federal activities which would not normally require a BCDC permit are dealt with. Because this provision could substantially affect MarAd's Suisun Bay Reserve Fleet site activities that heretofore were conducted under MarAd interests only conditions, MarAd has some reservations regarding the wording of this provision under which Federal agencies are "expected to" have all their activities conform to the management program and to explain, in writing, when they are inconsistent, why this is so. The "activities" which fall under this provision are not defined and could be interpreted to be almost anything. Hence, it is recommended that wording be included in the management program stating that:

(1) BCDC will meet with interested Federal agencies to jointly develop standards which will define the activities for which consistency will be necessary and to establish guidelines for judging consistency.

(2) Federal agencies will then apply these standards and guidelines to their own activities to determine their consistency.

Without these additions to the BCDC management program, the provisions in item (3) on page 25 of the BCDC document, could interfere with MarAd's Suisun Bay Reserve Fleet operations, and under certain conditions would make it almost impossible for MarAd to comply with.

Other comments on the BCDC management program that should be considered are the following:

1. Civil works projects of the U.S. Army Corps of Engineers are vital to the maintenance of our ports, harbors, and navigable waterways. These are not excluded projects or activities and will, therefore, have to be consistent with the management program. If the consistency requirements and procedures hinder and delay the Corps of Engineers in conducting these projects, the movement of waterborne commerce could be affected.

2. Neither the BCDC Bay Plan nor the California Coastal Zone Plan have detailed inventories or maps of Federal property in the coastal zone. Such inventories and/or maps would be helpful in clarifying exactly which Federal facilities will be included in the coastal zone.

3. The Maritime Administration is the Federal Port Controller during national emergencies. However, the BCDC management program does not allow for any waiver or consideration of streamlining its consistency provisions during national emergencies. MarAd's authority and activities as Federal Port Controller would increase and some recognition of our role and the special situation a national emergency would create should be provided for in the BCDC management program.

We appreciate the opportunity to provide these comments which we hope will be of assistance to you.

Sincerely,

Armour S. Armstrong

ARMOUR S. ARMSTRONG, Director
Office of Port and Intermodal Development

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OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

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SAN FRANCISCO BAY CONSERVATION & DEVELOPMENT COMMISSION

21 JUN 1976

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Mr. Robert W. Knecht
Assistant Administrator for
Coastal Zone Management
National Oceanic and Atmospheric
Administration
Office of Coastal Zone Management
3300 Whitehaven Street, N. W.
Washington, D. C. 20235

Dear Mr. Knecht:

The San Francisco Bay Conservation and Development Commission (BCDC) Coastal Zone Management Program has been reviewed within the Department of Defense (DoD) and the following comments represent the views of the Department.

We interpose no objection to initiation of action by the National Oceanic and Atmospheric Administration (NOAA) to obtain a Federal grant for the BCDC, conditioned on revision and resubmission of the program to us in consonance with our concerns about: (1) restrictions on exclusion of military lands from the coastal zone, (2) the authority given the BCDC to determine consistency of Federal activities with the program and (3) the process of using Memoranda of Understanding to assure consistency of Federal actions.

It is the DoD position that any lands used exclusively by the United States in accordance with Federal law, regardless of ownership or jurisdictional status, are excluded from a coastal zone. Phrases in the BCDC program such as "exclusive jurisdiction" and "readily identifiable for national defense" are not acceptable for they place restrictions on exclusion of military lands and are contrary to DoD's continuing position on the subject. Of particular concern is the definition of "readily identifiable national defense purposes" and the implication that the BCDC would make such determination.

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

The program appears to give the BCDC full authority to determine consistency of Federal activities with the state program. This, too, is contrary to the DoD policy to meet fully the Federal consistency objectives of the CZM Act, and to establish the conditions of maximum consistency as may be practicable for each action of obvious significance.

The BCDC's proposed use of Memoranda of Understanding in lieu of permits to negotiate and assure Federal response to the consistency provisions of the CZM Act tends to put Federal agencies in the same obligatory role as a system of permits. The DoD intends to be consistent with the BCDC's coastal goals, but considers that the use of a "permit process" through "memoranda of understanding" would be administratively cumbersome and would confuse the Federal agency sovereignty issue.

We understand that the undated program forwarded by NOAA to federal agencies for review on May 5, 1976, has been revised by the BCDC to incorporate significant changes as outlined above and in the enclosure. We would appreciate the opportunity to comment on the revised program. In the interim, we are furnishing as Enclosure 1 more detailed comments on the management program we have in hand.

Sincerely yours,

Perry J. Fliakas
Deputy Assistant Secretary of Defense
(Installations and Housing)

Enclosure

RECEIVED
JUN 30 1976
SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

DETAILED COMMENTS

ON THE SAN FRANCISCO BAY CZM PROGRAM

PAGE	PARAGRAPH OR STATEMENT	REMARKS
1	Paragraph 1C	The listing or priority shoreline uses neglects uses for national security purposes. After the word "plants" in line five, the following should be inserted: "and facilities or activities related to national security and defense."
4	Paragraph 2, subparagraph 3	After the word "industries" the following should be inserted: "and Federal facilities."
5	Paragraph 3A	The first line should be modified to read: "Under the McAteer-Petries Act BCDC has, except as may be otherwise affected by applicable Federal law and regulations, permit jurisdiction..."
1[illegible]	Excluded Federal Lands	In this section, a distinction is made between exclusive legislative jurisdiction and "readily identifiable" lands and waters of the United States used for national defense purposes. The distinction is contrary to DoD's continuing position that all Federal lands irrespective of ownership or jurisdictional status, are excluded from the coastal zone. Of particular concern is the definition of "readily identifiable national defense purposes" and who (BCDC or the Federal agency) would make such determination. This distinction is highly objectionable and if retained, would result in contained obstacles to a proper Federal function in the interest of national defense.
15	Permissible Uses	In discussing permissible uses in national interest, the question of "permissible uses" is associated with national defense facilities which confuses the concept. BCDC apparently intends that a national defense facility may not necessarily be synonymous with a Federal activity and that unless a defense activity is "readily identifiable" by the Commission, such activity will be subject to permit requirements the same as would be a non-federal activity. This wording or interpretation is unacceptable and should be revised or deleted.

Enclosure

PAGE	PARAGRAPH OR STATEMENT	REMARKS
19	National Defense and Aerospace	Language inferring that BCDC rather than a Federal agency, could ultimately advocate the advisability of closing any military installation must be clarified.
22	Paragraphs 2 and 3	Again the unacceptable distinction between "exclusive jurisdiction" and activities readily identifiable for national defense purposes occurs. Also, BCDC uses the word "should" in language concerning coordination planning with local Department of Defense representatives involving conflicts with national needs. "Will" is preferable to "should" and should be substituted.
	Planning for Federal Activities	Paragraph should be amended to add the following sentence: "Excluded from the Coastal Zone are 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 its agents." All language inconsistent with the thrust of the above sentence should be deleted from the BCDC program.
23	Excluded Federal Lands	In this section, misleading language occurs in referring to the exclusion of national defense and Coast Guard installations from the coastal zone.
25	Paragraph (2)	Reference to "Memorandum of Understanding" as an instrument in lieu of a permit is confusing concerning its application to undefined Federal facilities. As drafted, this section appears to include all Federal activities, exclusive jurisdiction notwithstanding, and to bring Federal activities under the control of BCDC. This portion of the program should be deleted entirely. The DoD intends to be consistent with the Commission's coastal goals, but considers that adequate Federal provisions for achieving necessary cooperation with BCDC already exist and work satisfactorily.
25	Paragraph (3)	The statement that the Commission will determine whether or not a Federal activity or development is consistent with the Commission's goals could place the DoD in a position of appeal. The DoD insists on a reversal of these roles as a proper reflection of the Federal Act.

PAGE	PARAGRAPH OR STATEMENT	REMARKS
27, 28	Federal Consistency Certification	References to consistency certification are unclear and require clarification in view of reference to the use of Memorandums of Understanding.
	Rivers and Harbors Act of 1899	Sections 10 and 11 should be changed to sections 9 and 10.

DEPARTMENT OF THE ARMY
SOUTH PACIFIC DIVISION, CORPS OF ENGINEERS
630 Sansome Street, Room 1216
San Francisco, California 94111

REPLY TO
ATTENTION OF:

SPDOC

14 May 1976

Mr. Charles R. Roberts
Executive Director
San Francisco Bay Conservation and
Development Commission
30 Van Ness Avenue
San Francisco, California 94102

Dear Mr. Roberts:

This letter responds to your written communication dated 3 May 1976 addressed to all participating federal agencies. This 3 May 1976 communication had as an inclosure thereto a proposed "national interest in San Francisco Bay" statement (hereinafter called statement) to be ultimately incorporated into the Bay plan. This statement purported to outline procedural regulations for federal agencies to follow in attaining the objectives set forth in the Federal Coastal Zone Management Act of 1972 (Title 16, United States Code, Section 1451 et seq.).

Section 1451 states, in substance, that the key to more effective protection and use of the land and water resources of the coastal zone is proper cooperation between federal, state, and local governments and other vitally affected interests in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.

It will be my pleasure to work with you in a spirit of mutual cooperation. I feel we are mutually desirous of formulating practices, procedures, and regulations to protect and enhance to the optimum degree ecological and environmental values within the coastal zone; therefore, if any differences of opinion develop, it is my hope that said differences will be discussed and timely resolved on a professional level.

The comments and recommendations contained herein are presented as a statement of the regional position (i.e. limited to the jurisdictional boundaries of the San Francisco Bay Conservation and Development Commission) of the Department of the Army with regard to the proposed statement. Our specific recommendations are as follows:

a. Recommendation No. 1: The paragraph entitled "Planning for Federal Activities" (which appears on page 2) should be amended to add the following sentence:

> Excluded from the coastal zone are 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.

b. All language inconsistent with the thrust of Recommendation No. 1 should be deleted. Recommendation No. 1 is submitted to ensure that the exclusion clause in the statement reads exactly the same as the exclusion clause in the law (i.e. Title 16, United States Code, Section 1453).

c. Recommendation No. 2: All language in the proposed statement which could be construed as creating an obligation on the part of Department of the Army components to enter into a Memorandum of Understanding or to apply for a permit as a condition precedent to the performance of federal functions must be deleted.

d. Recommendation No. 3: The following language (which appears on page 5) "Permits and licenses required under Sections 10 and 11 of the River and Harbor Act of 1899" should be modified to read "Permits and licenses required under Sections 9, 10, and 11 of the River and Harbor Act of 1899."

I trust that the San Francisco Bay Conservation and Development Commission will accept these recommendations in the same spirit of cooperation in which they are submitted. If you consider that additional personal communication would be of value, I will be happy to confer with you at any mutually convenient time and date. If you consider that further discussions should be held at the staff level, key members of my staff will be made available for consultation with their counterparts on the staff of the San Francisco Bay Conservation and Development Commission. If we continue to work together, I feel we will be able to formulate practices, procedures, and regulations to protect and enhance to the optimum degree ecological and environmental values in the coastal zone.

Respectfully,

Richard M. Connell

RICHARD M. CONNELL
Brigadier General, U.S. Army
Division Engineer

DEPARTMENT OF THE NAVY
WESTERN DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
P.O. BOX 727
SAN BRUNO, CALIFORNIA 94066

RECEIVED
APR 15 1976
SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

IN REPLY REFER TO:
2021A4:JSS:nm
Ser P2-280
14 APR 1976

Mr. Charles R. Roberts, Executive Director
San Francisco Bay Conservation and Development Commission
30 Van Ness
San Francisco, California 94102

Dear Mr. Roberts:

I am responding to your letter of April 6, 1976, which solicits comments from federal agencies on the Bay Conservation and Development Commission (BCDC) Management Program for San Francisco Bay. You indicate that this draft program has been submitted to the Office of the Coastal Zone Management for Federal review at the Washington level under the provisions of the Federal Coastal Zone Management Act of 1972, Public Law 92-583. In this matter, I am speaking on behalf of the Commandant, Twelfth Naval District, who has been designated by the Chief of Naval Operations as Navy Coordinator for Northern California, Coastal Zone matters.

A review of the draft Management Program for San Francisco Bay, forwarded by your letter of April 6, 1976, prompts some suggestions, but of more importance, reveals a number of provisions of serious concern to the Navy. Specific comments are as follows:

a. At paragraph 1c, on page one of the draft, the listing of priority shoreline uses neglects to mention use for national security purposes. In order that an appropriate interest in national security and defense is acknowledged early in the draft, it is requested that after the word "plants", in line five of the paragraph, the following words be inserted: "and facilities or activities related to national security and defense."

b. On page four of the draft under the third subparagraph relating to Major Plan Proposals, it is proposed that after the word "industries", the following words be inserted: "and Federal facilities." This will insert the State's concern with Federal activities early in the draft.

c. On page five of the draft (paragraph 3a) it is necessary that the first line be modified to read as follows: "Under the McAteer-Petries Act, BCDC has, <u>except as may be otherwise affected by applicable Federal law and regulations</u>, permit jurisdiction...." Without this insertion

no provision is made for activities by otherwise exempt Federal functionaries.

d. On page 12 of the draft, within the section concerned with Excluded Federal Lands, a distinction is made as between exclusive legislative jurisdiction and "readily identifiable" lands and waters of the United States used for national defense purposes. This distinction is contrary to the continuing position which the Navy has maintained, to the effect that all Federal lands, regardless of jurisdiction, are excludable under the Federal Act. Of particular concern is the definition of "readily identifiable national defense purposes" and who (BCDC Commission or Federal Agency) would make such determination. This distinction is basically objectionable, and if retained, will result in continued obstacles to a proper Federal function in the interest of national defense.

e. On page 15 of the draft, in discussing Permissible Uses in the National Interest, the question of "permissible uses" is associated with "national defense facilities", which confuses the entire concept. It is apparent that the Commission intended that a national defense facility may not necessarily be synonymous with a Federal activity and that unless a defense activity is "readily identifiable" by the Commission, such activity will be subject to permit requirements the same as would a non-Federal activity. This wording or interpretation is unacceptable to the Navy and should be revised or deleted.

f. On page 19 under the section identified as National Defense and Aerospace it is inferred that the Commission rather than a federal agency will determine, ultimately, the advisability of closing any military installation. This language must be clarified.

g. On page 22, referring to the "national interest" statements, is the unacceptable distinction between "exclusive jurisdiction" and those activities which are "readily identifiable for national defense purposes." Also, in this same paragraph, the BCDC Commission uses the word "should" instead of "will" in its language concerning coordinated planning with the local Department of Defense (DOD) representatives involving conflicts with national needs. "Will" is preferable to "should" and should be substituted.

h. On page 23 the plan uses misleading language in referring to "national defense and Coast Guard installations (being) excluded."

This is a misinterpretation of the Federal Act, which excludes all "lands the use of which is by law subject solely to the discretion of or held in trust by the Federal Government...."

i. On page 25, paragraph (2) of the draft, there is a reference to "memorandum of understanding" as an instrument in lieu of a permit. The language is confusing concerning its application to undefined Federal facilities. As drafted, it would appear to include all Federal activities, exclusive jurisdiction notwithstanding. This appears to be an indirect attempt to bring Federal activities under the control of the local Commission. It is requested that this portion of the draft program requesting future memorandum of understandings be deleted entirely. Existing Federal channels of coordination between Commission and federal agencies work satisfactorily without imposing any new requirements or restrictions. Also, on page 25, paragraph (3), there is the statement that "the Commission will determine whether the activity is or is not consistent with the BCDC Program." This would appear to place the Navy in an appeal posture to the states, an unacceptable position.

j. The reference on pages 27 and 28 of the draft to certification for consistency is unclear and needs clarification in light of the references to the use of a memorandum of understanding.

To summarize, although in many respects, the draft program appears to fully recognize the importance to the State of national security, in other very significant respects, the program represents a step backward in Navy/Commission understandings as reflected in the National Interest Statement in your earlier submission of November 25, 1975. Of particular concern is the following:

a. The repeated condition that Federal lands must be held under "exclusive jurisdiction" or that the activity must be "readily identifiable for national defense" as the basis for establishing exclusion from the Coastal Zone is not acceptable. This condition does not comply with the Federal Act. The Navy can accept no less than complete exclusion of all of the land it uses, irrespective of the jurisdiction or ownership estate, and without any qualification as to the identification of its activities thereon.

b. The proposed application of a form of "permit process", via the "memorandum of understanding" to assure consistency of Federal actions is unacceptable. The Navy fully intends to be consistent with the State's coastal goals insofar as practicable, but considers

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that adequate Federal provisions for achieving necessary cooperation with the State already exists. The additional administrative burden of executing the "memorandum of understanding" on numerous Navy actions is not acceptable.

c. The Commission's position that it will make the determination of whether or not a federal agencies' activities or development is consistent with the State's goals could place the Navy in a position of appeal on a State determination. The Navy must insist on a reversal of these roles as a proper reflection of the intent of the Federal Act.

The program as it now reads, with the conditions above, will lead to continued Federal/State frustrations and repeated confrontation related to whether a Federal activity function is being subjected to local control. A thorough detailed revision of the program in respect to those Federal/State relationships appears to be necessary. In that regard, I invite your attention to the draft statement forwarded by Captain Howe's letter of December 18, 1975, which clearly outlines the Navy's position.

The Navy appreciates the opportunity to cooperate with the Commission in preparation of the San Francisco Bay Program. The Navy takes seriously the consistency goals of the Federal Act and strongly supports a clearly defined program, which properly addressess State/Federal Government relationships, as the best means of assuring that our mutual goals in the maintenance of an adequate Bay environment are achieved.

Sincerely,

J. R. WILLIAMS
Captain, CEC, USN
Acting Commanding Officer

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

OFFICE OF THE ASSISTANT SECRETARY
FOR COMMUNITY PLANNING AND DEVELOPMENT

JUN 25 1976

IN REPLY REFER TO:

Honorable Elliot Richardson
Secretary of Commerce
Washington, D. C. 20230

Dear Mr. Secretary:

This is in response to the request of May 5, 1976, for statutorily-mandated Departmental advice to the Secretary of Commerce on whether or not to approve the proposed San Francisco Bay Conservation and Development Commission (BCDC) "segment" of the California Coastal Zone Management program.

The San Francisco BCDC area is not a segment of the overall State coastal zone management program in the normal sense of being a representative major section of the entire program to which National Oceanic and Atmospheric Administration/Office of Coastal Zone Management (NOAA/OCZM) rules, regulations, classifications, and process objectives can easily and appropriately be applied. Instead, the BCDC district comprises a geographical area of critical concern earlier recognized in California legislation as needing special attention and special protection; the BCDC is a site-specific state agency which does not fit conveniently within the Coastal Zone Management Act of 1972 and implementing regulations that require a statewide approach in California's coastal zone.

Therefore, it is difficult for HUD to seek in this specialized zone the usual balance between the need to protect fragile ecological structures and sensitive environments on the one hand, and the need to accommodate somewhere the requirements for development to deal with a growing population and an expanding commerce on the other hand. It would be difficult also to justify approval of the BCDC segment when NOAA/OCZM requirements for state-level mechanisms and other appropriate safeguards are not met.

Housing. HUD does not necessarily believe that additional housing must be built on the 100 foot coastal strip in the BCDC area.

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Conceptually, however, the BCDC coastal zone cannot stand alone independent of statewide perspective, review, and appeals procedures for coastal zone matters. The Office of the Assistant Secretary for Housing Production and Mortgage Credit (HPMC) does not believe that the BCDC segment has provided the independent NOAA/OCZM-required state-level review and appeals mechanisms that would affect housing and other functional matters. (a) The BCDC proposal does not provide for an appropriate state agency either to review BCDC decisions with respect to development permits when an affected party claims that the permit decision is inconsistent with established criteria, or to overturn the BCDC decision when such a claim is found to have merit. (b) The BCDC proposal would seem to allow local governments to pass zoning ordinances that restrict development more severely than the BCDC coastal zone proposal would, and the proposal fails to provide a procedure whereby BCDC or another appropriate agency reviews and overturns local government decisions when they unreasonably restrict development. (c) HPMC does not believe the BCDC proposal treats "uses of regional benefit" appropriately. HPMC believes new housing developments in some cases should be considered "uses of regional benefit" under paragraph 923.2 of the NOAA/OCZM regulations. However, BCDC on pages 36-37 has confined uses of regional benefit to "ports, water-related industries, airports, wildlife refuges, water-oriented recreation and water-oriented public assembly," and appears to have oriented its planning processes to ensure that these (but not other uses) "are not unreasonably excluded" by local governments from the BCDC area.

Land Use. The BCDC land use planning requirements appear to be set forth in a manner compatible with ultimately meeting HUD's land use element under the 701 Comprehensive Planning program although not now carried far enough to meet the 701 requirements. HUD poses no objections at this time although at some point it will be desirable to put the BCDC area in state perspective as regards where growth should and should not take place. (HUD's San Francisco Regional Office, attention Alan Goldfarb, will supply additional details.)

Floods and related disasters. The most serious deficiency in the BCDC proposals for coastal zone management is in regard to the treatment of flood hazards. Although there is some general discussion of flood hazards in both the Management Program and the San Francisco Bay Plan, neither emphasizes the facts that flood hazard reduction is an integral part of any Coastal Zone Management Program and that the National Flood Insurance Program (NFIP) represents the ongoing mechanism for dealing with the hazard. In fact, there are over 90 communities in the nine counties of the Bay Area which have been identified by HUD's Federal Insurance Administration (FIA) as being flood-prone. All but a few of these are participating in the NFIP and have specific flood plain management regulatory measures in effect. The BCDC proposal gives no reference to either the specific regulatory standards of the NFIP or to the areas of the Bay which have been identified by FIA as flood-prone nor does it discuss the role of the NFIP in flood hazard reduction in the Bay Area. Any questions regarding these comments should be directed to the Flood Plain Management Division of FIA at (202) 426-1891, or to Mr. Nicholas Lally, Director of that division in the HUD headquarters.

Conclusions

BCDC is a useful and ongoing operation, but HUD finds that the BCDC proposal for coastal zone management has highly inadequate coverage of the flood hazard in the context of the Coastal Zone Management Act of 1972 and implementing regulations, and that state perspective and state review mechanisms for dealing with appeals of BCDC decisions on its coastal zone are inadequately developed. The BCDC area is more a localized area of critical concern than a "segment" of the California coastal zone.

Recommendations

1. HUD recommends that approval of the BCDC segment be withheld at least until the flood hazard considerations and the NFIP are made integral parts of the BCDC coastal zone management plan.

2. HUD recommends that NOAA/OCZM review generally (a) the appropriateness of considering the BCDC area a "segment" of the California coastal zone management program and (b) the undesirability of the precedent that would be established in approving such a segment before state-level review and appeals mechanisms are authorized by state law and are in place. Moreover, inasmuch as coastal zone enabling legislation in California is about to lapse and there are difficulties in gaining passage of successor legislation, we recommend that approval of the BCDC segment be withheld until that situation is clarified and state-level review and appeals mechanisms are formally established to deal with the BCDC area and other segments.

Sincerely,

David O. Meeker, Jr. FAIA, AIP
Assistant Secretary

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

RECEIVED
JUL 1 1976
SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

Dear Mr. Secretary:

This is in response to your letter of May 5, 1976, transmitting the San Francisco Bay Conservation and Development Commission (BCDC) Coastal Management Program for review and comment by the Department of the Interior. Accordingly, we have reviewed the proposed program and offer the following comments.

General Comments

Based upon our review of the proposed program we have three primary areas of concern. The first deals with assessment of the environmental impacts of the proposed program for the Bay Area. Our second concern is that the Sacramento-San Joaquin Delta is excluded from the Coastal Zone Management (CZM) Plan for the State of California as well as for the BCDC. The third concern is related to the need for more coordination between the proposed CZM program and certain units of the Department of the Interior.

For the first concern, we note that NOAA's review criteria for developing and reviewing CZM programs and plans stress the need for displaying procedures for most of the required program elements plus an environmental assessment of those program elements. However, both the proposed CZM program and the BCDC plan present conclusions with little or no discussion on how the procedures were utilized to meet the requirements of the program elements. Additionally, an environmental assessment was not provided, particularly for such major plan proposals as port expansion noted for Benicia, Oakland, Redwood City, Richmond, and San Francisco; deepened shipping channels between the Golden Gate to the Delta and to Oakland, Redwood City, Richmond, and San Francisco; new shoreline parks, beaches, marinas, fishing piers, etc.; future airport developments;

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protecting and adding to prime wildlife areas; and encouraging private investments in shoreline developments.

Determining long-term impacts for these major proposal elements in a detailed manner may be difficult because the necessary information may not be readily available. However, we note that Appendix IV contains many maps and illustrations showing several of the above mentioned proposal areas and general information is available to make interpretations or assessments of impacts from constructing similar facilities existing in the area. Such known information includes what happens when a marsh area is filled, dredged, or diked. Also, we note that the maps are site specific for various types of uses or developments. This indicates information is available for the development of an environmental impact analysis.

Our second major concern is exclusion of the Sacramento-San Joaquin Delta in California's CZM plan. It is an important segment of "the adjacent shorelands (including the waters therein and thereunder) strongly influenced by each other . . ." and as such complies with Section 304(a) of the Coastal Zone Management Act which calls for including the coastal waters and the above mentioned lands. Our review of the proposed area shows that the waters of the Delta exert a considerable influence on the waters of San Francisco Bay and the Pacific Ocean. Furthermore, influence from tides and saltwater incursion through deeper channels has affected the character, quality, and potential uses of Delta waters.

Further, we note that the BCDC has recognized the importance of the Delta in its Policy Amendment Number 2 adopted on January 4, 1973, for the Bay Plan. Particular relevance is found in Findings d, e, and g(3) as well as the three policies of the amendment adopted by BCDC. Most importantly in terms of the CAMA, use of Delta waters, particularly the further withdrawal of such waters for irrigation and drinking water as contemplated by several active BCDC proposals, will directly and significantly affect the character of San Francisco Bay and adjacent bodies of water. Clearly, the land and water uses of this area can directly and significantly impact San Francisco Bay and should, therefore, be included within the State's Coastal Zone Management Program.

Further, we note that the Delta is excluded from the CZM program because BCDC claims other State agencies and a regional agency already handle the most pressing Delta problems. Even if other agencies are presently involved in management of various aspects of the Delta, we question this as a valid reason for omitting this area from the State's coastal zone. Such a situation is no different from other coastal areas where a myriad of agencies are involved in various forms of resource management. This is precisely a reason for coastal zone management in that Congress in considering the CZMA found inadequate, confusing institutional arrangements prevalent in the coastal zone and declared it a national policy to encourage cooperative, consolidated approaches to coastal resource management. We recommend that the OCZM, in cooperation with BCDC and the State of California, address the issue of a segmented CZM program as it relates to the Delta and provide in either the BCDC program or the Coastal Commission program a means at the State level of comprehensively handling the Delta as part of the State Coastal Zone Management Program. We would be pleased to participate in any discussions leading to resolution of this matter or to present our position as to why the Delta should be included within the coastal zone. The present position of the State, in regard to the Delta, puts the Department of the Interior in a potential position of "serious disagreement" with this portion of the State CZM program.

Another problem with the proposed coastal zone boundary relates to the treatment of areas landward of dikes which are not being used as salt ponds or are not classed as "managed wetlands" and used largely for duck hunting and agriculture. These areas are excluded from the proposed coastal zone, except for a 100-foot strip adjacent to the mean high water line. Thousands of acres of diked tidelands fall into the excluded category which primarily serve agricultural purposes or as open space and wildlife habitat. These lands are either abandoned salt ponds, seasonally flooded areas, or areas that have been allowed to revert to a natural state. These areas are more prone to being filled than other areas of the Bay since BCDC has no control over them. Comprehensive regional plans are lacking for these areas and, as a result, there is little or no administrative force to protect them for the benefit of the public. With existing authorities, housing developments, shopping centers, offices, and light

industrial complexes could spread over from the uplands into these areas to within 100 feet of the dikes. Diked tidelands are of considerable value to wildlife resources primarily as a result of the immediate proximity and ecological interrelationship to the open waters of San Francisco Bay. Destruction of either portion of this ecological system would seriously diminish wildlife resources for the entire coastal area.

Corrollary to this general concern is the fact that authorities and policies of BCDC as stated in the CZM program are inconclusive with respect to the status of diked salt ponds which may be discontinued for salt production use in the future. Such areas, be they left idle or proposed for conversion to other uses, should clearly be under the control of the BCDC CZM Program. Clarification is needed in the final program regarding the authorities and policies of BCDC on this issue. While the Federal government, through the Corps of Engineers, presently exerts jurisdiction on these former tidelands, overall comprehensive planning is nonexistent. We disagree with BCDC's contention that its control over the 100 feet landward of dikes is sufficient to insure protection of this valuable habitat. We recommend, if the BCDC CZM program is approved, that as part of administration of such a program, a formal investigation be conducted of these areas to ascertain their value to the Bay and its living resources and a program for insuring the maintenance of these valuable former tidelands be formulated and implemented. Such a program should involve a partnership of Federal, State, and local interests. We would be pleased to participate in any such endeavor.

This leads us to our third concern of better coordination between the proposed CZM program and certain units of the Department of the Interior. Our first suggestion here is that the CZM program be revised to include the latest up-to-date information on Federal lands. For example, we note that the latest information furnished by the Fish and Wildlife for its holdings in the San Francisco Bay area has not been used.

Further, we note that the CZM program and its primary component, the San Francisco Bay Plan as amended, has a strong emphasis on overall policy development related to

resources, uses, and general administration. Also, the plan has an effective permitting program which provides a meaningful complement to such a policy base. Specific land and water use planning, however, is restricted to designated priority use areas specified by the plan and "Special Area Plans." These "plans" are provided for by BCDC regulations which establish procedures for their adoption. One such plan for the San Francisco waterfront has been adopted by the Commission, and the proposed work program calls for use of Section 306 funds (if the program is approved) to complete additional such "plans."

In the past, coordination with this Department has not been as complete or clear as desirable for such resources and uses as fish and wildlife, outer continental shelf activities, historical, archaeological, and other cultural values.

We believe that in keeping with past trends, conditions affecting the resources and uses of the coastal zone will be changing rapidly. The San Francisco Bay Plan, as the core of a CZM program, if approved, should not be a static document. We note that provisions for modifying priority use areas in the plan are included in the McAteer-Petris Act. However, procedures for development or modification of "Special Area Plans" by BCDC in response to changes are not included in the CZM program. Our primary concern is that there is no specific opportunity or mechanism apparent in the program for insuring participation by Federal agencies in any aspect of these two important land and water use guiding processes. The Fish and Wildlife Service of this Department has, in the past, recommended to BCDC that several areas receive detailed planning under the "Special Area Plan" concept, for purposes of protecting unique fish and wildlife resources. Richardson Bay in Marin County is an example owing particularly to its importance to marine mammals (Harbor seals). To our knowledge, our past requests have not been acted upon.

We believe the concepts of Priority Use Areas and Special Area Plans are very important in terms of accomplishing the goals of the CZMA. We recommend that in modifying this preliminary program, BCDC and the OCZM insure that the final program submitted for approval contain specific

methodologies for conducting these important planning activities, and that such methodologies provide specific opportunities for Federal agency participation.

Specific Comments

On pages 25 and 26, Section (4), it is stated that "the following Federal agency licenses and permits to conduct activities affecting land and water uses in the coastal zone will be subject to certification by the Commission for consistency with the BCDC management program under Section 307(c)(3):" For the Department of the Interior, we note that only the Bureau of Land Management (BLM) is listed, and that the U.S. Geological Survey (GS) should also be listed. BLM issues leases and exploration permits for mineral rights on public lands, whereas GS issues drilling permits and approves exploration and operating plans pertaining to the extraction of leasable minerals.

As you are aware, the issue of excluded Federal lands has been submitted by your Department to the U.S. Attorney General for clarification. If public lands subject to leasing by BLM are excluded from the coastal zone, reference to the Department of the Interior, including BLM and GS, should be removed from Section (4) on page 26. However, if such lands remain within the identified coastal zone, the description of activities of the Department of the Interior should be clarified as noted in the above paragraph.

There is some question as to what criteria are applied when determining whether or not the use for lands to be filled is justifiable. On page 17 of the Management Program, (2) Marshes and Mudflats, it is stated that "special emphasis" is placed on preservation of marshland and mudflats. It further states that "fill can be permitted only for purposes of providing substantial public benefits and then only if there is no reasonable alternative." On page 14 of the Management Program, it states that "further fill should be limited to the minimum necessary for certain high priority water-oriented uses possibly requiring additional fill . . . ." Examples of uses of fill land with substantial public benefit and high priority use are given as specialty shops, hotels, and restaurants. Some of these uses seem to be inconsistent with the stated criteria. The Management Plan should better define what is considered high priority

water-oriented use and how this differs from previous uses on filled lands. For instance, could justifiable use be a shopping center or housing complex that offers open space with public access or specialty shops along the water?

There is also a deficiency in the program with regard to archeological, paleontological, and historical values. Although reference is made to historical values in regard to water-related industry on page 18, similar recognition should have been considered in most other development policies involving use or disturbance of submerged, wet, or dry lands.

The Pacific Ocean was once considerably lower than it is today; therefore, archeological and paleontological values may exist in the submerged lands. Transcending this, however, any disturbance of the natural land surface through excavations, grading, or filling could have an irreversible adverse affect on the aforementioned values.

The Management Program should address in more detail the policies for the inventory, protection, and conservation of historic and cultural resources, as required by the Act and by Section 923.4(b)(4) of the implementing regulations, particularly for the port development, construction of dikes, park development, encouragement of private investment, regulation of land use, see page 4, that are likely to have effects (both adverse and positive) on cultural resources. Like other resources in the San Francisco Bay Area, cultural resources can best be protected on a regular basis. Also, like other resources in the area, cultural resources have been severely damaged by ongoing development around the Bay. For example, only an estimated 10 percent of the prehistoric archeological sites recorded around the Bay margins in 1905-07 still survive today, and many of these have been damaged. Preservation and salvage efforts undertaken by individual local governments, historical and archeological organizations, and academic institutions, while often successful, cannot by their very nature serve the cultural resource management needs of the region as a whole.

A coordinated historic cultural resource management program is needed and should be integrated into the

Management Program proposed by BCDC. We note on page 38 that the California State Resources Agency has a primary role in the BCDC management program. The California State Historic Preservation Officer is Mr. Herbert Rhodes, Director, Department of Parks and Recreation, State Resources Agency, P.O. Box 2390, Sacramento, California 95811. He should be consulted and assist in the development of an inventory of historic and cultural resources in the area and in the development of a cultural resource management program.

As part of a cultural program, BCDC should either conduct a survey of cultural resources around the Bay immediately or build a phased program of reconnaissance, survey, and inventory into its planning system. It should also institute policies to insure that cultural resources will be identified, evaluated, and protected in accordance with Federal standards in connection with future regulated land use around and within the Bay. The requirement for the inventory and designation of areas of historical significance and cultural value is stated specifically in Section 923.13(a)(1) of the implementing procedures. In addition, the Secretary is prohibited from giving or granting approval until provision is made for preserving and restoring specific areas for conservation (Section 923.16(b)).

We also recommend that the Advisory Committee, mentioned on page 28, include someone with expertise in cultural resource management such as an archeologist, historian, or architectural historian.

Planning Process--Historic and Cultural Resources, on page 29, should be added to the section subjects to be considered in planning.

In the discussión on pages 37 and 38 concerning the roles of Federal agencies, no consideration has been given to the role of the National Park Service and Advisory Council on Historic Preservation in the identification and designation of historic and cultural resources. Clearly, the role of these organizations is outlined in the National Historic Preservation Act, Executive Order 11593, the procedures of the Advisory Council on Historic Preservation (36 CFR 800) for the

implementation of Section 106 of the National Historic Preservation Act and Section 1(3) and 2(b) of Executive Order 11593, and the Archeological and Historic Preservation Act of 1974 (Public Law 93-291).

With the BCDC Coastal Management Plan becoming part of the ultimate California Coastal Zone Management Plan, any funding that may become available through Section 306 of the Coastal Zone Management Act of 1972 for updating the BCDC plan should be contingent upon recognition of the historical and prehistorical values in subsequent policies and programs. Also, we suggest that scientific and educational uses be addressed in the plan and note that they are not listed under permissible uses on pages 15 and 16.

The Fish and Wildlife Service is concerned about the lack of consideration given to endangered species of fish and wildlife in BCDC's proposed CZM program. Three endangered species are found within the proposed Coastal Zone: California Clapper Rail, Saltmarsh Harvest Mouse, and the California Least Tern. We recommend that prior to final Federal approval, the Department of Commerce and BCDC ascertain the impacts of the proposed program on these endangered species. If impacts are projected to occur or consultation regarding these matters is needed, the Regional Director, Fish and Wildlife Service, Portland, Oregon should be contacted. Modifications to the CZM program which are necessary to insure the protection of critical habitat for these species should be made accordingly and in conformance with Section 7 of the Endangered Species Act of 1973 (Public Law 93-205), and guidelines regarding administration of that section recently issued by the Fish and Wildlife Service and the National Marine Fisheries Service.

Summary

We appreciate the opportunity to review and comment on this plan. Our main concerns with the proposed plan are:

- the absence of an environmental assessment for major proposals contained within the plan;
- the exclusion of the Sacramento-San Joaquin Delta from both the BCDC and California State CZM plans;
- the absence of mechanisms that insure Federal participation in planning for Special Area Plans and Priority Use Areas;
- weaknesses in procedures for identifying, inventorying and conserving areas of historical significance and cultural value; and

- lack of consideration given to the management of rare and endangered species of fish and wildlife.

We recommend that the recommendations outlined in this letter be incorporated into the plan. We feel that BCDC's past operations have been exemplary and we have no objection to your approval of the proposed plan.

Sincerely yours,

(Sgd) Ronald G. Coleman

Assistant Secretary of the Interior

Honorable Elliot L. Richardson
Secretary of Commerce
Washington, D.C. 20230

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
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May 5, 1976

Mr. Charles R. Roberts
Executive Director
San Francisco Bay Conservation
and Development Commission
30 Van Ness Avenue
San Francisco, California 94102

Dear Mr. Roberts:

We have reviewed the revisions in the BCDC draft Management Program For San Francisco Bay which you submitted to us with your memorandum of May 3, 1976. We are concerned about the last sentence in section 6 under the heading The BCDC Management Program and Section 307 of the Coastal Zone Management Act.

The sentence in question as revised reads as follows:

> "If no resolution is possible, BCDC will forward its determination to the appropriate Federal agency and as required by Section 307(c)(d) of the Federal Coastal Act, the Federal agency will not approve the proposed project."

We believe that in order for this statement to be in conformance with Section 307(c)(d) of the Coastal Zone Management Act of 1972 it should be revised further to indicate the following provision under Section 307(d):

> ...."Federal agencies shall not approve proposed projects that are inconsistent with a coastal state's management program, except upon a finding by the Secretary that such project is consistent with the purposes of this title or necessary in the interest of national security". (Emphasis added)

This same comment also has been made to the California Coastal Zone Conservation Commission which had included an identical sentence in its National Interest Statement in the proposed California Coastal Plan.

Thank you for the opportunity to review the revisions in the BCDC Draft Management Program for San Francisco Bay.

Sincerely yours,

Webster Otis
Special Assistant to the Secretary

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RECEIVED
SAN FRANCISCO BAY CONSERVATION & DEVELOPMENT COMMISSION

April 13, 1976

Mr. Charles R. Roberts
Executive Director
San Francisco Bay Conservation
and Development Commission
30 Van Ness Avenue
San Francisco, California 94102

Dear Mr. Roberts:

Thank you for the opportunity to review the Draft Commission Management Program For San Francisco Bay transmitted with your memorandum dated April 6, 1976. Mr. F.G. Macias of my staff already has been in touch with Mr. Michael Wilmar of your office to discuss some minor comments on the draft. However, we felt it would be more appropriate to take this means to make these additional comments.

We note that starting on page 12 of the draft there is a section designated g. The Delta which is included under the broader heading (4) Adequacy of the Boundary of the BCDC Segment. Although this section does not contain an explicit recommendation to include the Delta as a part of the BCDC Segment there is an implication that perhaps it should be. It also gives the impression that if it is not part of the BCDC Segment then maybe it should be included within the California coastal zone at some time in the future; again without a specific recommendation to do so.

This observation is not being made for the purpose of passing judgement on whether or not it would be appropriate to include the Delta in the Coastal Zone now or in the future. Such a determination would require extensive analysis and discussion among all interests concerned which to our knowledge has not been accomplished to date. Therefore, since neither the BCDC's nor the California Coastal Zone Conservation Commission's jurisdiction extends into the Delta at this time, it seems to

us that any discussion which implies such a possibility could create adverse reactions from various interests in and beyond the Delta unnecessarily. It is our feeling that the management program would not be weakened by the exclusion of this section. On the other hand, any apprehension resulting from the inclusion of this section could make it more difficult or impossible to extend the boundaries of the coastal zone into the Delta at some later date, even if justified by future studies, because of prejudicial antecedants.

Sincerely,

Webster Otis

Webster Otis
Special Assistant to the Secretary

United States Department of the Interior

FISH AND WILDLIFE SERVICE
DIVISION OF ECOLOGICAL SERVICES
2800 Cottage Way, Room E-2727
Sacramento, California 95825

RECEIVED

May 3, 1976

Mr. Charles R. Roberts
Executive Director
San Francisco Bay Conservation and
Development Commission
30 Van Ness Avenue
San Francisco, California 94102

Dear Mr. Roberts:

We appreciate the opportunity to provide comments on your draft report, "Management Program for San Francisco Bay," and to express our concern for the diked tidelands which are not included under the direct jurisdiction of the San Francisco Bay Conservation and Development Commission. In general the draft report appears adequate and should be sufficient to satisfy requirements of the Coastal Zone Management Act of 1972.

It is sometimes difficult to make recommendations for improving an agency's effectiveness when that agency has done and continues to do a good job in its assigned tasks. The Service recognizes BCDC as the agency which began turning the tide of degradation of the Bay and which implemented a multiobjective planning approach to preserve portions of the Bay for all beneficial uses. With our known respect in mind, we want you to consider our views concerning the need for BCDC to extend its jurisdiction to 100 feet landward of the MHHW line of all diked tidelands. For clarity and to assist us in expressing our concern, we have referenced our discussions to related portions of your draft report.

The following comments are for your consideration:

Page 3. Par. 1 - It should be mentioned early in the report that thousands of acres of diked tidelands are also being used for agricultural purposes or are accidentally serving as open space and wildlife habitat on an interim basis. The latter lands are either abandoned salt ponds, seasonally flooded areas, or areas that have been allowed to revert to nature. These lands should be recognized in the report as they are vitally important as wildlife habitat and open space, and are much more prone to being filled than other areas of the Bay plain since BCDC has no direct control over them.

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Page 4, Par. 2 and Par. 3 - Port planning should be accomplished on a regional basis to prevent unnecessary environmental degradation which results under a severely competitive system and piecemeal planning. Certain ports should be recognized as obsolete and that their former and present business can best be handled by other means. No port in the Bay area should be allowed to degrade the environment just so it can attract some of the business away from a neighboring port.

Page 5. Par. 1 - Use of shoreline property for housing developments will benefit developers and the few who can afford such a luxury, but it is at the expense of the remaining public sector, open space, aesthetics, and fish and wildlife of the area. To permanently commit diked tidelands to such developments will further degrade the Bay ecosystem. Only uses which are truly water oriented or which significantly benefit the public at large should be allowed to degrade the Bay ecosystem any further than has already taken place.

Page 11, Par. 3 - We do not believe BCDC's influence outside of the 100-foot shoreline band is sufficient to control the development in diked agriculture or abandoned salt pond type tidelands. Since no agency has a comprehensive regional plan for these areas, there is no administrative force to protect them for the benefit of the public. Under such a case, housing developments, shopping centers, offices, and light industrial complexes could spread over these lands up to within 100 feet of the bayward dikes. Although the Corps presently maintains jurisdiction on these former tidelands and the California Department of Fish and Game, the Service, and environmental groups keep pressure on the Corps, these lands are still being lost at a slow rate. If the Corps should happen to lose their jurisdiction over these sometimes dry, sometimes wet, or seasonally flooded diked tidelands, rampant filling and development probably would occur immediately and further degrade the open space and wildlife values of the entire Bay. In essence we believe that these lands which are such an important part of the total Bay system and which have a viable potential of being restored to tidal action, should be given at least the same protection as presently afforded to salt ponds and managed wetlands.

Page 15, Par. 1 and Page 17, Par. 2 - All diked tidelands must be given greater protection than indicated in these paragraphs if the ecological and aesthetical values of the Bay are to be maintained and protected for future generations. Under the present policy it appears that when salt production is no longer

pursued, the lands will be afforded the same lack of protection as presently given to diked dry and agriculture lands. Just about any type development can meet the criterion of having no impact on the Bay proper, and developers will be more than willing to allow public access on the 100-foot strand behind the bayward levees for the development rights on the remainder of the area behind dikes.

It must be recognized that present wildlife values of the Bay cannot be maintained on a 100-foot wide strand of land and the few areas for refuges that are or will be established. To maintain present wildlife values, habitat behind dikes must be either maintained or if development is to take place on some of these lands, the rest must be improved for wildlife. If the Bay is to become only a body of water surrounded by a 100-foot wide strand of open space parkland interspersed with the various other type of human encroachments, its present aesthetical values will be virtually lost and will become comparable to some of the present interior lagoon-type housing developments. The importance of wildlife and tidal restoration is recognized and direct enforceable protective measures must be afforded to all restorable tidelands behind dikes.

Page 19, Line 3 - National Park Service should be changed to Fish and Wildlife Service.

Page 36, Par. 3 - The 100-foot jurisdiction may be sufficient to protect a larger zone from some types of water dependent developments, but it has no impact on such types as housing or industrial developments that have no need for direct water access. In these cases the 100-foot wide span is not developed but all areas landward of the span are filled and destroyed.

Page 37, Par. 5 and Page 39, Par. 3 - The Corps does not necessarily have to deny a permit just because the Resources Agency objects to its issuance, although this is the general policy. More important than this, however, is if no agency has any direct responsibility for these diked tidelands or any clearly stated long-term management plan for these lands, then it is highly likely that piecemeal development will slowly destroy or degrade them even with the present Corps jurisdiction. If Corps jurisdiction over these lands is lost, which is possible since the Corps has no real desire to maintain it, development would proceed unchecked, all to the detriment of the open space and wildlife value of the Bay. To prevent this, <u>all</u> the diked tidelands, not just salt ponds and managed wetlands, must be given the same protection that BCDC affords to lands within the 100-foot band inside of the bayward dikes.

In summary, the Service views San Francisco Bay and the Sacramento-San Joaquin Delta as a single highly complex ecosystem that should be maintained for all its beneficial uses. The ecosystem consists of not only the open water areas and the immediate adjacent 100-feet of land but also the diked tidelands that are used for agriculture or allowed to stand idle. Since all thse lands were once tidal and contributed to the natural ecological balance of the Bay and presently support wildlife, we believe they should be afforded complete protection for wildlife use, eventual tidal restoration, or other public uses. If these lands are not protected or included in a comprehensive land use management plan, randomized development will ultimately destroy all their natural values which will further degrade the wildlife and open space values of the entire Bay-Delta ecosystem. To us the most plausible way to prevent such degradation from occurring is to include all diked tidelands below the plane of MHHW within the direct jurisdiction of BCDC. If the increased work load resulting from extension of jurisdiction is too great for your staff, measures should be taken to obtain additional personnel. The increased benefits to the Bay and the public derived from preventing further destruction and degradation of the valuable diked tidelands will far outweigh the expense of paying a few more personnel.

Should you have any questions on our views or would like to discuss them further, please contact us.

Sincerely yours,

Felix E. Smith

Felix E. Smith
Field Supervisor

cc: California Coastal Zone Commission, S.F.
California Resources Agency, Sacramento
Audubon Society - Golden Gate Chapter, Berkeley
California Dept. of Fish and Game, Sacramento
California Dept. of Fish and Game, Yountville
Committee for Green Foothills, Palo Alto
Save S.F. Bay Association, Berkeley
Sierra Club, S.F.

DEPARTMENT OF THE NAVY
WESTERN DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
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IN REPLY REFER TO:
2021A5:CM:nm
Ser P2-461
10 June 1976

Mr. Charles R. Roberts, Executive Director
San Francisco Bay Conservation and Development Commission
30 Van Ness Avenue
San Francisco, California 94102

Dear Mr. Roberts:

This Command has reviewed your communication dated May 3, 1976 containing the Bay Conservation and Development Commission's (BCDC) most recent revisions to the section on the National Interest in San Francisco Bay of the draft Management Program. Although this version has eliminated many of the previous objections, there are still clauses which must be clarified to permit complete Navy approval.

a. Planning for Federal activities:

Paragraph 1 - A minor typographical error in line four requires correction of the word "content" to "context."

Paragraph 2 - Although deletion of the words "readily identifiable" helps to clarify the intent of the exclusion clause, it is still considered necessary that the words "and that are used by the Department of Defense for national defense purposes" also be stricken. The Navy's position is that all naval activities on all of the lands the Navy uses are conducted in the interest of national defense and, thus, this qualification is not only not necessary but further tends to raise the question of a non-defense use of Navy lands. The use of the word "other" in line five is likewise objectionable as an unnecessary limiting qualification.

Paragraph 3 - This Command suggests the word "will" be substituted for "may" in line 15 to provide for definite accommodations to situations of conflict between overriding national needs and particular provisions of the plan. This change would be consistent with the language preceding, which stipulates that the situation is a "conflict both on overriding national need." What other alternative is there?

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Ser P2-461
10 June 1976

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

Paragraph 1 - Although this is not entirely clear regarding the procedure of the A-95 review process, the language does appear to be reasonable and not inconsistent with established Federal procedures.

Paragraph 2 - The requirement for memoranda of understanding (a form of permit) by "Federal agencies" is contrary to the long-standing Navy position. Ideally all referencesto such requirement should be deleted here and elsewhere throughout the statement. To avoid confusion regarding DOD activities, it is suggested that the first sentence of this paragraph be modified to read, "Except as to the Department of Defense (or any agency thereof), or as provided in paragraph five below..." This should clarify which Federal agencies are not being referred to elsewhere in the plan when a memoranda of understanding is required. The same change is recommended for paragraph three, line three.

If any of the above comments are unclear or unacceptable to BCDC, please contact this Command.

Sincerely,

James H. Mildes

JAMES H. MILDES
Head, Master Planning Branch
Installations Planning Division

U.S. DEPARTMENT OF TRANSPORTATION
REGIONAL REPRESENTATIVE OF THE SECRETARY

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SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

July 2, 1976

Mr. Robert W. Knecht
Assistant Administrator for Coastal Zone Management
National Oceanic and Atmospheric Administration
Rockville, Maryland 20852

Dear Mr. Knecht:

The DOT agencies in Region IX have reviewed the San Francisco Bay Conservation and Development Commission (BCDC) Coastal Management Program.

The program has been thoroughly reviewed and some modifications have been made as a direct result of verbal and written communications between DOT agencies and BCDC.

Comments provided by the Western Regional Office of Pipeline Safety were sent to Mr. Gardner on June 8, 1976 and the copy directed to this office was inadvertently missent to the wrong address.

The major DOT concerns are addressed in the body of this letter, however, the comments previously furnished by the office of Pipeline Safety are considered to be an integral part of the DOT comments.

The following are identified as Program items on which the DOT has disagreement with BCDC and still remain to be resolved.

The BCDC Plan submitted to the National Oceanic and Atmospheric Administration (NOAA) for approval contains materials dated April 6, 1976. Subsequent to that date, BCDC, responding in part to our comments, revised the Statement of National Interest with a date of May 3, 1976. We have been informed that NOAA is advised of those BCDC approved changes. Inasmuch as the changes make the BCDC Plan less objectionable to us, we will address our position to the BCDC Plan originally submitted as revised by the May 3, 1976 materials.

1. THE SCOPE OF THE FEDERAL LANDS EXCLUSION. The revised wording of the Federal lands exclusion from the definition of the coastal zone in the May 3rd Statement of National Interest eliminates much of our prior concern with regard to Coast Guard facilities. We believe, however, that the exclusion is still an unacceptably narrow interpretation of the Act. The Department of Transportation and most Federal agencies, as well as the Attorney General for the State of California (Opinion No. SO 73/25 of January 23, 1974), have interpreted the Federal lands exclusion from the coastal zone to mean that any lands used exclusively by the United States, its officers, or agents, in accordance with Federal law, irrespective of ownership or jurisdictional status, are excluded from the coastal zone while so used. Accordingly, the Federal lands exclusion must apply equally to all Federal agencies, not just the Department of Defense and the Coast Guard as the revised Draft would indicate. Those Federal lands so excluded should be identified in the plan as required by 15 CFR 923.11(b)(4).

The May 3rd revision's purported exclusion of Coast Guard facilities creates two specific problems for the Department of Transportation.

First, the exclusion as it now reads would establish a two part test for assessing whether the exclusion applies. In addition to Federal control, the additional test of use for specific operational missions is included. This is considered to be unacceptable to us.

Second, Paragraph 4 of the May 3rd Statement of National Interest indicates that a permit (including Memorandums of Understanding (MOU's)) would be required as a precondition to issuance of any Federal permit. The clear implication is that a Federal applicant must have a MOU for a permit from another Federal agency. We believe this is based on a misconception of what the Federal law requires. It is clear from the legislative history that the Congress intended to exclude Federal facilities from the CZM Act except as provided in the Federal consistency provisions, Section 307(c)(1) and (2). These sections are a compromise between the established concepts of Federal supremacy and the need to have a coastal zone planning process which is comprehensive. For ongoing Federal activities affecting the coastal zone, and for new Federal development in the coastal zone, the requirement is for consistency to the maximum extent possible. The provision dealing with Federal permits,

Section 307(c)(3), does not apply to the Federal applicant so as to modify those consistency standards. Were it to apply, Section 307(e)(1), including the provision that the Federal statute does not limit the authority of the Congress to authorize and fund projects, would be defeated; because a project authorized and funded by the Congress could in effect be vetoed by a coastal agency simply by the withholding of their certification to prevent issuance of a necessary Federal permit.

It is stated in Paragraph 4c(2) that a Memoranda of Understanding will replace the required commission permit which, in the case of FAA, involves airport development. This section should be clarified to indicate whether a Memoranda of Understanding will also be required for each and every type of FAA air navigation facility which may be located within the area of concern but off of the airport, such as the establishment of a Remote Control Air Ground Communication facility (RCAG), Airport Surveillance Radar (ASR), etc. Consideration should possibly be given to placing these types of facilities in a class action Memoranda of Understanding to eliminate any duplication of effort.

As a final point with regard to the exclusion of Federal facilities, we believe that the plan should note the existence of the concept of navigational servitude as embodied in the Constitution of the United States so as to avoid any suggestion that State control might be exercised over matters exclusively within the Federal domain, as, for example, placement of aids to navigation by the Coast Guard in the navigable waters of the United States.

2. PROCEDURAL REQUIREMENTS OF THE MANAGEMENT PLAN. The third sentence of Paragraph 1 of the May 3rd revised plan's Statement of National Interest correctly states the Federal decision-making processes which the Coast Guard is bound to follow. Our position is that the imposition of formalized procedural requirements, such as the MOU process as described in the plan, is unacceptable. Further, the suggestion that any Federal agency should routinely appear before the Commission as an applicant for a supposedly voluntary MOU seems to us to be an inappropriate procedure.

The May 3rd plan also implies that Federal agencies have generally agreed to use the MOU process. Informal conversations by the Coast Guard with other agencies indicates that while, as a matter of expediency the MOU process has been used with regard to some past specific projects. We are not aware of any Federal agency that has now agreed to use the MOU process for all of its projects, and most, in fact, reject the MOU process.

It is not likely that the DOT organizations, or any other Federal agency, would voluntarily enter into the restrictive formalized processes as described in the May 3rd plan. The statement's procedures would add a completely new and cumbersome overlay to the existing processes. We believe that these will discourage all Federal agencies from entering into a MOU with a coastal agency. The Federal decision making process now requires full accounting for an agency's actions including, in appropriate instances, public hearings. These existing processes would seem to provide ample opportunity for BCDC's substantive review of projects.

We believe that a more realistic alternative is mentioned in the third sentence of Paragraph number 1 which indicates that for special or unusual projects, additional coordination with individual Federal agencies might be desirable. In such a case, the agency involved may elect to use some form of written agreement when that approach is mutually beneficial. It is doubtful that any agency would go through the procedures outlined in Paragraphs 2, 3 and 5 so as to effectively submit themselves to the permitting process of a coastal agency. We believe that the formalized MOU processes must be eliminated from the plan. We also feel that the plan must be further revised to eliminate any suggestion that any Federal agency has agreed to routine use of the MOU process for its projects.

We find that efforts to implement the Federal lands exclusion and the consistency provisions have grown beyond realistic perspective in this plan. As the Coast Guard have noted several times to BCDC, it is the Federal agency charged with the protection of the coastal marine environment. That, combined with our mandated responsibilities for safety of life and property and law enforcement along our nation's coasts, makes it extremely unlikely that we would intentionally act inconsistent to the

interests of the coastal zone, short of a substantial overriding national interest. The DOT through the Coast Guard and BCDC have the same substantive goals; i.e., to preserve the coastal zone consistent with the declaration of Congress. We believe that existing Federal procedures will cause the same result for other Federal agencies. The plan should be revised to eliminate the MOU process and to address an explicit means of relief should a conflict occur between the State and a Federal agency over consistency with plan objectives.

The FAA regional offices recommends that the section identified in Paragraph 4C(6) should be expanded to not only include the review of applications for Federal assistance but also all Federal agency initiated direct development projects as stipulated under Part II of OMB Circular A-95. The FAA is now doing this and the involved clearinghouses have advised them that this type of information is of extreme value to all concerned parties at both the state and local levels.

3. CONCEPT OF NATIONAL INTEREST. The BCDC Plan, in Section 4a, Facilities of National Importance, fails to recognize the Coast Guard's programs in the preservation and maintenance of the coastal zone environment. Federally mandated Coast Guard 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, are essential to continued used of the coastal zone the plan seeks to protect. These Federal interests are applied to benefit, protect and preserve San Francisco Bay as well as the rest of the nation's coastal marine environment. Regulations passed by NOAA mandate a broad State perspective with regard to the siting of facilities and recognition of requirements which are other than local in nature.

The Managment Program must be revised to reflect these essential national interests, and must provide program consideration for the siting of facilities in support of requirements which are other than local in nature.

4. SEGMENTATION. It is our view that the BCDC Plan, proposed as an entirely separate entity from another California Coastal Zone Commission, is not merely

a segment of a single, overall California plan in accordance with Section 306(h) of the CZM Act; but rather one of two separate Coastal Zone Commissions in the same State. We believe that the essence of the Federal Act is to encourage a single, comprehensive State Plan directed towards broad and comprehensive planning on a regional basis. The Coast Guard has registered their concern with the apparent lack of interstate coordination inasmuch as several of the above raised issues have been satisfactorily resolved in the Pacific Coast states of Oregon and Washington. Approval of two separate plans for California will defeat efforts to achieve regional consistency.

5. GENERAL COMMENTS. We are aware that the Coast Guard has commented on several drafts of the BCDC Management Plan. The above comments with the exception of segmentation and FAA's programs are not new to BCDC. With the exception of the concession to delete specific Coast Guard properties from the coastal zone, no changes or recommendations offered by the Coast Guard have found their way into the plan. Although given an opportunity to comment, the Coast Guard believes that their comments have not been adequately considered. Further, this handling of their comments is not reflected in the plan as required by NOAA regulations (15 CFR 923.31).

Thank you for the opportunity to provide comments on this important program. We particularly appreciate the extended time that your office has allowed us to provide you with these comments.

Lawrence H. Dunn
LAWRENCE H. DUNN

cc: TES-70
G-W/73
Mr. Mike Wilmar, BCDC
all FCGs

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD
MAILING ADDRESS:
Commander (mep)
Twelfth USCG District
630 Sansome Street
San Francisco, CA 94126
Tel: (415) 556-1380

5740/1
18 MAY 1976

Mr. Charles Roberts
Executive Director
San Francisco Bay Conservation and
Development Commission
30 Van Ness Avenue
San Francisco, California 94102

Dear Mr. Roberts:

The following comments on the San Francisco Bay Conservation and Development Commission (BCDC) Statement of National Interest in San Francisco Bay received at the April 30, 1976 meeting between BCDC and Federal agencies are forwarded for your consideration.

Exclusion of Federal Lands:

The revised wording of the Federal lands exclusion from the definition of the coastal zone eliminates much of our prior concern with regard to our own facilities. We note, however, that the exclusion is still an unacceptably narrow interpretation of the Act. The Department of Transportation and most Federal agencies, as well as the Attorney General for the State of California (Opinion #SO 73/25 of January 23, 1974), have interpreted the Federal lands exclusion from the coastal zone to mean that any lands used exclusively by the United States, its officers, or agents, in accordance with Federal law, irrespective of ownership or jurisdictional status, are excluded from the coastal zone while so used. Accordingly, the Federal lands exclusion must apply equally to all Federal agencies, not just the Department of Defense and the Coast Guard as the revised Draft would indicate. Those Federal lands so excluded should be listed in the plan as required by 33 CFR 923.11(b)(4).

The revised draft's purported exclusion of Coast Guard Facilities creates two specific problems for us:

First, the exclusion as it now reads would purport to establish a two part test for assessing whether the exclusion applies. In addition to Federal control, the additional test of use for specific operational missions is included. This is unacceptable.

Second, Paragraph 4 of the revised draft indicates that a permit (including Memorandums of Understanding (MOU's)) would be required as a precondition to issuance of any Federal permit. The clear implication is that a Federal applicant must have a MOU for a permit from another Federal agency. We believe this is based on a misconception of what the Federal law requires. It is clear that the Congress excluded Federal facilities from the Act except for the Federal consistency provisions, Sections 307(c)(1) and (2). These sections establish a compromise between the established concepts of Federal supremacy and the need to have a coastal zone planning process which is comprehensive. For ongoing Federal activities affecting the coastal zone, and for new Federal development in the coastal zone, the requirement is for consistency to the maximum extent possible. The provision dealing with Federal permits, Section 307(c)(3), does not apply to the Federal applicant so as to modify those consistency standards. Were it to apply, Section 307(e)(1), including the provision that the Federal statute does not limit the authority of the Congress to authorize and fund projects, would be defeated; because a project authorized and funded by the Congress could in effect be vetoed by a coastal agency simply by the withholding of their certification to prevent issuance of a necessary Federal permit.

As a final point with regard to exclusion of Federal facilities, we feel that the plan should note the existence of the concept of navigational servitude as embodied in the Constitution of the United States so as to avoid any suggestion that State control might be exercised over matters exclusively within the Federal domain, as, for example, placement of aids to navigation by the Coast Guard in the navigable waters of the United States.

Procedural Requirements of the Management Plan:

The third sentence of Paragraph 1 of the revised draft correctly states the Federal decision-making processes which we are bound to follow. We emphasize again our desire to cooperate with the Commission in the development of Federal facilities consistent with plan, but also emphasize our position that the imposition of formalized procedural requirements, such as the MOU process as described in the revised draft, is unacceptable. Further, the suggestion that any Federal agency should routinely appear before the Commission as an applicant for a purportedly voluntary MOU seems to us to be an inappropriate procedure.

The revised draft implies that Federal agencies have generally agreed to use the MOU process. Our informal conversations with other agencies indicates that while, as a matter of expediency the MOU process has been used with regard to specific projects, no Federal agency has now agreed to use the MOU process for all of its projects.

It is not likely that the Coast Guard, or any other Federal agency, would voluntarily enter into the restrictive formalized processes as described in your draft. The statement's procedures would add a completely new and cumbersome overlay to the existing processes. We believe that these will discourage all Federal agencies from entering into a MOU with a coastal agency. The Federal decision making process now requires full accounting for an agency's actions including, in appropriate instances, public hearings.

We feel that a more realistic alternative is mentioned in the third sentence of Paragraph number 1 which indicates that for special or unusual projects, additional coordination with individual Federal Agencies might be desirable. In such a case, the agency involved may elect to use some form of written agreement when that approach is mutually beneficial. It is doubtful that any agency would go through the procedures outlined in Paragraphs 2, 3, and 5 so as to effectively submit themselves to the permitting process of a coastal agency. We recommend that the formalized MOU processes be eliminated from the statement. We also feel that the draft must be further revised to eliminate any suggestion that any Federal agency has agreed to routine use of the MOU process for its projects.

We feel that efforts to implement the Federal lands exclusion and the consistency provisions have grown beyond realistic perspective in these drafts. As we have noted, the Coast Guard is the Federal agency charged with the protection of the coastal marine environment. That, combined with our mandated responsibilities for safety of life and property and law enforcement along our nation's coasts, makes it extremely unlikely that we would intentionally act inconsistent to the interests of the coastal zone, short of a substantial overiding national interest. The Coast Guard and the Commission have the same substantive goals; i.e., to preserve the coastal zone consistent with the declaration of Congress. We believe that existing Federal procedures will cause the same result for other Federal agencies.

We recommend that you again review the Coast Guard positions. We feel that they correctly interpret the Federal statute and will result in the same Federal support for the coastal zone program that you seek to achieve. It seems pointless to jeopardize Federal approval of your plan in a disagreement over the issues addressed. Again, it is our intent to fully cooperate with the Commission and to work with you in the development of your plan.

Sincerely,

D. W. STARR, JR.
Captain, U. S. Coast Guard
Chief of Staff, Twelfth Coast Guard District

OFFICE OF PIPELINE SAFETY OPERATIONS
Western Regional Office
831 Mitten Road
Burlingame, California 94010

June 8, 1976

Mr. Richard R. Gardner
Office of Coastal Zone Mgt.
U.S. Dept. of Commerce
National Oceanic & Atmospheric Admin.
Rockville, Maryland

Dear Sir:

A copy of the Management Program for San Francisco Bay was recently received by this office with a request for comments.

There was no reference noted in the statement concerning pipelines. Therefore informational comments will be made concerning the duties and functions of this office.

The Office of Pipeline Safety Operations (OPSO) carries out DOT pipeline safety functions vested in the Secretary of Transportation under the following statutes.

Natural Gas Pipeline Safety Act of 1968, as amended.
Mineral Leasing Act, as amended.
Deepwater Port Act of 1974, relating to the establishment, enforcement, and review of regulations concerning the safe construction, operation, or maintenance of pipelines on Federal lands and the Outer Continental Shelf.
Section 5 of the International Bridge Act of 1972.
Title I - - Hazardous Materials Transportation Safety Act of 1974.
Transportation of Explosives Act.

The functions of OPSO include.

Developing, approving, and enforcing compliance with safety regulations for the transportation of gases or hazardous liquids by pipeline.
Managing Federal grants to aid States in enforcing intrastate gas pipeline safety programs.
Improving the safety of transportation by pipeline.
Collecting, compiling, and analyzing pipeline safety and operating data.
Conducting training programs for government and industry personnel.

OPSO compliance and enforcement activities pertain to design, construction, testing, operation and maintenance of gas and liquid pipeline facilities transporting hazardous materials.

The regulations for which this office is responsible are:

49 CFR Parts 191 & 192 - Regulations for the Transportation of Natural and Other Gas by Pipeline

49 CFR Part 195 - Transportation of Liquids by Pipeline

Plans are to revise the safety regulations to make them more applicable to offshore facilities and will develop and propose updated standards for LNG transportation and storage facilities.

State agencies may assume gas pipeline safety regulatory responsibility over all or some of the intrastate gas facilities in their State. This responsibility has been accepted by most States and the State program is monitored by OPSO.

Although the Office of Pipeline Safety does not have a direct input in the management plan pertaining to feasibility and location of pipeline facilities it does have the responsibility during installation and operation of the facilities for protection of the environment and public safety.

Sincerely,

Jack C. Overly

Jack C. Overly, Chief
Western Region
Office of Pipeline Safety Operations

cc: Mr. Mike Wilmar
San Francisco Bay Conservation
and Development Committee
30 Van Ness Ave.
San Francisco, CA 94102

Mr. J. P. Gualandri
Special Staff Assistant
Office of Sec Rep
1 Embarcadero Center
San Francisco, CA

UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
SAN FRANCISCO OPERATIONS OFFICE
1333 BROADWAY
OAKLAND, CALIFORNIA 94612

RECEIVED
APR 20 1976
SAN FRANCISCO BAY CONSERVATION
& DEVELOPMENT COMMISSION

Mr. Charles R. Roberts
Executive Director
San Francisco Bay Conservation and
Development Commission
30 Van Ness Avenue
San Francisco, CA 94102

Subject: DRAFT COMMISSION MANAGEMENT PROGRAM FOR SAN

Dear Mr. Roberts:

I have reviewed your draft management program dealing with activities of Federal agencies in or affecting the BCDC segment of the coastal zone.

Your proposals for administering the "Federal consistency" provisions of the Act and the National Interest Statement do not impact present ERDA activities. Your plan is a reasonable approach and we have no comments to offer.

I appreciate the opportunity to review your program and will coordinate with you any future ERDA activities which may compact the San Francisco Bay Plan.

Sincerely,

for Robert D. Thorne
Manager

EFM:MKH

UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

CZM
JUN 15 PM 3:56
MAIL ROOM

RECEIVED
JUN 25 1976

June 11, 1976

TMA
RG
BM
TP

Mr. Richard R. Gardner
Office of Coastal Zone Management
U. S. Department of Commerce
National Oceanic and Atmospheric
Administration
Rockville, Maryland 20852

Dear Mr. Gardner:

We have reviewed the San Francisco Bay Conservation and Development Commission Coastal Management Program.

We have no comments other than to observe that it is an excellent plan of proven success.

Thank you for letting us review this material.

Sincerely,

Jeff Swinebroad

Jeff Swinebroad
Deputy Associate Director for
Research & Development Programs
Division of Biomedical and
Environmental Research

cc: Mike Wilmar, BCDC

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

OFFICE OF THE ASSISTANT ADMINISTRATOR

JUN 16 1976

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JUN 25 1976

CZM Information
TMA
RG
BM
TP

Mr. Robert Knecht
Assistant Administrator
for Coastal Zone Management
National Oceanic and Atmospheric
Administration
Page Building 1
Washington, D.C. 20235

Dear Mr. Knecht:

We are pleased to respond to your request of May 5, 1976, for comments on the coastal zone management program for the San Francisco Bay Area, California.

We are enclosing for your information a copy of the comments of April 15, 1976, furnished by our San Francisco Regional Office to the San Francisco Bay Conservation and Development Commission (BCDC). As stated, these comments were provided to seek further clarification and confirmation of the general policies set forth in the program submitted for approval. The natural resource characteristics of San Francisco Bay and exceptionally important energy questions related to delivery of Alaskan oil and new California OCS operations combined to make it especially important that BCDC continue to exchange views and work closely with Mr. William Arntz, FEA Regional Administrator San Francisco.

We note that Appendix III, which deals with various relevant California laws, does not include the Warren-Alquist State Energy Resources Conservation and Development Act. We request that this Act be included and that the program narrative be amended to clearly reflect relations between authorities of BCDC and the State Energy Resources Conservation and Development Commission. We would like an opportunity to review this material when it is developed.

Overall, we recognize that the Bay Area program reflects a management program which has functioned effectively for several years. We anticipate no difficulty in being able to concur in approval of this program once requested elements of clarification have been provided.

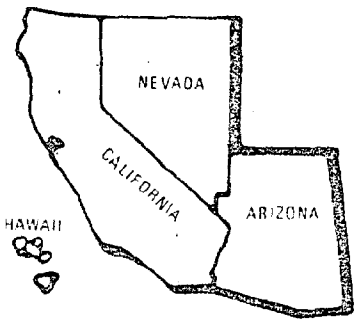
Sincerely,

William G. Rosenberg

William G. Rosenberg
Assistant Administrator
Energy Resource Development

Enclosure

FEDERAL ENERGY ADMINISTRATION
REGION IX
111 PINE STREET
SAN FRANCISCO, CALIFORNIA 94111



APR 15 1976

TO : Charles R. Roberts, Executive Director
San Francisco Bay Conservation and Development Commission

FROM : William Arntz, Regional Administrator

SUBJ : Draft Commission Management Program for San Francisco Bay

This is in response to your memo of April 6, 1976, requesting our comments on the draft BCDC Commission Management Program for the San Francisco Bay. The interest of the Federal Energy Administration in this plan primarily centers upon the provision for facilities to provide energy for the Bay AreaRegion and the Nation. The Management plan purports to provide for permissible uses in the "national interest" as well as to outline what constitutes a national interest in the San Francisco Bay.

In light of the projected shipment of Alaskan crude oil and gas to California and the potential use of California terminals to transship oil and gas to other areas of the country, it is extremely important that this role be further clarified. Specifically, it is important for BCDC to define just what it means by "providing for the national interest, " i.e. whether it intends to permit the development of petroleum and gas facilities for regional consumption only, or whatever it would be willing to provide for facilities to ship oil and gas to other regions of the country especially in light of their potential adverse environmental impact.

Specific comments on the Management Program for San Francisco Bay by the San Francisco Bay Conservation and Development Commission are as follows:

Page 15: Comments - The Management Program Plan states "uses that can be considered in the national interest are all permissable uses under the BCDC Management Program. These include ports; airports; facilities for energy production and transportation, such as power plants, petroleum off-loading facilities, pipelines and utility routes;" Further clarification is required here to determine the volume of petroleum off-loading facilities and pipelines that could be accommodated and specifically whether a BCDC plan would accommodate petroleum facilities to supply other areas of the country, as well as the Bay area.

Page 21: Comments - The program reads "and recognizing its responsibility to the rest of the Nation and its planning for the Bay, California, through the Commission has made every effort to consider the national interest in the siting of facilities." It would be useful to expand this section to describe just what efforts have been made to consider the national interest in the siting of petroleum and gas facilities in the Bay Area, especially those which would supply other areas of the country in addition to the Bay.

We ask for this clarification only in the interest of avoiding future conflict or confusion. Statements in many Coastal Zone Management Plans describe generally their interest in providing energy facilities in the national interest, but when it comes down to to permitting these types of facilities it has been our experience that these agencies apply a narrow parochial perspective and permit energy facilities only to supply regional consumption. The "willingness to accommodate the national interest" expressions in Coastal Management Plans are more often than not included to insure their receipt of Coastal Zone Management funds.

We would therefore be most interested to know specifically what is meant by accommodating the national interest in the siting of energy facilities in the BCDC plan.

Thank you very much for your consideration.

RECEIVED
SAN FRANCISCO ... CONSERVATION
& DEVELOPMENT COMMISSION

FEDERAL POWER COMMISSION
REGIONAL OFFICE
555 BATTERY STREET, ROOM 415
SAN FRANCISCO, CALIF. 94111

MAY 1976
CONSERVATION COMM.

May 19, 1976

Mr. Joseph E. Bodovitz
Executive Director
California Coastal Zone Conservation Commission
1540 Market Street
San Francisco, California 94102

Dear Mr. Bodovitz:

This is a response to your letter of April 30, 1976 which transmitted a draft of the report "National Interest in the Coast" for our review. We also have received your transmittal of May 14, 1976.

In the interest of accuracy the portion of Section 4 of the report which relates to Federal Power Commission licensing and permit authorities (page 6) should be revised as follows:

Federal Power Commission

(a) Licenses for construction and operation of hydroelectric generating projects including primary transmission lines.

(b) Certifications for interstate gas pipelines.

(c) Permits for construction and operation of facilities needed to import or export natural gas and electric energy.

These and other FPC activities and their statutory bases are described in greater detail in the enclosure.

Inasmuch as the Commission is an independent agency of the U. S. Government, operating within procedures established under Federal statutes, as published in 18 CFR 1 to 360 as Rules and Regulations of the Federal Power Commission, the procedures you are proposing in Section 4 of your report may present some conflicting problems. However, the FPC will comply with policy of the U. S. Congress as enunciated in Section 303 of the Coastal Zone Management Act of 1972 and will cooperate and coordinate its "activities" in the coastal zones to the "maximum extent practicable."

In this connection you may be interested to know that 18 CFR 2.81 and 2.82 and Part 9 of Appendices A and B thereto, require applicants for license or certificate, or for amendments thereto, to take steps necessary to comply with Federal, regional, State, and local laws and regulations for any permits needed to complete their proposals. The Commission has also established procedures for public hearings in which the Coastal Zone Commissions may wish to participate as intervenors supporting or opposing proposed projects (18 CFR 1.8).

We appreciate the opportunity to comment on your proposed report. When it is received at the Washington level I am sure our staff there, and possibly the Commission, will have further comments.

Very truly yours,

M. Frank Thomas

M. Frank Thomas
Regional Engineer

Enclosure

BASIC STATUTORY RESPONSIBILITIES OF THE
FEDERAL POWER COMMISSION
AS THEY MAY AFFECT COASTAL ZONE MANAGEMENT
PROGRAMS AND PLANNING

Pursuant to the Federal Power Act (FPA, 16 USC 791-825) and the Natural Gas Act (NGA, 15 USC 717) the Federal Power Commission has statutory responsibilities for certain water and related land and for land development programs in the United States which could impact on coastal zone planning and management programs under the requirements of the Coastal Zone Management Act of 1972. These statutory responsibilities include the following:

1. To issue licenses to non-Federal entities for the construction, operation, and maintenance of dams, powerhouses, transmission lines or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission and utilization of power, where lands and waters of the U. S. are affected or the power is in interstate commerce, or for the purpose of utilizing surplus water from any government dam (Section 4(e), FPA).

2. To reserve from entry, location, or other disposal any lands of the United States included in any proposed non-Federal project from the date of filing of the application until otherwise directed by the Commission or by Congress (Section 24, FPA).

3. "For the purpose of assuring an abundant supply of electric energy throughout the U. S. with the greatest possible economy and with regard to the proper utilization and conservation of natural resources," to provide for the voluntary interconnection and coordination of facilities by regions within the U. S. (Section 202(a) FPA).

4. To regulate the unregulated transmission by non-Federal entities and the wholesaling of electric energy in interstate commerce (Sections 19, 20, 201, FPA).

5. To issue permits for the construction, operation, and maintenance, or connection, at the borders of the United States, of facilities for the transmission of electric energy between the United States and a foreign country, or the exportation or importation of natural gas (including LNG), to or from a foreign country (Executive Order 10485, Section 202(e) FPA, Section 3, NGA).

APPENDIX II

Public Hearings

PUBLIC HEARINGS

STATE OF CALIFORNIA EDMUND G. BROWN JR., Governor

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
VAN NESS AVENUE
FRANCISCO, CALIFORNIA 94102
PHONE: 557-3686

April 19, 1976

TO: All Participating Federal Agencies
FROM: Charles R. Roberts, Executive Director

SUBJECT: SUMMARY OF PUBLIC HEARING ON BCDC MANAGEMENT PROGRAM FOR SAN FRANCISCO BAY

The public hearing on the Commission's draft management program for San Francisco Bay was held on April 15, 1976. The following is a list of the speakers at the hearing and a summary of their remarks:

Mr. Tom Hofweber, representing "P. A. C. E." said he had received the draft only a short time before the hearing and had not had enough time to respond completely. He also questioned the adequacy of the 100-foot shoreline band as an inland boundary of the BCDC segment of the coastal zone.

In response, Chairman Houghteling said that distribution was delayed by a malfunction in the Commission's reproduction equipment and comments could be submitted in writing up to May 5, 1976. He also pointed out that the program called for a reevaluation of the Commission's boundary in the 18-month period following final action by the California Legislature on the future of the Coastal Commission.

Mrs. Clark Kerr, representing the Save San Francisco Bay Association, said she thought the program should indicate that, in addition to other effects on the Bay, filling also reduces the capacity of the tidal basin and affects currents. She also pointed out that it may be impossible to design some facilities to reduce the hazards of construction on Bay fill to acceptable levels. Mrs. Kerr also asked if some reference could not be made to the amendment procedures specified in the McAteer-Petris Act.

In response, Michael Wilmar, Deputy Director, said the staff believed that these suggestions could all be incorporated in the final draft of the management program.

APPENDIX III

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

McATEER-PETRIS ACT

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
30 Van Ness Avenue, San Francisco 94102 557 - 3686

May, 1974

THE McATEER-PETRIS ACT
(As amended through the 1973 Legislative Session)

The McAteer-Petris Act, which created the San Francisco Bay Conservation and Development Commission, was enacted in 1965 and amended slighty in 1968. Extensive further amendments were made by Chapter 713 of the 1969 Regular Session (AB 2057), effective November 10, 1969. Subsequent amendments were made as follows:

Acts of the 1970 Regular Session of the Legislature (effective November 23, 1970):

Chapter 998 (AB 1200) -- Changed the date in Section 66611.

Chapter 1179 (AB 1771) -- Added a second paragraph to Section 66622.

Chapter 1279 (AB 1971) -- Added subdivision (e) to Section 66610.

Acts of the 1971 Regular Session of the Legislature (effective March 4, 1972):

Chapter 1339 (SB 1533) -- Changed Section 66620 (b), replacing HEW with EPA, and added to second paragraph of Section 66632 (a) authorization to charge permit filing and processing fees of government agencies.

Chapter 1639 (AB 1860) -- Added third paragraph to Section 66632 (a), making violation of Act a misdemeanor.

Acts of the 1972 Regular Session of the Legislature (effective March 7, 1973):

Chapter 373 (SB 34) -- Amended Sections 66611 and 66652 to authorize changes of adopted boundaries of water-oriented priority uses within the 100-foot shoreline band, under specified conditions.

Chapter 607 (SB 793) -- Amended Section 66610 to place portions of Corte Madera Creek within BCDC jurisdiction.

Chapter 651 (SB 181) -- Amended Section 66622 with regard to alternates to county representatives on BCDC.

Acts of the 1973 Regular Session of the Legislature (effective January 1, 1974):

Chapter 766 (SB 1316) -- Added Sections 66637 through 66641 to provide for issuance of cease and desist orders by the Commission and its executive director under specified circumstances, and to provide penalties for violation.

Chapter 835 (AB 1804) -- Added Section 66656.1 to provide for procedures for filing and determining claims of exemption from BCDC jurisdiction.

The composite text of the McAteer-Petris Act as of May 7, 1974, is as follows:

CALIFORNIA
GOVERNMENT CODE

TITLE 7.2. SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

CHAPTER 1. FINDINGS AND DECLARATIONS OF POLICY

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

66601. The Legislature further finds and declares that uncoordinated, haphazard filling in San Francisco Bay threatens the bay itself and is therefore inimical to the welfare of both present and future residents of the area surrounding the bay; that while some individual fill projects may be necessary and desirable for the needs of the entire bay region, and while some cities and counties may have prepared detailed master plans for their own bay lands, a governmental mechanism must exist for evaluating individual projects as to their effect on the entire bay; and that further piecemeal filling of the bay may place serious restrictions on navigation in the bay, may destroy the irreplaceable feeding and breeding grounds of fish and wildlife in the bay, may adversely affect the quality of bay waters and even the quality of air in the bay area, and would therefore be harmful to the needs of the present and future population of the bay region.

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

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

66603. The Legislature further finds and declares that the San Francisco Bay Conservation and Development Commission, treating the entire bay as a unit, has made a detailed study of all the characteristics of the bay, including: the quality, quantity, and movement of bay waters, the ecological balance of the bay, the economic interests in the bay, including the needs of the bay area population for industry and for employment, the requirements of industries that would not pollute the bay nor interfere with its use for recreation or other purposes, but would need sites near deepwater channels; that the study has examined all present and proposed uses of the bay and its shoreline, and the master plans of cities and counties around the bay; and that on the basis of the study the commission has prepared a comprehensive and enforceable plan for the conservation of the water of the bay and the development of its shoreline, entitled the San Francisco Bay Plan.

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

66605. The Legislature further finds and declares:

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

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

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

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

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

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

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

66605.1. The Legislature finds that in order to make San Francisco Bay more accessible for the use and enjoyment of people, the bay shoreline should be improved, developed and preserved. The Legislature further recognizes that private investment in shoreline development should be vigorously encouraged and may be one of the principal means of achieving bay shoreline development, minimizing the resort to taxpayer funds; therefore, the Legislature declares that the commission should encourage both public and private development of the bay shoreline.

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

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

66606.6. Nothing in this title shall deny the right of private property owners and local governments to establish agricultural preserves and enter into contracts pursuant to the provisions of the California Land Conservation Act of 1965. The commission, within six months after the effective date of this section, shall institute an affirmative action program to encourage local governments to enter into contracts under the California Land Conservation Act of 1965 with owners of property to which the provisions of that act may be applicable.

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

Chapter 2. Definition of San Francisco Bay

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

(a) San Francisco Bay, being all areas that are subject to tidal action from the south end of the bay to the Golden Gate (Point Bonita-Point Lobos) and to the Sacramento River line (a line between Stake Point and Simmons Point, extended northeasterly to the mouth of Marshall Cut), including all sloughs, and specifically, the marshlands lying between mean high tide and five feet above mean sea level; tidelands (land lying between mean high tide and mean low tide); and submerged lands (land lying below mean low tide).

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

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

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

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

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

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

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

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

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

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

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

(8) Corte Madera Creek in Marin County to the downstream end of the concrete channel on Corte Madera Creek which is located at the United States Army Corps of Engineers Station No. 318+50 on the Corte Madera Creek Flood Control Project.

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

66611. No later than December 1, 1971, the commission, after public hearing, of which adequate descriptive notice is given, shall adopt and file with the Governor and the Legislature a resolution fixing and establishing within the shoreline band the boundaries of the water-oriented priority land uses, as referred to in Section 66602. After such filing the commission may change such boundaries in the manner provided by Section 66652 for San Francisco Bay Plan maps. Such change will become effective only if authorized by an affirmative vote of two-thirds of the commission's members and, where the change involves a reduction or elimination of a priority use area which has been so designated because of contemplated acquisition necessary to implement the priority use, upon a finding that there is no substantial probability that a public agency will be committed to acquiring the area within the period prescribed by Section 66632.3 assuming the area were to be listed in the next report authorized by Section 66630.1. No other changes shall be made in such boundaries, except with the approval of the Legislature.

CHAPTER 3. SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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

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

(b) One member by the Administrator of the United States Environmental Protection Agency, from his staff.

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

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

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

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

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

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

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

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

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

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

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

Each city representative must be an elected city official.

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

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

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

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

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

[Subdivision (k) has been redesignated Subdivision (j)]

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

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

Chapter 4. Powers and Duties of the Commission

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

66630.1. The continuing review, among other things, shall include studies concerning properties within the area of the commission's jurisdiction which, in the opinion of the commission, might be acquired by public agencies for public use. Based on such studies the commission shall annually prepare a report setting forth the general location of such properties, the interest or interests proposed to be acquired therein, the public uses recommended therefor, the public agencies recommended to make the proposed acquisitions, the estimated cost of the proposed acquisitions and recommendations for financing such cost. Each annual report shall cover proposed acquisitions during a three-year period commencing January 1 after the date of the report and shall indicate any material changes made with respect to the report for the previous year. Not later than the fifth legislative day of each regular session of the Legislature, commencing with the 1971 Regular Session, the commission shall file such report with the Governor and Legislature.

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

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

The commission may require a reasonable filing fee and reimbursement of expenses for processing and investigating a permit application from all applicants before the commission including government agencies, notwithstanding the provisions of Section 6103 of this code.

Any person who places fill, extracts materials or makes any substantial change in the use of any water, land, or structure within the area of the commission's jurisdiction without securing a permit from the commission as required by this title is guilty of a misdemeanor.

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

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

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

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

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

(f) The commission shall take action upon an application for a permit, either denying or granting the permit, within 90 days after it receives the report (or, if the city council or the board of supervisors did not file a report with the commission within the 90-day period, within 90 days after the expiration of such 90-day period), or within 90 days after it receives an application from the applicant, whichever date is later. The permit shall be automatically granted if the commission shall fail to take specific action either denying or granting the permit within the time period specified in this section. A permit shall be granted for a project if the commission finds and declares that the project is either (1) necessary to the health, safety or welfare of the public in the entire bay area, or (2) of such a nature that it will be consistent with the provisions of this title and with the provisions of the San Francisco Bay Plan then in effect. To effectuate such purposes, the commission may grant a permit subject to reasonable terms and conditions including the uses of land or structures, intensity of uses, construction methods and methods for dredging or placing of fill. Thirteen affirmative votes of members of the commission are required to grant a permit. Neither of the federal representatives who are members of the commission may vote on whether

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

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

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

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

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

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

66632.1. Nothing in this title shall apply to any project where necessary local governmental approval and a Department of the Army Corps of Engineers permit have been obtained to allow commencement of the diking or filling process, and where such diking or filling process has commenced prior to the effective date of this title, nor to the continuation of dredging under existing Department of the Army Corps of Engineers permits.

[Compare with Sec. 66656, which appears to overlap]

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

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

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

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

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

66633. The commission may:

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

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

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

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

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

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

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

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

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

66637. (a) When the executive director determines that any person has undertaken, or is threatening to undertake, any activity that (1) may require a permit from the commission without securing a permit; or (2) may be inconsistent with any permit previously issued by the commission, he may issue an order directing such person to cease and desist.

(b) Any cease and desist order issued by the executive director may be subject to such terms and conditions as the executive director may determine are necessary to ensure compliance with the provisions of this title, including the immediate removal of any fill or other material where such removal is necessary to avoid irreparable injury to any area within the jurisdiction of the commission pending action by the commission under Section 66638.

(c) Any cease and desist order issued by the executive director shall become null and void 30 days after issuance.

(d) A cease and desist order issued by the executive director shall be effective upon the issuance thereof, and copies shall be served forthwith by certified mail upon the person being charged with the actual or threatened violation of this title.

66638. (a) When the commission, after public hearing, determines that any person has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing a permit, or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order requiring such person to cease and desist.

(b) Any cease and desist order issued by the commission may be subject to such terms and conditions as the commission may determine are necessary to insure compliance with the provisions of this title, including immediate removal of any fill or other material or the setting of a schedule within which steps must be taken to obtain a permit pursuant to this title.

(c) Notice of the public hearing on a proposed cease and desist order shall be given to all affected persons and such orders shall be effective and final as to the commission upon issuance thereof. Copies shall be served forthwith by certified mail upon the person being charged with the actual or threatened violation of this title and upon other affected persons who appeared at the hearing and requested a copy.

66639. (a) Within 30 days after service of a copy of a cease and desist order issued by the executive director under Section 66637 or the commission under Section 66638, any aggrieved party may file with the superior court a petition for writ of mandate for review thereof pursuant to Section 1094.5 of the Code of Civil Procedure. Failure to file such an action shall not preclude a party from challenging the reasonableness and validity of an order of the executive director or the commission in any judicial proceedings brought to enforce such order or for other civil remedies.

(b) The evidence before the court in any proceeding to review an order of the commission described in subdivision (a) shall consist of the record before the commission, and in cases where it is claimed that the findings are not supported by the evidence, abuse of discretion is established only if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

66640. (a) Upon the failure of any person to comply with any cease and desist order issued by the commission, the Attorney General, upon request of the commission, shall petition the superior court for the issuance of a preliminary or permanent injunction, or both, as may be appropriate, restraining such person or persons from continuing any activity in violation of the cease and desist order.

(b) The evidence before the court shall consist of the record before the commission, and any other relevant evidence which, in the judgment of the court, should be considered to effectuate and implement the policies of this title. In every such case, the court shall exercise its independent judgment on the evidence.

(c) The court shall issue an order directing defendants to appear before the court at a time and place certain and show cause why the injunction should not be issued. The court may grant such prohibitory or mandatory relief as may be warranted.

(d) The court may stay the operation of the cease and desist order after notice of the commission and hearing. Any such stay may be imposed or continued only if it is not against the public interest.

66641. (a) Any person who intentionally or negligently violates any cease and desist order issued, reissued, or amended by the commission or the executive director may be liable civilly in a sum of not to exceed six thousand dollars ($6,000) for each day in which such violation persists.

(b) The Attorney General, upon request of the commission, shall petition the superior court to impose, assess and recover such sums. In determining such amount, the court shall take into consideration all relevant circumstances, including but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs and corrective action, if any, taken by the person charged.

(c) The provisions of Section 66640 shall apply to proceedings to impose, assess and recover an amount pursuant to this article.

(d) Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal.

SEC. 6. Section 66642 is added to the Government Code, to read:

66642. (a) Every civil action brought under the provisions of this division at the request of the commission shall be brought by the Attorney General in the name of the people of the State of California and any such actions relating to the same violation may be joined or consolidated.

(b) Any civil action brought pursuant to this division shall be brought in a county in which the alleged violation is occurring or may occur. However, any action by or against a city, city and county, county, or other public agency shall, upon motion of either party, be transferred to a county or city and county not a party to the action or to a county or city and county other than that in which the city or public agency is located.

CHAPTER 5. THE SAN FRANCISCO BAY PLAN AND FURTHER REPORTS OF THE COMMISSION

66650. This title shall be known and may be cited as the McAteer-Petris Act. [Formerly Sec. 66653]

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

(a) The objectives of the plan;

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

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

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

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

Such changes shall be made by resolution of the commission adopted after public hearing on the proposed change, of which adequate descriptive notice shall be given. If the proposed change pertains to a policy or standard contained in the San Francisco Bay Plan, or defines a water-oriented use referred to in Section 66602 or 66605, the resolution adopting the change shall not be voted upon less than 90 days following notice of hearing on the proposed change and shall require the affirmative vote of two-thirds of the commission members. If the proposed change pertains only to a map or diagram contained in the San Francisco Bay Plan, the resolution adopting the change shall not be voted on less than 30 days following notice of hearing on the proposed change, except that changes proposed under Section 66611 shall not be voted on less than 90 days following such notice, and shall, except as provided by Section 66611, require the affirmative vote of the majority of the commission members.

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

66654. Within the area of the commission's jurisdiction under subdivisions (b), (c) and (d) of Section 66610, any uses which are in existence on the effective date of this section may be continued, provided, that no substantial change shall be made in such uses except in accordance with this title.

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

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

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

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

66656.1. (a) Any person claiming an exemption from the permit requirements of Section 66632 for placement of fill within the area of the commission's jurisdiction under subdivisions (a), (c), and (d) of Section 66610 after the effective date of this section, through reliance upon Section 66632.1, 66655 or 66656 shall, within 90 days after the effective date of this section, notify the commission by filing a claim of exemption with the commission. Failure of any person to file a claim of exemption within such time shall subject such activity of such person within such area of the commission's jurisdiction to the permit requirements of this act. [April 1, 1974]

(b) The commission shall, by regulation, establish procedures, including public hearings, for determining claims of exemption and may require documentation, including declarations under penalty of perjury or affidavits, to support any claim of exemption.

(c) The commission shall take reasonable steps to notify persons of this section, but the failure of any person to receive such notice shall not extend the period within which a claim of exemption must be filed under this section.

(d) This section shall not apply either to any person who has received a written determination by or on behalf of the commission prior to the effective date of this section that a specific project is exempt from the provisions of this act; or to any person who is a party to a written agreement with the commission relating to a claim of exemption.

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

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

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

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

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

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

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

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

SUISUN MARSH PRESERVATION ACT
AND
MAP

Senate Bill No. 1981

CHAPTER 1486

An act to add Chapter 9 (commencing with Section 1850) of Division 2 of the Fish and Game Code, relating to the Suisun Marsh, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1974. Filed with Secretary of State September 27, 1974.]

I am reducing the appropriation contained in Section 2 of Senate Bill No. 1981 from $4,190,000 to $190,000 by deleting the following subparagraphs.

(c) From the Bagley Conservation Fund, pursuant to the provisions of Item 383.5 of the Budget Act of 1975 (Chapter 375 of the Statutes of 1974), to the Wildlife Conservation Board 2,000,000

(d) From the funds remaining in the Bagley Conservation Fund after the expenditure of those sums actually required to implement the programs funded by Item 318.2 of the Budget Act of 1972 and by Item 350 of the Budget Act of 1973, as determined by the Director of Finance, to the Wildlife Conservation Board 2,000,000

The funding provided in (c) and (d) is unnecessary as I have already approved other legislation which provides funding for this project.

With this reduction, I approve Senate Bill No. 1981.

RONALD REAGAN, Governor

LEGISLATIVE COUNSEL'S DIGEST

SB 1981, Nejedly. Suisun Marsh; wildlife protection.

Enacts the Nejedly-Bagley-Z'berg Suisun Marsh Preservation Act of 1974, requiring, among other things, the preparation by the Department of Fish and Game of the fish and wildlife element of the Suisun Marsh Protection Plan for submission to the San Francisco Bay Conservation and Development Commission by January 1, 1976, the preparation by the commission of a Suisun Marsh Protection Plan for submission to the Governor and Legislature on or before December 1, 1976, and the preparation by the department of specified detailed studies. Specifies the subject matter and objectives of the plan. Permits the County of Solano and cities within the county to conduct a study of specified plans for inclusion, subject to specified approval, in the plan. Specifies boundaries of the marsh zone, the buffer zone, and the special study zone for purposes of the act.

Specifies effect of act on powers of the commission.

Specifies that, in order to allow time for the orderly preparation of the Suisun Marsh Protection Plan, until January 1, 1978, no development shall be permitted by any local governmental agency within the marsh zone, the buffer zone, or the special study zone which is either inconsistent with specified legislative findings or which does not conform to either the zoning ordinances of the agency which were in effect on January 1, 1974, or the land uses depicted in specified element of the Solano County General Plan, whichever is the lower land use classification. Exempts specified development from such restriction.

Requires the Wildlife Conservation Board to acquire, and the Department of Fish and Game to administer, fee title or lesser interests in those lands within or adjacent to the buffer zone that the board finds require prompt acquisition because of their critical importance to the integrity and continued wildlife use of the marsh.

Prohibits the exercise of eminent domain for such acquisitions outside the marsh in specified areas.

Authorizes the Wildlife Conservation Board to have the State Public Works Board make such acquisitions under the Property Acquisition Law until January 1, 1978, and requires any such acquisitions to be made under such law after that date.

Appropriates $4,190,000 for the purposes of the act from specified sources to the Department of Fish and Game, the San Francisco Bay Conservation and Development Commission, and the Wildlife Conservation Board in accordance with a specified schedule.

Provides that, notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to that section nor any appropriation made by the act for a specified reason.

To take effect immediately, urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 9 (commencing with Section 1850) is added to Division 2 of the Fish and Game Code, to read:

CHAPTER 9. SUISUN MARSH PRESERVATION

Article 1. General Provisions

1850. This chapter shall be known and may be cited as the Nejedly-Bagley-Z'berg Suisun Marsh Preservation Act of 1974.

1851. The Legislature hereby finds and declares that the Suisun Marsh, consisting of approximately 55,000 acres of marsh land and 30,000 acres of bays and sloughs, comprising almost 10 percent of the remaining natural wetlands in California, plays an important role in providing wintering habitat for waterfowl of the Pacific Flyway; that during years of drought the area becomes particularly important to waterfowl by virtue of its large expanse of aquatic habitat and the scarcity of such habitat elsewhere; that the area provides critical habitat for other wildlife forms, including such endangered, rare, or unique species as the peregrine falcon, white-tailed kite, bald eagle, California clapper rail, black rail, salt-marsh harvest mouse and Suisun shrew; that the existence of this wide variety of wildlife is due to the relatively large expanse of unbroken native habitat and the

diversity of vegetation and aquatic conditions that prevail in the marsh; that man is an integral part of the present marsh ecosystem and, to a significant extent, exercises control over the widespread presence of water and the abundant source of waterfowl foods; that the Suisun Marsh represents a unique and irreplaceable resource to the people of the state and nation; that the future of the wildlife value of the area is threatened by potential residential, commercial and industrial developments; and that it is the policy of the state to preserve and protect resources of this nature for the enjoyment of the current and succeeding generations.

1852. The Legislature further finds and declares that in order to preserve the integrity and assure continued wildlife use of the Suisun Marsh, including the preservation of its waterfowl-carrying capacity and retention of the diversity of its flora and fauna, there is a need for all of the following:

(a) Establishment of criteria for the production of valuable waterfowl food plants.

(b) Improvement of present water management practices, including drainage and other water control facilities.

(c) Provisions for supplemental water supplies to assure their availability when needed.

(d) Development and implementation of plans and policies to protect the marsh from degradation by excessive human use.

(e) Definition and establishment of a buffer zone consisting of upland areas that have high wildlife values themselves and also contribute to the integrity and continued wildlife use of the wetlands within the marsh zone.

1853. In enacting this chapter, it is not the intent of the Legislature to establish a right to perform development outside the boundaries prescribed in this chapter.

Article 2. Definitions

1860. "Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision of land pursuant to the Subdivision Map Act (Chapter 2 (commencing with Section 11500) Part 2, Division 4 of the Business and Professions Code) and any other division of land, including lot splits; change in the intensity of use of water, ecology related thereto, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility, and the removal or logging of major vegetation. As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone

line, and electrical power transmission and distribution line.

1861. "Department" means the Department of Fish and Game.

1862. "Commission" means the San Francisco Bay Conservation and Development Commission specified in Section 66620 of the Government Code.

1863. "Board" means the Wildlife Conservation Board.

1864. "Marsh zone" means those contiguous areas of lands, marshes, ponds, sloughs, and bays lying within the boundary of the buffer zone which are below the five-foot contour line as shown on the United States Geological Survey 1:24,000 maps for the area. At those points where the five-foot contour crosses and is exterior to the boundary described in Section 1865, the boundary described in Section 1865 shall be considered the boundary of both the marsh zone and the buffer zone.

1865. "Buffer zone" means those lands, ponds, sloughs, and bays which are external to the marsh zone, but internal to the following boundary:

Starting at a point on Suisun Bay approximately one mile northeast of the Benicia-Martinez Bridge, being the northern boundary of the Benicia Arsenal Military Reservation shown on the Point Chicago Quadrangle, 3800-W12200/7.5; thence northwesterly along such boundary to the edge of the easterly Southern Pacific Transportation Company right-of-way; thence northerly along the eastern side of the easterly Southern Pacific Transportation Company right-of-way to the section line between Sections 17 and 20, T. 3N., R. 2W; thence westerly along said section line to the eastern edge of the right-of-way of State Highway 21; thence northerly along the eastern edge of the right-of-way of State Highway 21 to the interchange in Sec. 19, T. 4N., R. 2W; thence northerly on the quarter section line of Secs. 7 and 18 to the city limit of the City of Fairfield; thence easterly along the city limit of the City of Fairfield to the southeastern corner of the city limits of the City of Fairfield approximately one-half mile west of the city limits of the City of Suisun; thence easterly to the Grizzly Island Road bridge at Hill Slough; thence northerly along the eastern edge of the right-of-way of Grizzly Island Road to the half section line of Sec. 31, T. 5N., R. 1W; thence easterly along the half section line of Sections 31, 32, and 33 to its intersection with State Highway 12; thence easterly along the southern edge of the right-of-way of State Highway 12 to the intersection of State Highway 12 and the west one quarter section line of Sec. 5, T. 4N., R. 1E.; thence south along the quarter section line of Sections 5, 8, 15, 20, 29, and 32, T. 4N., R. 1E., and Section 5, T. 3N., R. 1E. to its intersection with Montezuma Slough; thence southerly along the western boundary of the eastern levee of Montezuma Slough to Suisun Bay; thence southwesterly across the mouth of Montezuma Slough, along the shoreline of the south side of Van Sickle Island and Chipps Island to Simmons Point; thence northerly and then westerly around Honker Bay along the shoreline

of Chipps Island, Van Sickle Island, Wheeler Island, and Dutton Island to a point on Dutton Island immediately north of Point Palo Alto (on Snag Island), and then south to Point Palo Alto on Snag Island; thence westerly from Point Palo Alto on a line to the southernmost tip of Roe Island, and along the south shore of Roe Island to Preston Point; thence northerly on a line to Garnet Point on Ryer Island; thence on a line across the Suisun Cutoff to Point Buckler on Simmons Island, and then easterly, northerly and westerly around the shoreline of Grizzly Bay and across the mouths of Montezuma and Suisun Slough; thence southwesterly along the western shore of Grizzly and Suisun Bays to the point of beginning. All references to county parcel boundaries taken from Assessor's Map Book 32, p. 20, and Book 46, p. 02, County of Solano, California, 1973–74. Section, range, and township locations are referenced to the Mount Diablo Meridian.

1866. "Special study zone" means those lands in:

(a) Sections 7, 18 and 19 Township 4 North, Range 2 West and Sections 12 and 13, Township 4 North, Range 3 West lying south of the Southern Pacific Transportation Company right-of-way, west of the external boundary of the buffer zone and east of the right-of-way of State Highway 21;

(b) Sections 31, 32, and 33, Township 5 North, Range 1 West lying east of the right-of-way of the Grizzly Island Road, south of the right-of-way of State Highway 12, and north of the half section line of Sections 31, 32, and 33, Township 5 North, Range 1 West.

1867. "Suisun Marsh" or "marsh" means the marsh zone, the buffer zone, and the special study zone.

Article 3. Suisun Marsh Protection Plan

1870. The department, after public hearings and in cooperation with the Suisun Resource Conservation District, the County of Solano, and other appropriate local, regional, state, and federal governmental agencies, educational institutions, civic and public interest organizations, and private organizations and individuals, shall prepare and submit to the commission the fish and wildlife element of the Suisun Marsh Protection Plan.

1871. The element shall be based upon detailed studies of all the factors that significantly affect the fish and wildlife of the marsh and shall set forth those administrative and legislative actions necessary to preserve the integrity and assure continued wildlife use of the marsh.

1872. The commission, after public hearings and in cooperation with the Suisun Resource Conservation District, the County of Solano, and other appropriate local, regional, state, and federal governmental agencies, educational institutions, civic and public interest organizations, and private organizations and individuals, shall prepare and submit to the Governor and the Legislature a

Suisun Marsh Protection Plan.

1873. The plan shall be based upon detailed studies of all the factors that significantly affect the marsh and shall consist of such maps, text, and statements of policies and objectives as the commission determines are necessary to preserve the integrity, and assure continued wildlife use, of the marsh.

1874. In preparing the element and the plan, the department and the commission shall give consideration to the appropriate agency to administer the plan, to state or federal acquisition of additional lands in the marsh and to programs and policies that would assure retention of the existing large tracts of private land in the marsh for waterfowl and wildlife use, including, but not limited to the following:

(a) Tax incentives to private land owners who manage their lands so as to maximize their value as wildlife habitat.

(b) Direct government subsidy similar to the land bank program or agricultural subsidies.

(c) Assistance by way of preferential treatment in providing improvements such as water supplies and control structures and drainage facilities in return for owner guarantees that their properties will continue to be used for wildlife purposes.

(d) Assistance by way of preferential treatment in locating water transmission pipelines in, or immediately adjacent to, existing or former railroad rights-of-way, if any such pipeline assists in contributing to a supplemental water supply for the marsh or conveying water to other areas of public need.

(e) Appropriate zoning ordinances.

1875. The department shall submit the element to the commission not later than January 1, 1976, and the commission shall submit the plan to the Governor and the Legislature not later than December 1, 1976.

1876. The plan shall contain all of the following:

(a) The results of the detailed studies made by the department and the commission.

(b) An estimate of the amount of money that will be necessary to maintain and carry out the plan, including, but not limited to, an estimate of the amount of money that will be necessary to purchase real property which may be recommended for purchase for public use, and an indication of the possible sources of funding for such purposes.

(c) Such other information and recommendations as is deemed desirable.

1877. The County of Solano, or any city within the County of Solano, may conduct a study to determine the impact on the Suisun Marsh of development of the special study zone lands defined in Section 1866 and the results of such study, if approved by the department and the commission, shall be included in the Suisun Marsh Protection Plan.

1878. No provision of this chapter is intended to increase or decrease the area of jurisdiction of the commission as it is defined in Section 66610 of the Government Code. Notwithstanding any other provisions of law, and in order to allow time for orderly preparation of the Suisun Marsh Protection Plan, until January 1, 1978, any development within the area of jurisdiction of the commission, as defined in Section 66610 of the Government Code, and which is also within the marsh shall be subject to the permit process contained in Section 66632 of the Government Code. Notwithstanding the provisions of Section 66632 of the Government Code, the commission shall grant permits for such developments if it finds that the developments are (1) not injurious to health, safety, or welfare of the general public, (2) of a nature that will not prejudice the plan under preparation, and (3) consistent with the findings and declaration set forth in Sections 1851 and 1852; provided, however, that no permits shall be required for the following:

(a) Emergency repairs to existing public highways which are in the interest of the public safety or welfare, provided that such repairs shall not change the nature or density of the use of such public highways as compared to the use of the highways prior to the repairs.

(b) Operation, maintenance, repair, or replacement in kind of any distribution or related facility or existing transmission or generating facility necessary for the purpose of supplying electric, gas, or communication service to any person lawfully entitled thereto, or for the construction of such facilities to service any discrete development for which a permit has been granted by the commission.

1879. Notwithstanding any other provision of law or regulation of any local governmental agency, and in order to allow time for the orderly preparation of the Suisun Marsh Protection Plan, until January 1, 1978, no development shall be permitted by any such agency within the marsh zone, the buffer zone, or the special study zone which is either inconsistent with the findings and declaration set forth in Sections 1851 and 1852 or which does not conform to either the zoning ordinances of the appropriate governmental agency which were in effect on January 1, 1974, or the land uses depicted in the resource conservation and open space element of the Solano County general plan as filed with the State of California on June 25, 1973, and November 27, 1973, in compliance with the requirements of Section 65563 of the Government Code, whichever is the lower land use classification; provided, however, that this section shall not apply to any of the following:

(a) Developments authorized and for which a vested right was obtained thereunder prior to the effective date of this act.

(b) The construction of a regional sewage treatment plant.

(c) The exploration for and development, production, and transmission of natural gas.

(d) The continued conduct of the existing industrial use on those lands in Sections 11 and 12, Township 4 North, Range 1 West, Mt. Diablo Meridian, owned or leased by an industrial activity as of August 1, 1974.

(e) The disposal of dredge material on Goat Island as may be authorized by law.

(f) Developments permitted pursuant to the provisions of Section 1877.

1880. To assist in achieving the intent and purpose of this act the board shall acquire, and the department shall administer in the name of the state, fee title or such lesser interest as the board may determine appropriate in those lands within or adjacent to the buffer zone that the board finds require prompt acquisition because of their critical importance to the integrity and continued wildlife use of the marsh; but nothing in this chapter shall authorize the exercise of eminent domain for the acquisition of fee title or a lesser interest in lands that are exterior to the boundary of the Suisun Marsh and are described as follows:

(a) Lands in Sections 4, 5, 8, 9, 16, 17, 20, and 21, T. 3N., R. 1E., lying southerly of the Birds Landing-Meins Landing Road, easterly of the boundary of the Suisun Marsh, and westerly of the right-of-way of the Sacramento Northern Railway and Sections 28 and 29, T. 3N., R. 1E.

(b) Lands in Sections 20, 29, 30, and 31, T. 3N., R. 2W., lying between the southerly right-of-way of State Highway 21 and the exterior boundary of the Suisun Marsh.

1881. Until January 1, 1978, the board may make such acquisitions by direct purchase or may authorize the State Public Works Board to make any such acquisition, and the State Public Works Board is hereby authorized to make such acquisitions pursuant to the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code). After January 1, 1978, any such acquisition, if made, shall be made for the board by the State Public Works Board pursuant to the Property Acquisition Law.

1882. The provisions of this chapter shall not operate to interfere with the jurisdiction and authority of the State Lands Commission as set out in Division 6 (commencing with Section 6001) of the Public Resources Code.

1883. The provisions of Sections 66637 to 66642, inclusive, of the Government Code shall apply to all actions for which permits of the commission may be required under this chapter.

SEC. 2. The sum of four million one hundred ninety thousand dollars ($4,190,000) is hereby appropriated for expenditure without regard to fiscal years for the purposes of this act in accordance with the following schedule:

(a) From the California Environmental Protection Program Fund to the Department of Fish and Game $95,000

(b) From the California Environmental Protection Program Fund to the San Francisco Bay Conservation and Development Commission	95,000
(c) From the Bagley Conservation Fund, pursuant to the provisions of Item 383.5 of the Budget Act of 1975 (Chapter 375 of the Statutes of 1974), to the Wildlife Conservation Board.....	2,000,000
(d) From the funds remaining in the Bagley Conservation Fund after the expenditure of those sums actually required to implement the programs funded by Item 318.2 of the Budget Act of 1972 and by Item 350 of the Budget Act of 1973, as determined by the Director of Finance, to the Wildlife Conservation Board.....	2,000,000

SEC. 3. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to that section nor shall there be an appropriation made by this act because the duties, obligations, or responsibilities imposed on local government by this act are minor in nature and will not cause any financial burden to local government.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

Rapid urbanization of the land areas adjacent to the Suisun Marsh has created environmental and economic pressures on the marsh which pose an urgent and immediate threat to the continued viability of the marsh as a wildlife habitat of nationally recognized critical importance. In order to ensure that the protection contemplated by this act will be effective, it is necessary that the provisions of this act go into immediate effect.

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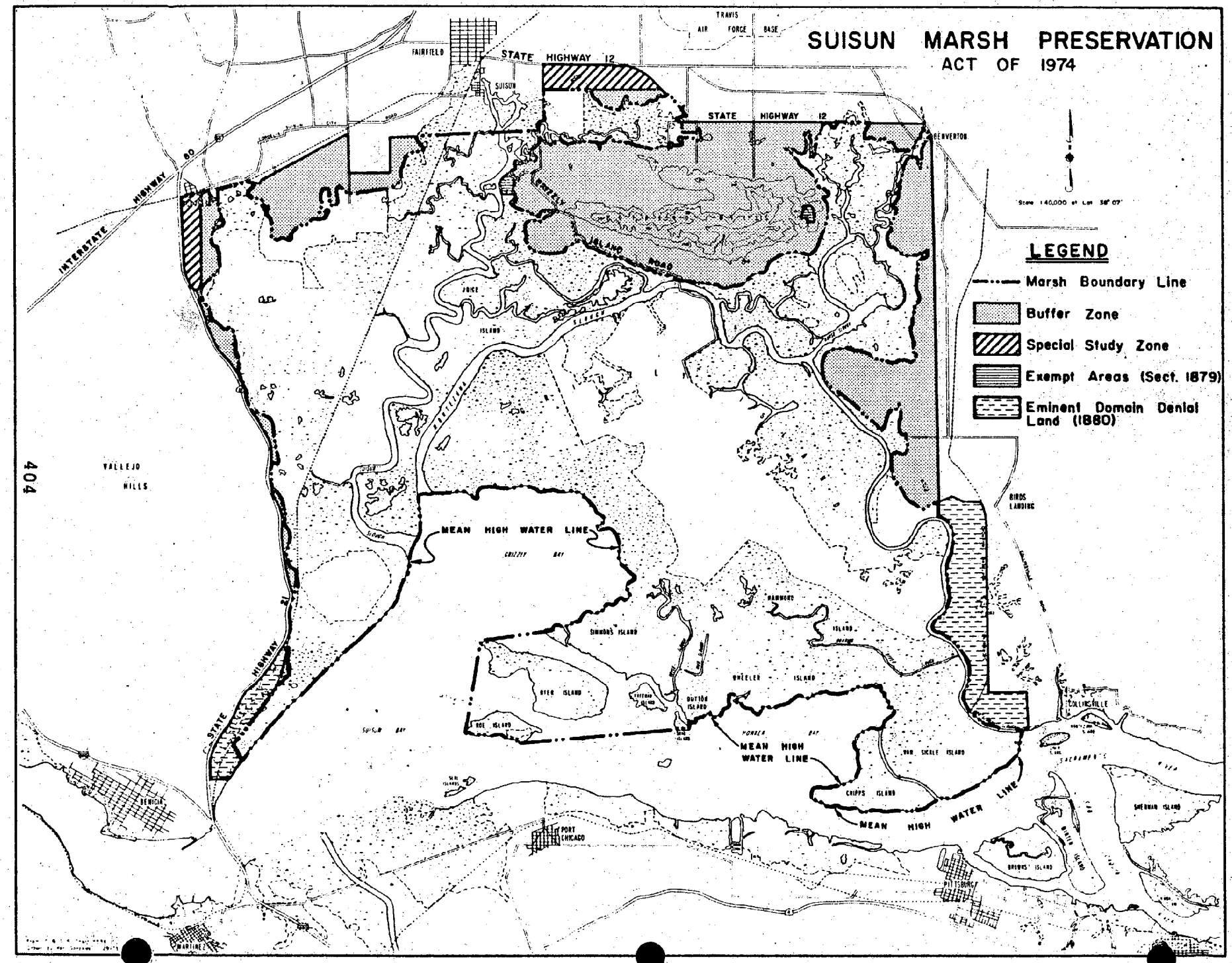
SUISUN MARSH PRESERVATION
ACT OF 1974
LEGEND
Marsh Boundary Line
Buffer Zone
Special Study Zone
Exempt Areas (Sect. 1879)
Eminent Domain Denial Land (1880)
Scale 1:40,000 at Lat 38° 07'
TRAVIS AIR FORCE BASE
FAIRFIELD
SUISUN
STATE HIGHWAY 12
STATE HIGHWAY 12
BENVERTON
INTERSTATE HIGHWAY 80
GRIZZLY ISLAND ROAD
JUICE ISLAND
VALLEJO HILLS
MEAN HIGH WATER LINE
GRIZZLY BAY
SIMMONS ISLAND
HAMMOND ISLAND
WHEELER ISLAND
BYER ISLAND
DUTTON ISLAND
ROE ISLAND
SUISUN BAY
HONKER BAY
MEAN HIGH WATER LINE
VAN SICKLE ISLAND
CHIPPS ISLAND
MEAN HIGH WATER LINE
BIRDS LANDING
COLLINSVILLE
SHERMAN ISLAND
BROWNS ISLAND
PITTSBURG
PORT CHICAGO
BENICIA
MARTINEZ
STATE HIGHWAY 21

PROPOSITION 20
(California Coastal Zone Conservation Act of 1972)

"PROPOSITION 20"

THE CALIFORNIA COASTAL ZONE CONSERVATION ACT OF 1972
as amended by Chapters 28 and 1014 (1973)

The people of the State of California do enact as follows:

SECTION 1. Division 18 (commencing with Section 27000) is added to the Public Resources Code, to read:

DIVISION 18. CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION
CHAPTER 1. GENERAL PROVISIONS AND FINDINGS AND DECLARATIONS OF POLICY

27000. This division may be cited as the California Coastal Zone Conservation Act of 1972.

27001. The people of the State of California hereby find and declare that the California coastal zone is a distinct and valuable natural resource belonging to all the people and existing as a delicately balanced ecosystem; that the permanent protection of the remaining natural and scenic resources of the coastal zone is a paramount concern to present and future residents of the state and nation; that in order to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to preserve the ecological balance of the coastal zone and prevent its further deterioration and destruction; that it is the policy of the state to preserve, protect, and, where possible, to restore the resources of the coastal zone for the enjoyment of the current and succeeding generations; and that to protect the coastal zone it is necessary:

(a) To study the coastal zone to determine the ecological planning principles and assumptions needed to ensure conservation of coastal zone resources.

(b) To prepare, based upon such study and in full consultation with all affected governmental agencies, private interests, and the general public, a comprehensive, coordinated, enforceable plan for the orderly, long-range conservation and management of the natural resources of the coastal zone, to be known as the California Coastal Zone Conservation Plan.

(c) To ensure that any development which occurs in the permit area during the study and planning period will be consistent with the objectives of this division.

(d) To create the California Coastal Zone Conservation Commission, and six regional coastal zone conservation commissions, to implement the provisions of this division.

CHAPTER 2. DEFINITIONS

27100. "Coastal zone" means that 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.

27101. "Coastal zone plan" means the California Coastal Zone Conservation Plan.

27102. (a) "Commission" means the California Coastal Zone Conservation Commission.

(b) "Regional commission" means any regional coastal zone conservation commission.

27103. "Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision of land pursuant to the Subdivision Map Act and any other division of land, including lot splits; change in the intensity of use of water, ecology related thereto, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility, and the removal or logging of major vegetation. As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

27104. "Permit area" means that portion of the coastal zone lying between the seaward limit of the jurisdiction of the state and 1,000 yards landward from the mean high tide line of the sea subject to the following provisions:

(a) The area of jurisdiction of the San Francisco Bay Conservation and Development Commission, together with all contiguous areas 2,900 feet landward thereof, and any river, stream, tributary, creek, or flood control or drainage channel which flows into such area, is excluded.

(b) If any portion of any body of water which is not subject to tidal action lies within the permit area, the body of water together with a strip of land 1,000-feet wide surrounding it shall be included; provided, however, that this subdivision does not apply to any river, stream, tributary, creek, or flood control or drainage channel when a portion of it lies within the permit area.

(c) Any urban land area which is (1) a residential area zoned, stabilized and developed to a density of four or more dwelling units per acre on or before January 1, 1972; or (2) a commercial or industrial area zoned, developed, and stabilized for such use on or before January 1, 1972, may, after public hearing, be excluded by the regional commission at the request of a city or county within which such area is located. An urban land area is "stabilized" if 80 percent of the lots are built upon to the maximum density or intensity of use permitted by the applicable zoning regulations existing on January 1, 1972.

Tidal and submerged lands, beaches, and lots immediately adjacent to the inland extent of any beach or of the mean high tide line where there is no beach shall not be excluded.

Orders granting such exclusion shall be subject to conditions which shall assure that no significant change in density, height, or nature of uses occurs.

An order granting exclusion may be revoked at any time by the regional commission, after public hearing.

(d) Each regional commission shall adopt a map delineating the precise boundaries of the permit area within 60 days after its first meeting and file a copy of such map in the office of the county clerk of each county within its region. In delineating any inland boundary of the permit area, the regional commission may adjust such boundary by moving it seaward by not more than 50 yards. Such adjustments may only be made to avoid bisecting any lot or parcel owned by the same person or to conform to identifiable physical natural or manmade features such as streets, highways, or any structures, in order to more efficiently carry out the provisions of Chapter 5 (commencing with Section 27400) of this division.

27105. "Person" includes any individual, organization, partnership, and corporation, including any utility and any agency of federal, state, and local government.

27106. "Sea" means the Pacific Ocean and all the harbors, bays, channels, estuaries, salt marshes, sloughs, and other areas subject to tidal action through a connection with the Pacific Ocean, excluding nonestuarine rivers, streams, tributaries, creeks and flood control and drainage channels.

CHAPTER 3. CREATION, MEMBERSHIP, AND POWERS OF COMMISSION AND REGIONAL COMMISSIONS

Article 1. Creation and Membership of Commissions and Regional Commissions

27200. The California Coastal Zone Conservation Commission is hereby created and shall consist of the following members:

(a) Six representatives from the regional commissions, selected by each regional commission from among its members.

(b) Six representatives of the public who shall not be members of a regional commission.

27201. The following six regional commissions are hereby created:

(a) The North Coast Regional Commission for Del Norte, Humboldt, and Mendocino Counties shall consist of the following members:

(1) One supervisor and one city councilman from each county.

(2) Six representatives of the public.

(b) The North Central Coast Regional Commission for Sonoma, Marine, and San Francisco Counties shall consist of the following members:

(1) One supervisor and one city councilman from Sonoma County and Marin County.

(2) Two supervisors of the City and County of San Francisco.

(3) One delegate to the Association of Bay Area Governments.

(4) Seven representatives of the public.

(c) The Central Coast Regional Commission for San Mateo, Santa Cruz, and Monterey Counties shall consist of the following members:

(1) One supervisor and one city councilman from each county.

(2) One delegate to the Association of Bay Area Governments.

(3) One delegate to the Association of Monterey Bay Area Governments.

(4) Eight representatives of the public.

(d) The South Central Coast Regional Commission for San Luis Obispo, Santa Barbara, and Ventura Counties shall consist of the following members:

(1) One supervisor and one city councilman from each county.

(2) Six representatives of the public.

(e) The South Coast Regional Commission for Los Angeles and Orange Counties shall consist of the following members:

(1) One supervisor from each county.

(2) One city councilman from the City of Los Angeles selected by the president of such city council.

(3) One city councilman from Los Angeles County from a city other than Los Angeles.

(4) One city councilman from Orange County.

(5) One delegate to the Southern California Association of Governments.

(6) Six representatives of the public.

(f) The San Diego Coast Regional Commission for San Diego County, shall consist of the following members:

(1) Two supervisors from San Diego County and two city councilmen from San Diego County, at least one of whom shall be from a city which lies within the permit area.

(2) One city councilman from the City of San Diego, selected by the city council of such city.

(3) One member of the San Diego Comprehensive Planning Organization.

(4) Six representatives of the public.

27202. All members of the regional commissions and public members of the commission shall be selected or appointed as follows:

(a) All supervisors, by the board of supervisors on which they sit;

(b) All city councilmen except under subsections (e) (2) and (f) (2), by the city selection committee of their respective counties;

(c) All delegates of regional agencies, by their respective agency;

(d) All public representatives, equally by the Governor, the Senate Rules Committee and the Speaker of the Assembly, provided that the extra member under (b) (4) and the extra members under (c) (4) shall be appointed by the Governor, the Senate Rules Committee and the Speaker of the Assembly respectively.

27203. A member of a regional commission who is also a supervisor from a county or city and county with a population greater than 650,000 may, subject to confirmation by his appointing power, appoint an alternate member to represent him at any regional commission meeting. The alternate member shall serve at the pleasure of the member who appointed him. The alternate member shall have the same qualifications as a public member pursuant to Section 27220. An alternate member shall have all of the powers and duties as a member of the regional commission, except that the alternate member shall only participate and vote in meetings in the absence of the member who appointed him.

An alternate member shall be entitled to a payment and reimbursement for the necessary expenses, pursuant to Section 27223, incurred in participating in regional commission meetings. Either the member of the regional commission or his alternate member shall receive such payment and reimbursement for the necessary expenses pursuant to this division. If both the member of the regional commission and his alternate member attend and participate in any portion of a regional commission meeting, only the alternate member shall be entitled to such a payment and reimbursement for attending that particular meeting.

An alternate member shall not be eligible for appointment to the commission.

Article 2. Organization

27220. Each public member of the commission or of a regional commission shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information, to appraise resource uses in light of the policies set forth in this division, to be responsive to the scientific, social, esthetic, recreational, and cultural needs of the state. Expertise in conservation, recreation, ecological and physical sciences, planning, and education shall be represented on the commission and regional commissions.

27221. Each member of the commission and each regional commission shall be appointed or selected not later than December 31, 1972.

Each appointee of the Governor shall be subject to confirmation by the Senate.

27222. In the case of persons qualified for membership because they hold a specified office, such membership ceases when their term of office ceases. Vacancies which occur shall be filled in the same manner in which the original member was selected or appointed.

27223. Except as provided in this section, members shall serve without compensation but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties to the extent that reimbursement is not otherwise provided by another public agency. All members shall receive fifty dollars ($50) for each full day of attending meetings of the commission or of any regional commission.

27224. The commission and regional commissions shall meet no less than once a month at a place convenient to the public. Unless otherwise provided in this division, no decision on permit applications or on the adoption of the coastal zone plan or any part thereof shall be made without a prior public hearing. All meetings of the commission and each regional commission shall be open to the public. A majority affirmative vote of the total authorized membership shall be necessary to approve any action required or permitted by this division, unless otherwise provided.

27225. The first meeting of the commission shall be no later than February 15, 1973. The first meeting of the regional commissions shall be no later than February 1, 1973.

27226. The headquarters of the commission shall be in a city, county, or city and county which lies, in whole or in part, within the coastal zone.

Article 2.5. Conflicts of Interest

27230. Except as hereinafter provided none of the following persons shall appear or act, in any capacity whatsoever except as a representative of the state, or political subdivision thereof, in connection with any proceeding, hearing, application, request for ruling or other official determination, judicial or otherwise, in which the coastal zone plan, or the commission or any regional commission is involved in an official capacity:

(a) Any member or employee of the commission or regional commission;

(b) Any former member or employee of the commission or regional commission during the year following termination of such membership or employment;

(c) Any partner, employer, an employee of a member or employee of the commission or any regional commission, when the matter in issue is one which is under the official responsibility of such member or employee, or in connection with which such member or employee has acted or is scheduled to act, in any official capacity whatsoever.

27231. No member or employee of the commission or any regional commission shall participate, in any official capacity whatsoever, in any proceeding, hearing, application, request for ruling or other official determination, judicial or otherwise, in which any of the following has a financial interest: the member or employee himself; his spouse; his child; his partner; any organization in which he is then serving or has, within two years prior to his selection or appointment to or employment by such commission or regional commission, served, in the capacity of officer, director, trustee, partner, employer or employee; any organization within which he is negotiating for or has any arrangement or understanding concerning prospective partnership or employment.

27232. In any case within the coverage of Section 27230, or Section 27231 when the commission determines that in any case within the coverage of such section the financial interest involved is not substantial, the prohibitions therein contained shall not apply if the person concerned advises the commission in advance of the nature and circumstances thereof, including full public disclosure of the facts which may potentially give rise to a violation of this article, and obtains from the commission a written determination that the contemplated action will not adversely affect the integrity of the commission or any regional commission. Any determination made pursuant to this section shall require the affirmative vote of two-thirds of the members of the commission.

27233. Nothing in this article shall preclude or prevent any member of the commission or any regional commission, or any employee thereof, who is also an employee of another public agency, a county supervisor, city councilman, member of the Association of Bay Area Governments, member of the Association of Monterey Bay Associated Governments, delegate to the Southern California Association of Governments, or member of the San Diego Comprehensive Planning Organization, and who has in such designated capacity voted or acted upon a particular matter, from voting or otherwise acting upon such matter as a member of the commission or any regional commission, or employee thereof, as the case may be. Nothing in this section shall be construed to exempt any such member of the commission or any regional commission, or any employee thereof, from any other provision of this article.

27234. Any person who violates any provision of this article shall, upon conviction, and for each such offense, be subject to a fine of not more than ten thousand dollars ($10,000) or imprisonment in the state prison for not more than two years, or both.

Article 3. POWERS AND DUTIES

27240. The commission and each regional commission, may:

(a) Accept grants, contributions, and appropriations;

(b) Contract for any professional services if such work or services cannot satisfactorily be performed by its employees;

(c) Be sued and sue to obtain any remedy to restrain violations of this division. Upon request of the commission or any regional commission, the State Attorney General shall provide necessary legal representation.

(d) Adopt any regulations or take any action it deems reasonable and necessary to carry out the provisions of this division, but no regulations shall be adopted without a prior public hearing.

27241. The commission and regional commissions may request and utilize the advice and services of all federal, state, and local agencies. Upon request of a regional commission any federally recognized regional planning agency within its region shall provide staff assistance insofar as its resources permit.

27242. All elements of the California Comprehensive Ocean Area Plan, together with all staff and funds appropriated or allocated to it, shall be delivered by the Governor and shall be attached and allocated to the commission at its first meeting.

27243. The commission and each regional commission shall each elect a chairman and appoint an executive director, who shall be exempt from civil service.

CHAPTER 4. CALIFORNIA COASTAL ZONE CONSERVATION PLAN

Article 1. Generally

27300. The commission shall prepare, adopt, and submit to the Legislature for implementation the California Coastal Zone Conservation Plan.

27301. The coastal zone plan shall be based upon detailed studies of all the factos that significantly affect the coastal zone.

27302. The coastal zone plan shall be consistent with all of the following objectives:

(a) The maintenance, restoration, and enhancement of the overall quality of the coastal zone environment, including, but not limited to, its amenities and aesthetic values.

(b) The continued existence of optimum populations of all species of living organisms.

(c) The orderly, balanced utilization and preservation, consistent with sound conservation principles, of all living and nonliving coastal zone resources.

(d) Avoidance of irreversible and irretrievable commitments of coastal zone resources.

27303. The coastal zone plan shall consist of such maps, text and statements of policies and objectives as the commission determines are necessary.

27304. The plan shall contain at least the following specific components:

(a) A precise, comprehensive definition of the public interest in the coastal zone.

(b) Ecological planning principles and assumptions to be used in determining the suitability and extent of allowable development.

(c) A component which includes the following elements:

(1) A land-use element.

(2) A transportation element.

(3) A conservation element for the preservation and management of the scenic and other natural resources of the coastal zone.

(4) A public access element for maximum visual and physical use and enjoyment of the coastal zone by the public.

(5) A recreation element.

(6) A public services and facilities element for the general location, scale, and provision in the least environmentally destructive manner of public services and facilities in the coastal zone. This element shall include a power plant siting study.

(7) An ocean mineral and living resources element.

(8) A population element for the establishment of maximum desirable population densities.

(9) An educational or scientific use element.

(d) Reservations of land or water in the coastal zone for certain uses, or the prohibition of certain uses in specific areas.

(e) Recommendations for the governmental policies and powers required to implement the coastal zone plan including the organization and authority of the governmental agency or agencies which should assume permanent responsibility for its implementation.

Article 2. Planning Procedure

27320. (a) The commission shall, within six months after its first meeting, publish objectives, guidelines, and criteria for the collection of data, the conduct of studies, and the preparation of local and regional recommendations for the coastal zone plan.

(b) Each regional commission shall, in cooperation with appropriate local agencies, prepare its definitive conclusions and recommendations, including recommendations for areas that should be reserved for specific uses or within which specific uses should be prohibited, which it shall, after public hearing in each county within its region, adopt and submit to the commission no later than April 1, 1975.

(c) On or before December 1, 1975, the commission shall adopt the coastal zone plan and submit it to the Legislature for its adoption and implementation.

CHAPTER 5. INTERIM PERMIT CONTROL

Article 1. General Provisions

27400. On or after February 1, 1973, any person wishing to perform any development within the permit area shall obtain a permit authorizing such development from the regional commission and, if required by law, from any city, county, state, regional or local agency.

Except as provided in Sections 27401 and 27422, no permit shall be issued without the affirmative vote of a majority of the total authorized membership of the regional commission, or of the commission on appeal.

27401. No permit shall be issued for any of the following without the affirmative vote of two-thirds of the total authorized membership of the regional commission, or of the commission on appeal:

(a) Dredging, filling, or otherwise altering any bay, estuary, salt marsh, river mouth, slough, or lagoon.

(b) Any development which would reduce the size of any beach or other area usable for public recreation.

(c) Any development which would reduce or impose restrictions upon public access to tidal and submerged lands, beaches and the mean high tideline where there is no beach.

(d) Any development which would substantially interfere with or detract from the line of sight toward the sea from the state highway nearest the coast.

(e) Any development which would adversely affect water quality, existing areas of open water free of visible structures, existing and potential commercial and sport fisheries, or agricultural uses of land which are existing on the effective date of this division.

27402. No permit shall be issued unless the regional commission has first found, both of the following:

(a) That the development will not have any substantial adverse environmental or ecological effect.

(b) That the development is consistent with the findings and declarations set forth in Sections 27001 and with the objectives set forth in Section 27302.

The applicant shall have the burden of proof on all issues.

27403. All permits shall be subject to reasonable terms and conditions in order to ensure:

(a) Access to publicly owned or used beaches, recreation areas, and natural reserves is increased to the maximum extent possible by appropriate dedication.

(b) Adequate and properly located public recreation areas and wildlife preserves are reserved.

(c) Provisions are made for solid and liquid waste treatment, disposition and management which will minimize adverse effects upon coastal zone resources.

(d) Alterations to existing land forms and vegetation, and construction of structures shall cause minimum adverse effect to scenic resources and minimum danger of floods, landslides, erosion, siltation, or failure in the event of earthquake.

27404. If, prior to November 8, 1972, any city or county has issued a building permit, no person who has obtained a vested right thereunder shall be required to secure a permit from the regional commission; providing that no substantial changes may be made in any such development, except in accordance with the provisions of this division. Any such person shall be deemed to have such vested rights if, prior to November 8, 1972, he has in good faith and in reliance upon the building permit diligently commenced construction and performed substantial work on the development and incurred substantial liabilities for work and materials necessary therefor. Expenses incurred in obtaining the enactment of an ordinance in relation to the particular development or the issuance of a permit shall not be deemed liabilities for work or material.

27405. Notwithstanding any provision in this chapter to the contrary, no permit shall be required for the following types of development:

(a) Repairs and improvements not in excess of seven thousand five hundred dollars ($7,500) to existing single-family residences; provided, that the commission shall specify by regulation those classes of development which involve a risk of adverse environmental effect and may require that a permit be obtained.

(b) Maintenance dredging of existing navigation channels or moving dredged material from such channels to a disposal area outside the permit area, pursuant to a permit from the United States Army Corps of Engineers.

(c) Repair or maintenance activities of any sort; provided, that such activities do not result in an addition to, or enlargement or expansion of, the object of such repair or maintenance activities.

Article 2. Permit Procedure

27420. (a) The commission shall prescribe the procedures for permit applications and their appeal and may require a reasonable filing fee and the reimbursement of expenses. All such fees and reimbursements collected heretofore or hereafter shall be credited to, and shall be in augmentation of, the appropriation made in Section 4 of Proposition 20 as approved by the electorate at the general election on November 7, 1972, and are hereby appropriated to the commission for the same period and for the same purposes as set forth therein.

(b) The regional commission shall give written public notice of the nature of the proposed development and of the time and place of the public hearing. Such hearing shall be set no less than 21 nor more than 90 days after the date on which the application is filed.

(c) The regional commission shall act upon an application for permit within 60 days after the conclusion of the hearing and such action shall become final after the tenth working day unless an appeal is filed within that time.

27421. Each unit of local government within the permit area shall send a duplicate of each application for a development within the permit area to the regional commission at the time such application for a local permit is filed, and shall advise the regional commission of the granting of any such permit.

27422. The commission shall provide, by regulation, for the issuance of permits by the executive directors without compliance with the procedure specified in this chapter in cases of emergency or for repairs or improvements to existing structures not in excess of twenty-five thousand dollars ($25,000) and other developments not in excess of ten thousand dollars ($10,000). Nonemergency permits shall not be effective until after reasonable public notice and adequate time for the review of such issuance has been provided. If any two members of the regional commission so request at the first meeting following the issuance of such permit, such issuance shall not be effective and instead the application shall be set for a public hearing pursuant to the provisions of Section 27420.

27423. (a) An applicant, or any person aggrieved by approval of a permit by the regional commission, may appeal to the commission.

(b) The commission may affirm, reverse, or modify the decision of the regional commission. If the commission fails to act within 60 days after notice of appeal has been filed, the regional commission's decision shall become final.

(c) The commission may decline to hear appeals that it determines raise no substantial issues. Appeals it hears shall be scheduled for a de novo public hearing and shall be decided in the same manner and by the same vote as provided for decisions by the regional commissions.

27424. Any person, including an applicant for a permit, aggrieved by the decision or action of the commission or regional commission shall have a right to judicial review of such decision or action by filing a petition for a writ of mandate in accordance with the provisions of Chapter 2, (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure, within 60 days after such decision or action has become final.

27425. Any person may maintain an action for declaratory and equitable relief to restrain violation of this division. No bond shall be required for an action under this section.

27426. Any person may maintain an action for the recovery of civil penalties provided in Sections 27500 and 27501.

27427. The provisions of this article shall be in addition to any other remedies available at law.

27428. Any person who prevails in a civil action brought to enjoin a violation of this division or to recover civil penalties shall be awarded his costs, including reasonable attorneys fees.

CHAPTER 6. PENALTIES

27500. Any person who violates any provision of this division shall be subject to a civil fine not to exceed ten thousand dollars ($10,000).

27501. In addition to any other penalties, any person who performs any development in violation of this division shall be subject to a civil fine not to exceed five hundred dollars ($500) per day for each day in which such violation persists.

CHAPTER 7. REPORTS

27600. (a) The commission shall file annual progress reports with the Governor and the Legislature not later than the fifth calendar day of the 1974 and 1975 Regular Sesseion of the Legislature, and shall file its final report containing the coastal zone plan with the Governor and the Legislature not later than the fifth calendar day of the 1976 Regular Session of the Legislature.

CHAPTER 8. TERMINATION

27650. This division shall remain in effect until January 1, 1977, and as of that date is repealed.

SEC. 2. Section 11528.2 is added to the Business and Professions Code, to read:

11528.2 The clerk of the governing body or the advisory agency of each city or county or city and county having jurisdiction over any part of the coastal zone as defined in Section 27100 of the Public Resources Code, shall transmit to the office of the California Coastal Zone Conservation Commission within three days after the receipt thereof, one copy of each tentative map of any subdivision located, wholly or partly, within the coastal zone and such Commission may, within 15 days thereafter, make recommendations to the appropriate local agency regarding the effect of the proposed subdivision upon the California Coastal Zone Conservation Plan. This section does not exempt any such subdivision from the permit requirements of Chapter 5 (commencing with Section 27400) of Division 18 of the Public Resources Code.

This section shall remain in effect only until the 91st day after the final adjournment of the 1976 Regular Session of the Legislature, and as of that day is repealed.

SEC. 3. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 4. There is hereby appropriated from the Bagley Conservation Fund to the California Coastal Zone Conservation Commission the sum of five million dollars ($5,000,000) to the extent that any moneys are available in such fund and if all or any portions thereof are not available then from the General Fund for expenditure to support the operations of the commission and regional coastal zone conservation commissions during the fiscal years of 1973 to 1976, inclusive, pursuant to the provisions of Division 18 (commencing with Section 27000) of the Public Resources Code.

SEC. 5. The Legislature may, by two-thirds of the membership concurring, amend this act in order to better achieve the objectives set forth in Sections 27001 and 27302 of the Public Resources Code.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

DIVISION 13. ENVIRONMENTAL QUALITY [NEW]

Chapter		Section
1.	Policy	21000
2.	Short Title	21050
2.5	Definitions	21060
2.6	General	21080
3.	State Agencies, Boards and Commissions	21100
4.	Local Agencies	21150
5.	Submission of Information	21160
6.	Limitations	21165

Division 13 added by Stats.1970, c. 1433, p. 2780, § 1.

CHAPTER 1. POLICY

Sec.

21000. Legislative intent.

21001. Additional legislative intent.

Chapter 1 added by Stats.1970, c. 1433, p. 2780, § 1.

Aeronautics, department of, implementation of this act, see 4 Cal.Adm.Code 6009 et seq.

Fish and game, state guidelines, see 14 Cal.Adm.Code 750 et seq.

Implementation of Division 13.

Colorado river board, see 14 Cal.Adm. Code 12000 et seq.

Community Colleges, see 5 Cal.Adm.Code 57100 et seq.

Resources agency, see 14 Cal.Adm.Code 15000 et seq.

Highway commission, see 21 Cal.Adm. Code 1500 et seq.

Regulations for preserving and enhancing the environment, see 2 Cal.Adm.Code 2901 et seq.

Law Review Commentaries

Application of environmental impact report requirement of the California Environmental Quality Act of 1970 to rate hearings of electric utilities (1971) 8 U.S.F.L.Rev. 152.

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Coastal zone management: The California experience. Robert H. Krueger (1972) 47 S.Bar J. 492.

Compatibility of economic and environmental objectives in governmental decision making. (1971) 5 Pacific L.J. 92.

Courts as protectors of the environment. John F. Powell (April 1972) 47 Los Angeles Bar Bull. 215.

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

Environmental impact report for private projects. Carl J. Beneker II (1973) 48 S.Bar J. 127.

Note 1

Environmental law—the uncertain trumpet. Thomas C. Lynch, Jan S. Stevens (1970) 5 U.S.F.L.Rev. 10.

Environmental protection: Attorney general's perspective. Evelle J. Younger (1974) 5 Pacific L.J. 19.

Expanding scope of environmental law. Kevin P. Kane (Jan. 1973) 48 Los Angeles Bar Bull. 81.

Friends of Mammoth: Vox populi or judicial social engineering. (1973) 1 Pepperdine L.Rev. 137.

Guidelines to implement this act, see 14 Cal.Adm.Code 15000 et seq.

Marine pollution: A critique of present and proposed international agreements and institutions—a suggested global oceans environmental regime. Lawre[illegible]R. Lanctot (1972) 24 Hast.L.J. 67.

Noisy airports—nuisance. Jerrold A. Fadem & Michael M. Berger (1971) 3 Southwestern U.L.Rev. 39.

Pollution problem and legal institutions: A conceptual overview. James E. Krier. (1971) 18 U.C.L.A.Law Rev. 429.

Substantive right to a better environment. Ronald H. Robie (1973) 49 Los Angeles Bar Bull. 17.

Library references

Health and Environment ⟹28.
States ⟹75, 83.
C.J.S. Health § 21.
C.J.S. States §§ 63 et seq., 103.

§ 21000. Legislative intent

The Legislature finds and declares as follows:

(a) The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.

(b) It is necessary to provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man.

(c) There is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of the people of the state, including their enjoyment of the natural resources of the state.

(d) The capacity of the environment is limited, and it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached.

(e) Every citizen has a responsibility to contribute to the preservation and enhancement of the environment.

(f) The interrelationship of policies and practices in the management of natural resources and waste disposal requires systematic and concerted efforts by public and private interests to enhance environmental quality and to control environmental pollution.

(g) It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage.

(Added by Stats.1970, c. 1433, p. 2780, § 1.)

State EIR guidelines, see 14 Cal.Adm. Code 15000 et seq.

Law Review Commentaries

Friends of the Mammoth. (1973) 9 C.W. L.R. 536.

Population density crisis. (1973) 10 C. W.L.R. 147.

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1. In general

Federal agencies and instrumentalities are required under Federal Water Pollution Control Act Amendments of 1972 to comply with both substantive and procedural requirements of state pollution control permit programs. People of State of Cal. ex rel. State Water Resources Control Bd. v. Environmental Protection Agency (C.A.1975) 511 F.2d 963.

Federal district court would abstain from exercising its jurisdiction in civil rights action against city, members of city council and planning commission and others for alleged conspiracy to deprive landowner of use of undeveloped real property, as land use planning was a sensitive social and political issue with which state legislature and judiciary were deeply concerned, adjudication of federal issues might involve constitutional questions which could be avoided if definitive ruling on state issues would terminate controversy, validity of acts alleged to be in furtherance of charged conspiracy depended upon interpretation of complex state statutory scheme of land use control and possibly determinative issues of state law were doubtful. Rancho Palos Verdes Corp. v. City of Laguna Beach (D. C.1975) 390 F.Supp. 1004.

While economic and environmental values may be given equal weight under the comparable National Environmental Policy Act, the federal precedents are of diminished value in view of substantial differences between the federal act and the state Environmental Quality Act which suggests that environmental protection is of paramount concern, and a sense of urgency is conveyed in several provisions of the state act. San Francisco Ecology Center v. City and County of San Francisco (1975) 122 Cal. Rptr. 100, 48 C.A.3d 584.

Financial detriment to state of losing a favorable bid for freeway construction could not outweigh substantial benefit of requiring compliance with requirements of Environmental Quality Act, and delay of condemnees and other residents residing in vicinity of the project in asserting noncompliance with environmental impact report requirement would not support defense of

laches. People By and Through Dept. of Public Works v. Bosio (1975) 121 Cal.Rptr. 375, 47 C.A.3d 495.

Legislative intent in enacting the Environmental Quality Act is that environmental considerations play a significant role in the decision-making and such intent is not to be effectuated by vague or illusory assurances by state and local entities that the effect of a project on the environment has been taken into consideration; "findings" need not be made with formality attached to that term in judicial proceedings. Burger v. Mendocino County (1975) 119 Cal.Rptr. 568, 45 C.A.3d 322.

Resolution of board of supervisors approving without modification motel complex project and merely stating that the board had fully considered the environmental impact report without referring in any way to the clearly adverse environmental effects pointed out by report and in no way stating that there were overriding economic or social values of project was inadequate and not in compliance with law. Id.

Where department of housing and community development received written legal advice from Attorney General to the effect that permits issued under Mobilehome Parks Act were subject to requirements of the Environmental Quality Act, but then issued permit without environmental inquiry, and where applicant, who had waited four months to ascertain whether state would require city authorities to make environmental inquiries, then incurred $40,000 of expenses in constructing the park on property zoned light industrial, the state was estopped by the doctrine of laches from rescinding the permit and preventing further construction of the mobile home park. People v. Department of Housing and Community Development (1975) 119 Cal.Rptr. 266, 45 C.A.3d 185.

Legislature intended Environmental Quality Act to be interpreted in such manner as to afford fullest possible protection to environment within reasonable scope of statutory language. Bozung v. Local Agency Formation Commission of Ventura County (1975) 118 Cal.Rptr. 249, 529 P.2d 1017, 13 C.3d 263.

Since California Environmental Quality Act was modeled on federal statute, judicial and administrative interpretation of federal enactment is persuasive authority in interpreting California act. No Oil, Inc. v. City of Los Angeles (1971) 119 Cal.Rptr. 34, 529 P.2d 66.

Genuine issues of material fact were generated whether zone change, which was issued after grant of conditional use permit and variance, affected the same property and whether sole motivation for zone change was one of administrative convenience or to grant substantial rights not previously bestowed under use permit and variance, precluding summary judgment for property owners on issue whether neighboring landowners, whose attack on conditional use permit and variance was barred by laches and limitations, were entitled to challenge validity of zone change for failure to comply with Environmental Quality Act. Concerned Citizens of Palm Desert, Inc. v. Riverside County Bd. of Sup'rs (1974) 113 Cal.Rptr. 328, 38 C.A.3d 257.

Laches was not a bar to county's action against city under the Environmental Quality Act to halt city's extraction of subsurface waters from within distant county, where, inter alia, there was no showing of prejudice to the city by delay of some four years, both parties were public entities in litigation as to which the legislature had declared a clear and all-encompassing public interest, and there was a vast disparity in the population, staff, budget and research and planning resources available to the two entities. Inyo County v. Yorty (1973) 10[illegible] Cal.Rptr. 377, 32 C.A.3d 795.

In view of fact that if land exchange agreement, which involved alienation of granted tidelands, and dredging and landfill agreement, which agreements were executed in 1957 in connection with harbor development, were to proceed in 1972 they could not do so without approval of secretary of army and without consideration of Environmental Quality Act of 1970 and Coastal Zone Conservation Act of 1972, it could not be said that, because of absence of environmental study or report in 1967, that the plan did not constitute a "program" within meaning of exception to constitutional prohibition of Const. Art. 15, § 3 on alienation of tidelands for a small beneficial exchange of lands reclaimed in course of public program for harbor development. Orange County v. Heim (1973) 106 Cal.Rptr. 825, 30 C.A.3d 694.

Environmental impact statement was not required in connection with proposed construction of a highrise hotel, where permit for construction was issued prior to effective date of 1972 amendments to Environmental Quality Act. San Francisco Planning and Urban Renewal Ass'n v. Central Permit Bureau (1973) 106 Cal.Rptr. 670, 33 C.A.3d 920.

Where public utilities commission stated that it intended to adopt regulations pursuant to Environmental Quality Act (§ 21082), requiring all public agencies to adopt procedures for the evaluation of projects and the preparation of environmental impact reports, and indicated that it would withhold action on application for certificate of public convenience and necessity for proposed power plant until such regulations were promulgated, an order by the supreme court compelling the commission to adopt a particular procedure would have contravened priorities established by the legislature and would have done violence to principle of separation of powers enunciated in state constitution. Desert Environment Conservation Ass'n v. Public Utilities Commission (1973) 106 Cal.Rptr. 31, 505 P.2d 223, 8 C.3d 749.

Legislature intended Environmental Quality Act to be interpreted in such manner as to afford fullest possible protection to environment within the reasonable scope of the statutory language. Friends of Mammoth v. Board of Sup'rs of Mono County (1972) 104 Cal.Rptr. 761, 502 P.2d 1049, 8 C.3d 247.

Environmental impact report which was filed in response to order of the court was adequate under § 21000 et seq., where it covered those matters which the court deemed to have been inadequately reported previously, and where it also pledged that the water district would prepare an additional detailed report before making any decision to proceed with the alternatives described, and that the district would further conduct studies as to the environmental impact associated with any water system expansion beyond that presently to be undertaken. Environmental Defense Fund, Inc. v. Coastside County Water Dist. (1972) 101 Cal.Rptr. 714, 28 C.A.3d 512.

The California Environmental Quality Act and the National Environmental Policy Act are so paralleled in content and so nearly identical in words that judicial interpretation of federal law is strongly persuasive in deciding meaning of § 21000 et seq. Environmental Defense Fund, Inc. v. Coastside County Water Dist. (1972) 101 Cal.Rptr. 197, 27 C.A.3d 695, supplemented 101 Cal. Rptr. 714, 28 C.A.3d 512.

The powers of the state water resources control board and the regional water quality control boards are not so limited and they not only can, but must consider the effects of a proposed discharge upon all aspects of the environment. 57 Ops.Atty.Gen. 19, 1-16-74.

2. Attorney fees

Motion of nonprofit corporations, which had brought a successful mandamus action challenging the validity of creation by ordinance of three informational oil drilling districts without first preparing and considering an environmental impact report, for an award of reasonable attorneys' fees incurred by them in connection with appeal would be denied by supreme court, but trial court would be authorized to determine if movants were entitled to reasonable attorneys' fees for services on appeal and, if so, to fix the amount thereof. No Oil, Inc. v. City of Los Angeles (1975) 119 Cal.Rptr. 216, 531 P.2d 784, 13 C.3d 486.

Motion of plaintiffs, who successfully appealed the dismissal of their suit to compel submission of environmental impact statement before annexation plan was approved, for an award of attorneys' fees incurred in connection with the appeal would be denied without prejudice to their right to make a similar motion in the trial court, since, inter alia, the motion raised questions of law which have not been decided in California and which the supreme court could not properly decide without full briefing and opportunity for oral argument. Bozung v. Local Agency Formation Commission of Ventura County (1975) 119 Cal.Rptr. 215, 531 P.2d 783, 13 C.3d 483.

§ 21001. Additional legislative intent

The Legislature further finds and declares that it is the policy of the state to:

(a) Develop and maintain a high-quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.

(b) Take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.

(c) Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.

(d) Ensure that the long-term protection of the environment shall be the guiding criterion in public decisions.

(e) Create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations.

(f) Require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality.

(g) Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.

(Added by Stats.1970, c. 1433, p. 2781, § 1.)

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

1. In general

Guidelines established by state resources agency, which took effect on February 10, 1973, were not applied retroactively to decisions of court or city council rendered before guidelines went into effect, but court made use of guidelines as a suggested interpretation of Environmental Quality Act and as an illustration of procedures which resource agency finds necessary to enforcement of statute. No Oil, Inc. v. City of Los Angeles (1974) 118 Cal. Rptr. 34, 529 P.2d 66.

State water resources control board has the authority to adopt the regulation, in compliance with Fish & G.C. § 6937, requiring a water appropriator to allow passage of water through a dam for preservation of fish below such dam. 57 Ops.Atty. Gen. 577, 11-21-74.

CHAPTER 2. SHORT TITLE

Sec.
21050. Citation.

Chapter 2 added by Stats.1970, c. 1433, p. 2781, § 1.

§ 21050. Citation

This division shall be known and may be cited as the Environmental Quality Act of 1970.

(Added by Stats.1970, c. 1433, p. 2781, § 1.)

Law Review Commentaries

Friends of Mammoth: Vox populi or judicial social engineering. (1973) 1 Pepperdine L.Rev. 137.

CHAPTER 2.5 DEFINITIONS

Sec.
21060. Application of definitions.
21060.5 Environment.
21061. Environmental impact report.
21062. Local agency.
21063. Public agency.
21064. Blank.
21065. Project.
21066. Person.
21067. Lead agency.

Chapter 2.5 was added by Stats.1972, c. 1154, p. 2271, § 1, urgency, eff. Dec. 5, 1972.

Law Review Commentaries

Compatibility of economic and environmental objectives in governmental decision making. (1974) 5 Pacific L.J. 92.

Land development and the environment: Subdivision Map Act. (1974) 5 Pacific L.J. 55.

§ 21060. Application of definitions

Unless the context otherwise requires, the definitions in this chapter govern the construction of this division.

(Added by Stats.1972, c. 1154, p. 2271, § 1, urgency, eff. Dec. 5, 1972.)

Legislative intent relating to Stats. 1972, c. 1154, p. 2271, see 1972 A.J. 2920.

Section 17 of Stats. 1972, c. 1154, provided: "The Legislature finds and declares that Section 1 of this act is intended to clarify existing provisions of the Environmental Quality Act of 1970 and thereby to facilitate and to promote uniform administration of the Environmental Quality Act of 1970 throughout the state. It is therefore the intent of the Legislature in enacting Section 1 of this act only to declare and to clarify existing law."

Law Review Commentaries

Legislative review. (1973) 4 Pacific L.J. 451.

Library references

Health and Environment. ⟹25.5.

§ 21060.5 Environment

"Environment" means the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance.

(Added by Stats.1972, c. 1154, p. 2271, § 1, urgency, eff. Dec. 5, 1972.)

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559

Library references

Words and Phrases (Perm. Ed.)

§ 21061. Environmental impact report

"Environmental impact report" means a detailed statement setting forth the matters specified in Section 21100. It includes any comments on an environmental impact report which are obtained pursuant to Section 21104 or 21153, or which are required to be obtained pursuant to this division.

An environmental impact report is an informational document which, when its preparation is required by this division, shall be considered by every public agency prior to its approval or disapproval of a project. The purpose of an environmental impact report is to provide public agencies with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which any adverse effects of such a project might be minimized; and to suggest alternatives to such a project.

(Added by Stats.1972, c. 1154, p. 2271, § 1, urgency, eff. Dec. 5, 1972.)

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

Environmental impact statements, zoning and low-cost housing. (1973) 46 So.Cal.L.R. 754.

Library references

Health and Environment ⟹25.10.

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1. In general

Although city council had adopted a redevelopment plan which included eight more blocks within central business area, environmental impact statement, which the department of housing and urban development filed in connection with proposed contract for funding a fourth action year of urban renewal, and which only discussed the ramifications of redevelopment of a three-block area, was not too narrow in scope, where there was no guarantee that federal funds would be used toward redevelopment of the eight-block area, and where, with the addition of the three-block area, the central business district of city would be self-sufficient with exception of inadequate parking facilities. Citizens Against Destruction of Napa v. Lynn (D.C.1973) 391 F.Supp. 1188.

Where state announced only that it tentatively intended to construct a freeway along a tentative route, and plan was to be a step-by-step process involving consultation with community and individuals assessment of future traffic needs, availability of funding, and apparent constant revision in alignment grade and other physical features as well as consideration of environmental and human impacts, such circumstances were insufficient to afford basis for compensation either in damages or in an award for inverse condemnation in plaintiffs' property which was bisected by route shown on published map, despite claim of arbitrary and capricious delay by state. Smith v. State (1975) 123 Cal.Rptr. 715, 50 C.A.3d 529.

The environmental impact report should provide decision makers with information which enables them to make a decision which intelligently takes account of the environmental consequences, but an evaluation of the environmental effects of a proposed project need not be exhaustive. San Francisco Ecology Center v. City and County of San Francisco (1975) 122 Cal.Rptr. 100, 48 C.A.3d 584.

The ecology center and others could not complain that environmental impact report regarding expansion of airport might have overestimated the number of passengers who would use the airport in 1986, or the projections of aircraft noise levels in 1986, since decision makers are not precluded from forecasting future needs but are encouraged to make reasonable forecasts in preparation of the EIR; if subsequent studies undermine the projections upon which the EIR is based, opponents should bring new data to the attention of the decision makers. Id.

Supreme Court decision (No oil, Inc. v. City of Los Angeles (1974) 118 Cal.Rptr. 34, 529 P.2d 66, 13 Cal.3d 68) requiring that agency determine whether project may have significant environmental impact and thus whether environmental impact report is required before it approves project and impliedly holding that the adoption of ordinance is a project within meaning of Environmental Quality Act is retroactive in its application. Beverly v. Board of Supr's of Los Angeles County (1975) 119 Cal.Rptr. 282, 41 C.A.3d 515.

Under Environmental Quality Act, an environmental impact report is required before agency approves project. No oil, Inc. v. City of Los Angeles (1974) 118 Cal.Rptr. 34, 529 P.2d 66.

Fact that resolution of city council carried by a bare eight to seven majority compelled conclusion that, with respect to oil drilling project, city's use of erroneous test which limited use of an environmental impact report to projects which may have an important or momentous effect of semi-permanent duration, and which excluded presence of disputed factual issues of public controversy as criteria suggesting preparation of a report, constituted prejudicial abuse of discretion. Id.

Where county retained jurisdiction to grant or deny application to amend zoning ordinance to permit construction of mountain subdivision and zone change was not approved until after effective date of provision of § 21169 validating projects which were undertaken or approved before provision's effective date and which did not comply with Act, environmental impact report was required for proposed project. People v. Kern County (1974) 115 Cal.Rptr. 67, 39 C.A.3d 830.

Even if the county was acting illegally in removing trees from public street, i. e., because of failure to file an environmental impact report, such failure did not justify defendants' obstruction of operation of machine employed to remove trees, and, thus, did not insulate defendants from a conviction of obstructing a public way. People v. Man (1974) 114 Cal.Rptr. 237, 39 C.A.3d Supp. 1.

Where city's groundwater extraction project involved a continued modification in its constantly increased intensity and scope of actual and projected groundwater withdrawals and it appeared that continuance of subsurface extractions might have a new significant effect on the environment, and only 50 percent of the estimated cost of construction of additional wells had been spent, city's expanded tapping and extraction of the underground water, though commenced prior to the effective date of the Environmental Quality Act, was an "ongoing project," requiring the filing of an environmental impact report. Inyo County v. Yorty (1973) 108 Cal.Rptr. 377, 32 C.A.3d 795.

2. Evidence

The rules of evidence which govern the trial of a court action do not apply to the collection of data in preparation of an environmental impact report, supporting studies need not be physically attached to the EIR, they only need be available and accessible. San Francisco Ecology Center v. City and County of San Francisco (1975) 122 Cal.Rptr. 100, 48 C.A.3d 584.

3. Sufficiency of report

The sufficiency of an environmental impact report is to be reviewed in light of what is reasonably feasible; preparation of an EIR need not be interminably delayed to include all potential comments or results of works in progress which might shed some additional light on subject of the impact statement; the court should look for adequacy and completeness in an impact statement, not perfection. San Francisco Ecology Center v. City and County of San Francisco (1975) 122 Cal.Rptr. 100, 48 C.A.3d 584.

4. Cost-benefit computations

The environmental impact report on airport expansion was not incomplete for not containing cost-benefit computations, since neither the Environmental Quality Act nor the National Environmental Policy Act requires computation of a cost-benefit ratio; such studies may be useful, but they are not indispensable to an environmental impact statement. San Francisco Ecology Center v. City and County of San Francisco (1975) 122 Cal.Rptr. 100, 48 C.A.3d 584.

Where resolution of airport commission and board of supervisors approving environmental impact report for airport expansion identified certain adverse environmental effects and prospective benefits of the project, and reflected the judgment that the social, economic environmental benefits of the project, outweighed its significant environmental risks, since the resolutions adequately exposed the agency's mode of analysis, they must be sustained if supported by substantial evidence. Id.

5. Findings

The findings of airport commission and board of supervisors adopting environmental impact report and approving the expansion of San Francisco International airport were supported by substantial evidence showing, inter alia, that the project would make the airport an exceptionally convenient, safe and compact airport, that the extended terminals would reduce the noise levels, that adjacent communities would benefit from noise reductions, that quality of effluent entering San Francisco Bay would be improved, and that project would have significant environmental as well as economic benefits weighing against the environmental disadvantages. San Francisco Ecology Center v. City and County of San Francisco (1975) 122 Cal.Rptr. 100, 48 C.A.3d 584.

§ 21062. Local agency

"Local agency" means any public agency other than a state agency, board, or commission. For purposes of this division a redevelopment agency and a local agency formation commission are local agencies, and neither is a * * * state agency, board, or commission.

(Added by Stats.1972, c. 1154, p. 2271, § 1, urgency, eff. Dec. 5, 1972. Amended by Stats.1975, c. 222, p. —, § 1, urgency, eff. July 5, 1975.)

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

Library references

Words and Phrases (Perm. Ed.)

1. In general

Local agency formation commission was governmental agency to which provisions of Environmental Quality Act concerning preparation of environmental impact reports were applicable. Bozung v. Local Agency Formation Commission of Ventura County (1975) 118 Cal.Rptr. 249, 529 P.2d 1017, 13 C.3d 263.

§ 21063. Public agency

"Public agency" includes any state agency, board, or commission, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision.

(Added by Stats.1972, c. 1154, p. 2271, § 1, urgency, eff. Dec. 5, 1972.)

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

Library references

Words and Phrases (Perm. Ed.)

1. In general

Local agency formation commission was governmental agency to which provisions of Environmental Quality Act concerning preparation of environmental impact reports were applicable. Bozung v. Local Agency Formation Commission of Ventura County (1975) 118 Cal.Rptr. 249, 529 P.2d 1017, 13 C.3d 263.

§ 21064. Blank

§ 21065. Project

"Project" means the following:

(a) Activities directly undertaken by any public agency.

(b) Activities undertaken by a person which are supported in whole or in part through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(c) Activities involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(Added by Stats.1972, c. 1154, p. 2271, § 1, urgency, eff. Dec. 5, 1972.)

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

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1. In general

City's April, 1971 authorization to lessee of city land to demolish buildings on site and to build a new building pertained to "projects" within meaning of this section and by reason of grandfather clause under § 21169 applicable to projects started before December 5, 1972 they were legal and valid. Bresnahan v. City of Pasadena (1975) 121 Cal.Rptr. 759, 48 C.A.3d 297.

Amendment to Environmental Quality Act defining word "project," added in 1972, applied to suit involving necessity of environmental impact report on action of local agency formation commission taken before amendment was adopted. Bozung v. Local Agency Formation Commission of Ventura County (1975) 118 Cal.Rptr. 249, 529 P.2d 1017, 13 C.3d 263.

For purposes of the Environmental Quality Act, city's expanded groundwater extraction after effective date of the Act was a "project" separate and divisible from aqueduct largely constructed prior to the effective date where, inter alia, aqueduct could be and had been filled entirely by surface runoff, extraction of subsurface water was steadily increasing, and approximately 95 percent of estimated cost of construction of aqueduct had been expended, but only 50 percent of the estimated cost of construction of additional wells to bring subsurface extraction to its full projected capacity had been spent. Inyo County v. Yorty (1973) 108 Cal.Rptr. 377, 32 C.A.3d 795.

Timber-harvesting plans submitted to state forester for approval under requirements of the Z'berg-Nejedly Forest Practice Act of 1973 are subject to the California Environmental Quality Act and may require filing of environmental impact reports. 57 Ops.Atty.Gen. 587, 11-22-74.

2. Public projects

Supreme Court decision [No Oil, Inc. v. City of Los Angeles (1974) 118 Cal.Rptr. 34, 529 P.2d 66, 13 Cal.3d 68] requiring that agency determine whether project may have significant environmental impact and thus whether environmental impact report is required before it approves project and implicitly holding that the adoption of ordinance is a project within meaning of Environmental Quality Act is retroactive in its application. Rosenthal v. Board of Sup'rs of Los Angeles County (1975) 119 Cal.Rptr. 282, 44 C.A.3d 815.

Approval by local agency formation commission of city annexation of predominantly rural land as part of plan for property's development for residential, commercial and recreational uses was "project," within meaning of this section, and was not excluded from operation of Act as involving mere "feasibility and planning studies." Bozung v. Local Agency Formation Commission of Ventura County (1975) 118 Cal.Rptr. 249, 529 P.2d 1017, 13 C.3d 263.

Widening of portion of avenue was a municipal capital improvement project and as such was not a private project within subdivisions of this section, but instead was a public work subject to provisions of subd. (a) of this section and was not covered by either validating provisions or moratorium provision with respect to private projects. Plan For Arcadia, Inc. v. Arcadia City Council (1974) 117 Cal.Rptr. 96, 42 C.A.3d 712.

3. Private projects

Shopping center and parking lot projects were private projects within this section and thus anything done prior to December 5, 1972, the effective date of Act's amendment pertaining to private projects, with respect to public agency approval or the issuance of any entitlement for use had been confirmed, validated and declared legally effective under express terms of Act, notwithstanding a failure to comply with Act. Plan For Arcadia, Inc. v. Arcadia City Council (1974) 117 Cal.Rptr. 96, 42 C.A.3d 712.

4. Single project

Shopping center and parking lot projects, together with widening of portion of adjacent street were related to each other and in assessing their environmental impact they were required to be regarded as a single project under Environmental Quality Act. Plan For Arcadia, Inc. v. Arcadia City Council (1974) 117 Cal.Rptr. 96, 42 C.A.3d 712.

5. Ordinances

County board of supervisors' action in adopting each rezoning ordinance with respect to five parcels of undeveloped land to permit various types of residential developments involved a "project" within meaning of this section thereby requiring board to consider and resolve whether such ordinance might have a significant factor on the environment before its adoption. Rosenthal v. Board of Sup'rs of Los Angeles County (1975) 119 Cal.Rptr. 282, 44 C.A.3d 815.

§ 21066. Person

"Person" includes any person, firm, association, organization, partnership, business, trust, corporation, company, district, county, city and county, city, town, the state, and any of the agencies and political subdivisions of such entities.

(Added by Stats.1972, c. 1154, p. 2271, § 1, urgency, eff. Dec. 5, 1972.)

Library references

Words and Phrases (Perm. Ed.)

§ 21067. Lead agency

"Lead agency" means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment.

(Added by Stats.1972, c. 1154, p. 2271, § 1, urgency, eff. Dec. 5, 1972.)

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

Library references

Words and Phrases (Perm. Ed.)

1. In general

Local agency formation commission, not city, was "lead agency" charged with obligation to prepare environmental impact report on projected environmental effects of commission's approval or disapproval of city's proposed annexation of agricultural land with view toward land's development for residential, commercial and recreational uses. Bozung v. Local Agency Formation Commission of Ventura County (1975) 118 Cal.Rptr. 249, 529 P.2d 1017, 13 C.3d 263.

Sec.
21080. Application to discretionary projects; non-application to ministerial projects.
21080.5 Certified regulatory programs; plans in lieu of environmental impact report; certification; repeal [New].
21081. Blank.
21082. Public agencies; adoption of objectives, criteria and procedures; consistency with guidelines.
21083. Office of planning and research; preparation and development of guidelines; conditions.
21083.5 Submission of federal impact report in lieu of state report; conditions.
21084. List of exempt classes of projects.
21085. Designation of exempt classes of projects; emergency repairs to public facilities.
21086. Addition or deletion of exempt classes of projects; procedure.
21087. Reviewal of guidelines; changes or amendments.
21088. Distribution of guidelines; amendments and changes; notice.
21089. Fees.
21090. Redevelopment plan deemed single project.

Chapter 2.6 was added by Stats.1972, c. 1154, p. 2272, § 2.3, urgency, eff. Dec. 5, 1972.

Law Review Commentaries

Compatibility of economic and environmental objectives in governmental decision making. (1974) 5 Pacific L.J. 92.

§ 21080. Application to discretionary projects; non-application to ministerial projects

(a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits and the approval of tentative subdivision maps (except where such a project is exempt from the preparation of an environmental impact report pursuant to Section 21166).

(b) This division shall not apply to ministerial projects proposed to be carried out or approved by public agencies.

(Added by Stats.1972, c. 1154, p. 2272, § 2.3, urgency, eff. Dec. 5, 1972.)

Relation to ministerial projects, see 17 Cal.Adm.Code 2111.

Library references

Health and Environment ⟹25.5, 25.10.

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

Friends of Mammoth: Vox populi or judicial social engineering. (1973) 1 Pepperdine L.Rev. 137.

Land development and the environment: Subdivision Map Act. (1974) 5 Pacific L.J. 55.

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1. In general

Where property proposed for mobile home park had been zoned for light industrial use since 1956, no discretionary use permit or variance was needed at the municipal level under the California Environmental Quality Act; only city building permit was needed. People v. Department of Housing and Community Development (1975) 119 Cal.Rptr. 266, 45 C.A.3d 185.

Municipal building permit for mobile home park, premised upon compliance with local building code, was a "ministerial project" or act under the California Environmental Quality Act. Id.

City council's action in approving final building plans with respect to shopping center project was not a discretionary act but was instead ministerial and thus not within coverage of this section. Plan for Arcadia, Inc. v. Arcadia City Council (1974) 117 Cal.Rptr. 96, 42 C.A.3d 712.

Where county retained jurisdiction to grant or deny application to amend zoning ordinance to permit construction of mountain subdivision and zone change was not approved until after effective date of provision of § 21169 validating projects which were undertaken or approved before provision's effective date and which did not comply with Act, environmental impact report was required for proposed project. People v. Kern County (1974) 115 Cal.Rptr. 67, 39 C.A.3d 830.

The enactment and amendment of zoning ordinances must be preceded, pursuant to subd. (a) of this section and § 21151, by preparation of an environmental impact report if the proposed ordinance may have a significant effect on the environment, and this conclusion applies to zoning ordinances which may have been adopted during the moratorium period of December 5, 1972 to April 5, 1973. 56 Ops.Atty.Gen. 401, 9-26-73.

2. Rezoning

Rezoning is a phrase used to connote the amendment or enactment of different zoning regulations for particular areas, and as such, if a proposed enactment or amendment may have a significant effect on the environment an environmental impact report is required under subd. (a) of this section and 21151. 56 Ops.Atty.Gen. 401, 9-26-73.

3. Discretionary projects

If, under the California Environmental Quality Act, a project is a "discretionary" one, agency may not grant the permit without first determining in writing whether the proposal has significant environmental impact. People v. Department of Housing and Community Development (1975) 119 Cal.Rptr. 266, 45 C.A.3d 185.

4. Hybrid projects

Since the California Environmental Quality Act should be interpreted to afford the fullest possible protection to the environment within the reasonable scope of its statutory language, this section which prohibits agency from granting permit for discretionary project without first determining in writing whether the proposal has a significant environmental impact and which does not require such determination for ministerial projects, requires such a determination for projects of a mixed ministerial-discretionary character, and doubt whether a project is ministerial or discretionary should be resolved in favor of the discretionary characterization. People v. Department of Housing and Community Development (App.1975) 119 Cal.Rptr. 266.

5. Written determination

The department of housing and community development violated provision of this section which prohibits agency from granting permit without first determining in writing whether proposal for discretionary project has significant environmental impact by issuing a construction permit for a mobile home park without first determining whether the park would have a significant environmental impact. People v. Department of Housing and Community Development (App.1975) 119 Cal.Rptr. 266.

§ 21080.5 Certified regulatory programs; plans in lieu of environmental impact report; certification; repeal

(a) When the regulatory program of a state agency, board, or commission requires a plan or other written documentation, containing environmental information and complying with the requirements of paragraph (3) of subdivision (b) of this section, to be submitted in support of the issuance to a person, other than a public agency, of a lease, permit, license, certificate, or other entitlement for use, such plan or other written documentation may be submitted in lieu of the environmental impact report required by this division; provided, that the Secretary of the Resources Agency has certified the regulatory program pursuant to this section. A regulatory program certified pursuant to this section is exempt from the provisions of Chapter 3 (commencing with Section 21100) of this division.

(b) In order to qualify for certification pursuant to this section, a regulatory program shall meet all of the following criteria:

(1) The enabling legislation of the regulatory program shall:

(i) Include protection of the environment among its principal purposes.

(ii) Contain authority for the administering agency to promulgate rules and regulations for the protection of the environment, guided by standards set forth in the enabling legislation.

(iii) Require utilization of an interdisciplinary approach which will ensure the integrated use of the natural and social sciences in decisionmaking.

(2) The rules and regulations adopted by the administering agency shall:

(i) Require that a project will not be approved as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the project may have on the environment.

(ii) Include guidelines for the orderly evaluation of projects and the preparation of the plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program.

(iii) Require the administering agency to consult with all public agencies which have jurisdiction, by law, with respect to the activity involving the issuance of the lease, permit, license, certificate, or other entitlement for use.

(iv) Require that final action on the issuance of a lease, permit, license, certificate, or other entitlement for use include the written responses of the issuing authority to significant environmental points raised during the evaluation process.

(v) Require the filing of a notice of the issuance of a lease, permit, license, certificate, or other entitlement for use with the Secretary of the Resources Agency. Such notices shall be available for public inspection, and a list of such notices

(v) It is posted on a weekly basis in the office of the Resources Agency. Each such list shall remain posted for a period of 30 days.

(vi) Require notice of the filing of the plan or other written documentation to be made to the public and to any person who requests, in writing, such notification. The notification shall be made in a manner that will provide the public or any such person with sufficient time to review and comment on such filing.

(3) The plan or other written documentation required by the regulatory program shall:

(i) Include a description of the project with alternatives to the project, and mitigation measures to minimize any significant adverse environmental impact.

(ii) Be available for a reasonable time for review and comment by other public agencies and the general public.

(c) The Secretary of the Resources Agency shall certify a regulatory program which the secretary determines meets all the qualifications for certification set forth in this section, and withdraw certification on determination that the regulatory program no longer meets such qualifications. Certification and withdrawal of certification shall occur only after compliance with Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) Any action or proceeding to attack, review, set aside, void, or annul a determination or decision of a state agency, board, or commission to issue a lease, permit, license, certificate, or other entitlement for use under a regulatory program which has been certified pursuant to this section on the basis that the plan or other written documentation submitted in support of such issuance does not comply with the provisions of this section shall be commenced no later than 30 days from the date of the filing of notice of issuance.

(e) This section shall remain in effect only until January 1, 1978, and as of that date is repealed.

(Added by Stats.1975, c. 1187, p. —, § 1.)

Repeal

This section is repealed by force of its own provisions on Jan. 1, 1978.

Section 2 of Stats.1975, c. 1187, p. —, provided:

"Section 1 of this act shall not be construed by implication to either confirm or repeal any administrative regulation, and shall not be construed as affecting the authority of the Secretary of the Resources Agency to adopt, amend, or repeal guidelines pursuant to Sections 21083 to 21087, inclusive, of the Public Resources Code."

Library References

Health and Environment ⟹25.10.

§ 21081. Blank

§ 21082. Public agencies; adoption of objectives, criteria and procedures; consistency with guidelines

All public agencies shall adopt by ordinance, resolution, rule, or regulation, objectives, criteria, and procedures for the evaluation of projects and the preparation of environmental impact reports pursuant to this division. A school district, or any other district, whose boundaries are coterminous with a city, county, or city and county, may utilize the objectives, criteria, and procedures of the city, county, or city and county, as may be applicable, in which case, the school district or other district need not adopt objectives, criteria, and procedures of its own. The objectives, criteria, and procedures shall be consistent with the provisions of this division and with the guidelines adopted by the Secretary of the Resources Agency pursuant to Section 21083. Such objectives, criteria, and procedures shall be adopted by each public agency no later than 60 days after the Secretary of the Resources Agency has adopted guidelines pursuant to Section 21083.

(Added by Stats.1972, c. 1154, p. 2272, § 2.3, urgency, eff. Dec. 5, 1972. Amended by Stats.1975, c. 242, p. —, § 1.)

Environmental impact evaluation, see 10 Cal.Adm.Code 2820 et seq.

State guidelines, food and agriculture, see 3 Cal.Adm.Code 200 et seq.

State water resources control board, implementation of E.Q.A. of 1970, see 23 Cal. Adm.Code 2700 et seq.

Timber harvesting plans, see 14 Cal. Adm.Code 891.1 et seq.

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

§ 21083. Office of planning and research; preparation and development of guidelines; conditions

The Office of Planning and Research shall prepare and develop proposed guidelines for the implementation of this division by public agencies. Such guidelines shall include objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports in a manner consistent with this division.

Such guidelines shall specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a "significant effect on the environment". Such criteria shall require a finding of "significant effect on the environment" if any of the following conditions exist:

(a) A proposed project has the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals;

(b) The possible effects of a project are individually limited but cumulatively considerable;

(c) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

Such guidelines shall also include procedures for determining the lead agency pursuant to the provisions of Section 21165.

The Office of Planning and Research shall develop and prepare such proposed guidelines as soon as possible and shall transmit them immediately to the Secretary of the Resources Agency. No later than 60 days after the effective date of this section the Secretary of the Resources Agency shall certify and adopt such guidelines pursuant to Chapter 4.5 (commencing with Section 11371) of Part 1, Division 3, Title 2, of the Government Code, which shall become effective upon the filing thereof, provided that such guidelines shall not be adopted without compliance with Sections 11423, 11424 and 11425 of the Government Code.

(Added by Stats.1972, c. 1154, p. 2272, § 2.3, urgency, eff. Dec. 5, 1972.)

Implementation of guidelines, see 17 Cal. Adm.Code 3100 et seq.

State EIR guidelines, see 14 Cal.Adm. Code 15000 et seq.

Derivation: Former section 21103, added by Stats. 1970, c. 1433, p. 2782, § 1.

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Compatibility of economic and environmental objectives in governmental decision making. (1974) 5 Pacific L.J. 92.

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

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1. In general

Administrative guidelines making optional the applicability of environmental impact report requirement whenever right-of-way or construction funds were budgeted for highway project prior to November 23, 1970 does not provide a lawful alternative to the preparation of an initial environmental impact report. People By and Through Dept. of Public Works v. Bosko (1975) 124 Cal. Rptr. 375, 47 C.A.3d 435.

Requirements of Environmental Quality Act cannot be avoided by chopping up proposed projects into bite size pieces which, individually considered, might be found to have no significant effect on environment or to be only ministerial. Plan For Arcadia, Inc. v. Arcadia City Council (1974) 117 Cal.Rptr. 96, 42 C.A.3d 712.

2. Reports

Agency's negative declaration that project will not have substantial adverse impact on environment and thus that environmental impact report is not required will be sustained unless as matter of law it appears that project as a whole will have substantial adverse impact on environment. Running Fence Corp. v. Superior Court of California, Sonoma County (1975) 124 Cal. Rptr. 339, 51 C.A.3d 400.

3. Evidence

In determining whether local agency erroneously made negative declaration finding that proposed project would not have substantial adverse effect on environment, test is whether there is any substantial evidence in light of whole record to sustain decision of local agency. Running Fence Corp. v. Superior Court of California, Sonoma County (1975) 124 Cal.Rptr. 339, 51 C.A.3d 400.

§ 21083.5 Submission of federal impact report in lieu of state report; conditions

The guidelinesss prepared and adopted pursuant to Section 21083 may provide that when an environmental impact statement has been, or will be, prepared for the same project pursuant to the requirements of the National Environmental Policy Act of 1969 and implementing regulations thereto, all or any part of such statement may be submitted in lieu of all or any part of an environmental impact report required by this division, provided that such statement, or the part thereof so [illegible]d, shall

[illegible] with the requirements of this division and the guidelines adopted pursuant [illegible]

(Added by Stats.1972, c. 1154, p. 2272, § 2.3, urgency, eff. Dec. 5, 1972.)

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

§ 21084. List of exempt classes of projects

The guidelines prepared and adopted pursuant to Section 21083 shall include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall be exempt from the provisions of this division. In adopting the guidelines, the Secretary of the Resources Agency shall make a finding that the list or classification of projects referred to in this section do not have a significant effect on the environment.

(Added by Stats.1972, c. 1154, p. 2272, § 2.3, urgency, eff. Dec. 5, 1972.)

Categorical exemptions, see 21 Cal.Adm. Code 1510 et seq.

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

Friends of Mammoth: Vox populi or judicial social engineering. (1973) 1 Pepperdine L.Rev. 137.

Land development and the environment; Subdivision Map Act. (1974) 5 Pacific L.J. 55.

§ 21085. Designation of exempt classes of projects; emergency repairs to public facilities

All classes of projects designated pursuant to Section 21084, together with emergency repairs to public service facilities necessary to maintain service, shall be exempt from the provisions of this division.

(Added by Stats.1972, c. 1154, p. 2272, § 2.3, urgency, eff. Dec. 5, 1972.)

1. In general

Determination that a project does not require an environmental impact report, when that project is not exempt from environmental study under Environmental Quality Act or guidelines, must take form of a written negative declaration. No Oil, Inc. v. City of Los Angeles (1974) 118 Cal. Rptr. 34, 529 P.2d 66.

§ 21086. Addition or deletion of exempt classes of projects; procedure

A public agency may, at any time, request the addition or deletion of a class of projects, to the list designated pursuant to Section 21084. Such a request shall be made in writing to the Office of Planning and Research and shall include information supporting the public agency's position that such class of projects does, or does not, have a significant effect on the environment.

The Office of Planning and Research shall review each such request and, as soon as possible, shall submit its recommendation to the Secretary of the Resources Agency. Following the receipt of such recommendation, the Secretary of the Resources Agency may add or delete the class of projects to the list of classes of projects designated pursuant to Section 21084 which are exempt from the requirements of this division.

The addition or deletion of a class of projects, as provided in this section, to the list specified in Section 21084 shall constitute an amendment to the guidelines adopted pursuant to Section 21083 and shall be adopted in the manner prescribed in Sections 21083, 21084, and 21087.

(Added by Stats.1972, c. 1154, p. 2272, § 2.3, urgency, eff. Dec. 5, 1972.)

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

§ 21087. Review of guidelines; changes or amendments

The Office of Planning and Research shall periodically review the guidelines adopted pursuant to Section 21083 and shall recommend proposed changes or amendments to the Secretary of the Resources Agency. Changes or amendments to the guidelines shall be adopted by the Secretary of the Resources Agency in the same manner as provided in Section 21083 for the adoption of the original guidelines.

(Added by Stats.1972, c. 1154, p. 2272, § 2.3, urgency, eff. Dec. 5, 1972.)

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

§ 21088. Distribution of guidelines, amendments and changes; notice

The Secretary of the Resources Agency shall provide for the timely distribution to all public agencies of the guidelines and any amendments or changes thereto. In addition, the Secretary of the Resources Agency may provide for publication of a bulletin to provide public notice of the guidelines, or any amendments or changes thereto, and of the completion of environmental impact reports prepared in compliance with this division.

(Added by Stats.1972, c. 1154, p. 2272, § 2.3, urgency, eff. Dec. 5, 1972.)

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

§ 21089. Fees

A public agency may charge and collect a reasonable fee from any person proposing a project subject to the provisions of this division in order to recover the estimated costs incurred by the public agency in preparing an environmental impact report for such project.

(Added by Stats.1972, c. 1154, p. 2272, § 2.3, urgency, eff. Dec. 5, 1972.)

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

Environmental impact statements, zoning and low-cost housing. (1973) 46 So.Cal.L.R. 754.

§ 21090. Redevelopment plan deemed single project

For all purposes of this division all public and private activities or undertakings pursuant to or in furtherance of a redevelopment plan shall be deemed a single project.

(Added by Stats.1972, c. 1154, p. 2272, § 2.3, urgency, eff. Dec. 5, 1972.)

1. In general

Requirements of Environmental Quality Act cannot be avoided by chopping up proposed projects into bite size pieces which, individually considered, might be found to have no significant effect on environment or to be only ministerial. Plan For Arcadia, Inc. v. Arcadia City Council (1974) 117 Cal.Rptr. 96, 42 C.A.3d 712.

CHAPTER 3. STATE AGENCIES, BOARDS AND COMMISSIONS

Sec.
21100. Environmental impact report on proposed state projects.
21101. Environmental impact report on proposed federal projects.
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Chapter 3 added by Stats.1970, c. 1433, p. 2781, § 1.

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Coastal zone management: The California experience. Robert B. Krueger (1972) 47 S.Bar J. 402.

Friends of Mammoth: Vox populi or judicial social engineering. (1973) 1 Pepperdine L.Rev. 137.

Land development and the environment: Subdivision Map Act. (1974) 5 Pacific L.J. 55.

Notice requirements to parties outside of city's zoning. (1973) 61 C.L.R. 597.

§ 21100. Environmental impact report on proposed state projects

All state agencies, boards, and commissions shall prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any

[illegible] propose to carry out or approve which may have a significant effect on the environment. Such a report shall include a detailed statement setting forth the following:

(a) The environmental impact of the proposed action.

(b) Any adverse environmental effects which cannot be avoided if the proposal is implemented.

(c) Mitigation measures proposed to minimize the impact including, but not limited to, measures to reduce wasteful, inefficient, and unnecessary consumption of energy.

(d) Alternatives to the proposed action.

(e) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

(f) Any irreversible environmental changes which would be involved in the proposed action should it be implemented.

(g) The growth-inducing impact of the proposed action.

(Added by Stats.1970, c. 1433, p. 2781, § 1. Amended by Stats.1972, c. 1154, p. 2274, § 2.5, urgency, eff. Dec. 5, 1972; Stats.1974, c. 276, p. 501, § 1, operative Jan. 7, 1975.)

General development plan as report on project for purposes of this section, see § 5002.2.

Law Review Commentaries

Compatibility of economic and environmental objectives in governmental decision making. (1974) 5 Pacific L.J. 92.

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

Friends of the Mammoth. (1973) 9 C.W.L.R. 536.

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1. In general

Where corridor hearings had complied with statute and regulations in effect at the time of such hearings, but new design hearings were necessary because previous ones had not adequately considered the effect of freeway on air and noise pollution, and National Environmental Policy Act and California Environmental Quality Act required officials to reconsider advisability of proceeding with freeway, new corridor hearings should also be held so that public could participate in process of determining the need for the freeway. Keith v. Volpe (D.C.1972) 352 F.Supp. 1324, affirmed 506 F.2d 696, certiorari denied 95 S.Ct. 826, 420 U.S. 908, 42 L.Ed.2d 837.

Where state announced only that it tentatively intended to construct a freeway along a tentative route, and plan was to be a step-by-step process involving consultation with community and individuals, assessment of future traffic needs, availability of funding, and apparent constant revision in alignment grade and other physical features as well as consideration of environmental and human impacts, such circumstances were insufficient to afford basis for compensation either in damages or in an award for inverse condemnation in plaintiffs' property which was bisected by route shown on published map, despite claim of arbitrary and capricious delay by state. Smith v. State (1975) 123 Cal.Rptr. 745, 50 C.A.3d 529.

The single most important requirement of the Environmental Quality Act is the preparation of the environmental impact report which compels various state and local governmental entities to consider possible adverse consequences to the environment of the proposed activity and to record such impact in writing. Russian Hill Improvement Ass'n v. Board of Permit Appeals (1971) 118 Cal.Rptr. 490, 41 C.A.3d 158, appeal dismissed 95 S.Ct. 2616.

The two basic requirements imposed upon state and local governmental entities under the Environmental Quality Act of 1970 are: (1) preparation of written environmental impact report satisfying elements of statute, and (2) disclosure of the environmental impact report prior to the administrative decision so as to permit input from public and other agencies into making of the final report as well as the governmental decision based on that report. Id.

Even if the doctrine of substantial compliance is applicable to environmental impact report requirement, failure of allegedly substitute staff memoranda to discuss or analyze proposed development in terms of requirements of Environmental Quality Act of 1970 establishing criteria for environmental impacts reports and taking of testimony at hearing on day that planning commission reached its decision approving project were not sufficient to constitute substantial compliance with the report criteria or the citizen input requirements of the Environmental Quality Act of 1970. Id.

Where office building was leased to state prior to 1972 amendment of this section, environmental impact statement was not required unless there was some other report on the proposed project or a fund authorization in connection therewith. City of Orange v. Valenti (1971) 112 Cal.Rptr. 379, 37 C.A.3d 240.

If adverse consequences to environment as pointed out in environmental impact report can be mitigated or if feasible alternatives are available, proposed activity such as issuance of a permit should not be approved, and in making these determinations concrete concepts, not mere aphorisms or generalities, must be considered. Friends of Mammoth v. Board of Sup'rs of Mono County (1972) 104 Cal.Rptr. 761, 502 P.2d 1049, 8 C.3d 247.

1.5 Statement

Even in an urban setting where the land was zoned for the use proposed, environmental impact statement could be required of state in connection with leasing of office building from its owner for establishment of a state office if, considering the character of the area in question, establishment of the office had adverse effects on traffic circulation and parking. City of Orange v. Valenti (1974) 112 Cal.Rptr. 379, 37 C.A.3d 240.

2. Report

Study report, on proposed large real estate development, which was not intended to be an environmental impact statement and which did not discuss various subdivisions of the state Environmental Quality Act failed to literally or substantially comply therewith. Environmental Law Fund, Inc. v. Town of Corte Madera (1975) 122 Cal.Rptr. 282, 49 C.A.3d 105.

Where city planning commission and permit appeals board did not prepare a formal, properly labeled environment impact report, the submission of three staff memoranda, holding of public hearings, consideration of supplemental reports and alternate designs, and fact that project conformed to environmental guidelines in urban design plan were not sufficient to comply with Environmental Quality Act's requirement that an environmental impact report be prepared. Russian Hill Improvement Ass'n v. Board of Permit Appeals (1974) 118 Cal.Rptr. 490, 41 C.A.3d 158, appeal dismissed 95 S.Ct. 2616.

Whatever is required to be considered in an environmental impact report under the Environmental Quality Act must be in the formal report, and what any official might have known from other writings or oral presentations cannot supply anything lacking in the report. Id.

Environmental Quality Act requires the preparation of an environmental impact report whenever it can be fairly argued on basis of substantial evidence that project may have significant environmental impact. No Oil, Inc. v. City of Los Angeles (1974) 118 Cal.Rptr. 34, 529 P.2d 66.

Negative impact declaration, determining that project for removal of 32 trees which were pushing up curbs, gutters, sidewalks and driveways would have no significant adverse effect on the environment requiring preparation of an environmental impact report, sufficiently followed the factors to be considered and made a reviewable record, despite contention that negative declaration should take the form of a "Mini Eir," where such declaration considered, inter alia, noise and vehicle emissions, safety, and aesthetic qualities. Dixon v. Los Angeles County (1971) 113 Cal.Rptr. 433, 38 C.A.3d 370.

Fact that building had been built and state office had been operating therein for over a year did not excuse filing of an environmental impact report on theory that it was too late to do anything about the office; report would be excused as impracticable only if the state could show that the costs of moving the office to another location would clearly outweigh the environmental benefits of such move. City of Orange v. Valenti (1974) 112 Cal.Rptr. 379, 37 C.A.3d 240.

A local agency is required to prepare an environmental impact report when (1) it is carrying out a "project," and (2) the project may have a significant effect on the environment. Inyo County v. Yorty (1973) 108 Cal.Rptr. 377, 32 C.A.3d 795.

Under this section, there is no requirement that the adverse effects be considered significant before they are required to be listed. Friends of Mammoth v. Board of Sup'rs of Mono County (1972) 104 Cal.Rptr. 761, 502 P.2d 1049, 8 C.3d 247.

Court has authority to consider adequacy of environmental impact report which has been filed with and accepted by planning commission, and with respect thereto the court can properly use instrument of injunction to deal with a deed for effective equitable action. Environmental Defense Fund, Inc. v. Coastside County Water Dist. (1972) 101 Cal.Rptr. 197, 27 C.A.3d 695, supplemented 104 Cal.Rptr. 714, 28 C.A.3d 512.

Timber-harvesting plans submitted to state forester for approval under requirements of the Z'berg-Nejedly Forest Practice Act of 1973 are subject to the California Environmental Quality Act and may require filing of environmental impact reports. 57 Ops.Atty.Gen. 587, 11-22-74.

3. Review

In determining adequacy of environmental impact report under the Environmental Equality Act the courts may refer to federal cases decided under the analogous National Environmental Policy Act. San Francisco Ecology Center v. City and County of San Francisco (1975) 122 Cal. Rptr. 100, 48 C.A.3d 584.

Supreme court would not make prospective only its decision relating to governmental agency approved private projects requiring the preparation of an environmental impact report merely because numerous projects were approved without requiring preparation of impact reports in the erroneous belief that such projects were exempt from Act, since it appeared that few would still be subject to attack, and there appeared no need for court to delay effective date of decision to allow additional time for governmental agencies to draw up guidelines. Friends of Mammoth v. Board of Sup'rs of Mono County (1972) 104 Cal.Rptr. 761, 502 P.2d 1049, 8 C.3d 247.

Court does not have duty of passing on validity of conclusions expressed in environmental impact report filed with and accepted by planning commission, but only on sufficiency of report as an informative document. Environmental Defense Fund, Inc. v. Coastside County Water Dist. (1972) 104 Cal.Rptr. 197, 27 C.A.3d 695, supplemented on other grounds 104 Cal.Rptr. 714, 28 C.A.3d 512.

§ 21101. Environmental impact report on proposed federal projects

In regard to any proposed federal project in this state which may have a significant effect on the environment and on which the state officially comments, the state officials responsible for such comments shall include in their report a detailed statement setting forth the matters specified in Section 21100 prior to transmitting the comments of the state to the federal government. No report shall be transmitted to the federal government unless it includes such a detailed statement as to the matters specified in Section 21100.

(Added by Stats.1970, c. 1433, p. 2782, § 1.)

1. In general

Where proposed freeway had received some funding prior to effective date of California Environmental Quality Act of 1970, but state had not yet received design approval from federal agencies for two of eight segments of federal-aid freeway, state officials were required to comply with requirements of Act and file environmental impact statement. Keith v. Volpe (D.C. 1972) 352 F.Supp. 1324.

In suit to restrain federal and state highway officials from proceeding with construction of freeway without [illegible] to comply, as to federal [illegible] provisions of Federal Aid Highway [illegible]

National Environmental Policy Act, and, as to state defendant, with California Environmental Quality Act, evidence raised substantial issues of fact as to whether project was a "federal project" so as to be within subject matter jurisdiction of court and as to whether plaintiffs had standing, whether action was barred by laches or whether defendants were immune from suit under Eleventh Amendment, precluding summary judgment for defendants. Sierra Club v. Volpe (D.C.1972) 351 F.Supp. 1092.

Courts will not countenance abuse of the significant effect qualification of the Environmental Quality Act as a subterfuge to excuse the making of impact reports otherwise required by Act. Friends of Mammoth v. Board of Sup'rs of Mono County (1972) 104 Cal.Rptr. 761, 502 P.2d 1049, 8 C.3d 247.

§ 21102. Request for or authorization of expenditure of funds; statement of effect on environment

No state agency, board, or commission shall request funds, nor shall any state agency, board, or commission which authorizes expenditures of funds, other than funds appropriated in the Budget Act, authorize funds for expenditure for any project, other than a project involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted or funded, which * * * may have a significant effect on the environment unless such request or authorization is accompanied by * * * an environmental impact report.

Feasibility and planning studies exempted by this section from the preparation of an environmental impact report shall nevertheless include consideration of environmental factors.

(Added by Stats.1970, c. 1433, p. 2782, § 1. Amended by Stats.1972, c. 1154, p. 2274, § 3, urgency, eff. Dec. 5, 1972.)

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1. In general

This section providing that no state agencies shall authorize expenditures of funds for any project, other than a project involving only planning, which could have a significant effect on the environment unless such authorization is accompanied by an environmental impact report provides the minimum requirement for nonapplication of the report requirement to existing projects; no such project not fully funded prior to the effective date of the Environmental Quality Act is exempt. People By and Through Dept. of Public Works v. Bosio (1975) 121 Cal.Rptr. 375, 47 C.A.3d 495.

Administrative guidelines making optional the applicability of environmental impact report requirement whenever right-of-way or construction funds were budgeted for highway project prior to November 23, 1970 does not provide a lawful alternative to the preparation of an initial environmental impact report. Id.

Courts will not countenance abuse of the significant effect qualification of the Environmental Quality Act as a subterfuge to excuse the making of impact reports otherwise required by Act. Friends of Mammoth v. Board of Sup'rs of Mono County (1972) 104 Cal.Rptr. 761, 502 P.2d 1049, 8 C.3d 247.

2. Report

Inasmuch as circular letter of division of highways making optional the applicability of environmental impact report requirement whenever right-of-way or construction funds were budgeted for the project prior to November 23, 1970 was inconsistent with Environmental Quality Act insofar as letter dispensed with the report requirement in respect of projects not fully funded, the letter was not validated by 14 Cal. Adm.Code 15075 providing that if a project for which all funds have been authorized has not progressed to the point where all such funds have been spent, a report shall be prepared if it is feasible to modify the project or abandon it. People By and Through Dept. of Public Works v. Bosio (1975) 121 Cal.Rptr. 375, 47 C.A.3d 495.

§ 21103. Repealed by Stats.1972, c. 1154, p. 2275, § 4, operative Dec. 5, 1972

The repealed section, added by Stats. 1970, c. 1433, p. 2782, § 1, required that the office of planning and research, in conjunction with state regional, and local agencies, coordinate development of objectives, etc. relating to impact reports. See, now, § 21083.

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

1. In general

Court does not have duty of passing on validity of conclusions expressed in environmental impact report filed with and accepted by planning commission, but only on sufficiency of report as an informative document. Environmental Defense Fund, Inc. v. Coastside County Water Dist. (1972) 104 Cal.Rptr. 197, 27 C.A.3d 695, supplemented on other grounds 104 Cal.Rptr. 714, 28 C.A.3d 512.

§ 21104. State agency; consultations prior to completion of impact report

Prior to completing an environmental impact report, the responsible state agency shall consult with, and obtain comments from, any public agency which has jurisdiction by law with respect to the project, and may consult with any person who has special expertise with respect to any environmental impact involved.

The responsible state agency shall consult with, and obtain comments from, the State Air Resources Board in preparing an environmental impact report on a highway or freeway project, as to the air pollution impact of the potential vehicular use of such highway or freeway.

(Added by Stats.1970, c. 1433, p. 2782, § 1. Amended by Stats.1972, c. 1154, p. 2275, § 6, urgency, eff. Dec 5, 1972; Stats.1974, c. 176, p. 349, § 1.)

Similar provisions for local agencies, see § 21153.

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

1. In general

Whatever is required to be considered in an environmental impact report under the Environmental Quality Act must be in the formal report, and what any official might have known from other writings or oral presentations cannot supply anything lacking in the report. Russian Hill Improvement Ass'n v. Board of Permit Appeals (1974) 118 Cal.Rptr. 490, 44 C.A.3d 158, appeal dismissed 95 S.Ct. 2646.

The two basic requirements imposed upon state and local governmental entities under the Environmental Quality Act of 1970 are: (1) preparation of written environmental impact report satisfying elements of statute, and (2) disclosure of the environmental impact report prior to the administrative decision so as to permit input from public and other agencies into making of the final report as well as the governmental decision based on that report. Id.

Under § 21153 requiring local agency prior to completing environmental impact report to consult with and obtain comments from any public agency which has jurisdiction with respect to project and with any person who has special expertise with respect to environmental impact involved and guidelines for Environmental Quality Act requiring final report to contain comments received and the response to environmental points and specify why suggestions were not accepted, county was required in final environmental impact report regarding proposed subdivision to respond with specificity as to disposition of environmental issues raised to draft report and set forth reasons why such objections were rejected and why it considered development of project to be of overriding importance and its failure to do so rendered the final report fatally defective. People v. Kern County (1974) 115 Cal.Rptr. 67, 39 C.A.3d 830.

This section requires consultation with other agencies only when a detailed environmental impact statement is required, and thus if no detailed statement was required in connection with leasing of office building by state, there could be no separate cause of action for failure of state to consult with city in which building was located. City of Orange v. Valenti (1974) 112 Cal.Rptr. 378, 37 C.A.3d 240.

§ 21105. Environmental impact report and comments as part of regular project report; availability to legislature and general public

The responsible state * * * agency shall include the environmental impact report * * * as a part of the regular project report used in the existing review and budgetary process. It shall be available to the Legislature * * *. It shall also be available for inspection by the general public who may secure a copy thereof by paying for the actual cost of such a copy. It shall be filed by the responsible state agency with the appropriate local planning agency of any city, county, or city and county which will be affected by the project.

(Added by Stats.1970, c. 1433, p. 2783, § 1. Amended by Stats.1972, c. 971, p. 1754, § 7, urgency, eff. Dec. 5, 1972.)

1. In general

The preparation and submission of a formal environmental impact report well in advance of the public hearing on the application for a site permit is the only way in which the public input requirement of the Environmental Quality Act can be satisfied. Russian Hill Improvement Ass'n v. Board of Permit Appeals (1974) 118 Cal. Rptr. 490, 44 C.A.3d 158, appeal dismissed 95 S.Ct. 2646.

Even if the doctrine of substantial compliance is applicable to environmental impact report requirement, failure of allegedly substitute staff memoranda to discuss or analyze proposed development in terms of requirements of Environmental Quality Act of 1970 establishing criteria for environmental impacts reports and taking of testimony at hearing on day that planning commission reached its decision approving project were not sufficient to constitute substantial compliance with the report criteria or the citizen input requirements of the Environmental Quality Act of 1970. Id.

Where city was engaged in project of extracting subsurface water in a county distant from the city and the county was the area in which the ecological damage, if any, would occur, city was obliged to file environmental impact statement with the planning agencies of the county or counties where the project was to be constructed and where significant ecological impact might occur. Inyo County v. Yorty (1973) 108 Cal.Rptr. 377, 32 C.A.3d 795.

§ 21106. Request of funds to protect environment

All state agencies, boards, and commissions shall request in their budgets the funds necessary to protect the environment in relation to problems caused by their activities.

(Added by Stats.1970, c. 1433, p. 2782, § 1.)

§ 21107. Repealed by Stats.1972, c. 1154, p. 2275, § 9, urgency, eff. Dec. 5, 1972

The repealed section, added by Stats. 1970, c. 1433, p. 2782, § 1, required every state agency, board and commission to review its present authority, rules, regulations, etc., and to propose legislation in order to comply with intent, policies and procedures of this division.

§ 21108. State agency, board or commission; approval or determination to carry out project; notice; contents; public inspection; posting

(a) Whenever a state agency, board, or commission approves or determines to carry out a project which is subject to the provisions of this division, it shall file notice of such approval or such determination with the Secretary of the Resources Agency. Such notice shall indicate the determination of the agency, board, or commission whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to the provisions of this division.

(b) Whenever a state agency, board, or commission determines that a project is not subject to the provisions of this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172, and it approves or determines to carry out such project, it, or the person specified in subdivision (b) or (c) of Section 21065, may file notice of such determination with the Secretary of the Resources Agency. Any notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination attached to it issued by the state agency, board, or commission responsible for making the determination that a project is not subject to the provisions of this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the state agency, board, or commission.

(c) All notices filed pursuant to this section shall be available for public inspection, and a list of such notices shall be posted on a weekly basis in the Office of the Resources Agency. Each such list shall remain posted for a period of 30 days.

(Added by Stats.1972, c. 1154, p. 2275, § 9, urgency, eff. Dec. 5, 1972. Amended by Stats.1974, c. 56, p. 124, § 1, urgency, eff. March 4, 1974.)

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

Library references

Health and Environment ⟹25.10.

1. In general

Under the Environmental Quality Act the legislature had contemplated that projects which adversely affect the environment may nonetheless be approved; the existence of significant environmental hazard does not necessarily require the disapproval of a project. San Francisco Ecology Center v. City and County of San Francisco (1975) 122 Cal.Rptr. 109, 48 C.A.3d 584.

The legislative history of the Environmental Quality Act supports the view that environmental values are to be assigned greater weight than the needs of economic growth so that decision makers must assign greater priorities to environmental values than to economic needs, but the courts will not substitute their judgment for that of responsible agency. Id. local government."

CHAPTER 4. LOCAL AGENCIES

Sec.

21150. Environmental impact report required before allocation of state or federal funds.

21151. Local agencies; preparation and completion of impact report; submission as part of general plan report.

21152. Local agency; approval or determination to carry out project; notice; contents; public inspection; posting.

21153. Local agency; consultations prior to completion of impact report.

21154. Issuance of project order by state; effect on impact report of local agency.

21155. Economic practices manual; development and contents [New].

Chapter 4 added by Stats.1970, c. 1433, p. 2782, § 1.

Law Review Commentaries

Friends of Mammoth: Vox populi or judicial social engineering. (1973) 1 Pepperdine L.Rev. 337.

§ 21150. Environmental impact report required before allocation of state or federal funds

State agencies, boards, and commissions, responsible for allocating state or federal funds on a project-by-project basis to local * * * agencies for * * * any project which may have a significant effect on the environment, shall * * * require from the responsible local governmental agency a detailed statement setting forth the matters specified in Section 21100 prior to the allocation of any funds * * * other than funds solely for * * * projects involving only feasibility or planning studies for possible future actions which the agency, board, or commission has not approved, adopted, or funded.

(Added by Stats.1970, c. 1433, p. 2782, § 1. Amended by Stats.1972, c. 1154, p. 2275, § 10, urgency, eff. Dec. 5, 1972.)

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

1. In general

Federal defendants in suit to restrain construction of freeway project would be preliminarily enjoined from any further action on project until Federal Aid Highway Act provisions requiring public hearings and National Environmental Policy Act provisions requiring filing of environmental impact statements were complied with and state defendants would be similarly enjoined until environmental impact statement was filed, in view of likelihood of success on merits on basis of tentative findings that compliance with applicable statutes was at all times practicable and should have been undertaken and that no "design approval" of project had been given. Sierra Club v. Volpe (D.C.1972) 351 F. Supp. 1002.

Courts will not countenance abuse of the significant effect qualification of the Environmental Quality Act as a subterfuge to excuse the making of impact reports otherwise required by Act. Friends of Mammoth v. Board of Sup'rs of Mono County (1972) 104 Cal.Rptr. 761, 502 P.2d 1049, 8 C. 3d 247.

§ 21151. Local agencies; preparation and completion of impact report; submission as part of general plan report

* * * All local agencies shall prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any project they intend to carry out * * * or approve which may have a significant effect on the environment * * *. When a report is required by Section 65402 of the Government Code, the environmental impact report may be submitted as a part of that report.

(Added by Stats.1970, c. 1433, p. 2783, § 1. Amended by Stats.1972, c. 971, p. 1754, § 1; Stats.1972, c. 1154, p. 2276, § 11, urgency, eff. Dec. 5, 1972.)

Legislative intent that local agencies, prepare impact report on private projects, See 1972 A.J. 2020.

Law Review Commentaries

Application of environmental impact report requirement of the California Environmental Quality Act of 1970 to rate hearings of electric utilities (1974) 8 U.S.F.L.Rev. 752.

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

... housing. (1973) 16 S.C.L.
... protection: Attorney general ... Evelle J. Younger ... L.J. 19.
... scope of environmental law. ... Kane (Jan. 1973) 48 Los Angeles ... 81.
... of the Mammoth. (1973) 9 C.W. ...
Land development and the environment; Subdivision Map Act. (1974) 5 Pacific L.J.

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1. In general

Where alleged technical deficiencies in local agency's procedure which resulted in issuance of negative declaration that proposed project would not have substantial adverse impact upon environment were not raised before local agencies, they could not be raised for first time on seeking court review. Running Fence Corp. v. Superior Court of California, Sonoma County (1975) 124 Cal.Rptr. 339, 51 C.A.3d 400.

Negative declaration with respect to necessity of environmental impact report on project for removal of 32 trees which were pushing up sidewalks, curbs, gutters and driveways was not insufficient on theory that it failed to contemplate the cumulative effect of all other similar projects wherever undertaken, since a planned removal of trees done over a long period of time as part of routine and ordinary highway maintenance could not be equated with successive tree cutting done within a compressed time, as time can have the effect of reducing the impact of alterations of the environment. Hixon v. Los Angeles County (1974) 113 Cal.Rptr. 433, 38 C.A.3d 370.

Planning agency has no power under the Environmental Quality Act, in case of a local agency such as water district, to make a decision that is binding on anyone as to adequacy of an environmental impact report. Environmental Defense Fund, Inc. v. Coastside County Water Dist. (1972) 101 Cal.Rptr. 197, 27 C.A.3d 695, supplemented on other grounds 104 Cal.Rptr. 714, 28 C.A.3d 512.

The enactment and amendment of zoning ordinances must be preceded, pursuant to § 21080, subd. (a) and this section, by preparation of an environmental impact report if the proposed ordinance may have a significant effect on the environment, and this conclusion applies to zoning ordinances which may have been adopted during the moratorium period of December 5, 1972 to April 5, 1973. 56 Ops.Atty.Gen. 404, 9-26-73.

Local agency formation commission was governmental agency to which provisions of Environmental Quality Act concerning preparation of environmental impact reports were applicable. Bozung v. Local Agency Formation Commission of Ventura County (1975) 118 Cal.Rptr. 249, 529 P.2d 1017, 13 C.3d 263.

1.5 —— Prior law, In general

City's urban design plan's section on conservation did not fulfill requirement of being "an officially adopted conservation element" for purposes of exempting city from requirement of filing an environ... prior to 1972 amendments ... this section exemptions for cities having such elements in their general plans as of January 13, 1972. Russian Hill Improvement Ass'n v. Board of Permit Appeals (1974) 118 Cal. Rptr. 490, C.A.3d 158, appeal dismissed 95 S.Ct. 2646.

2. Definitions

Approval by local agency formation commission of city annexation of agricultural land proposed to be used for residential, commercial and recreational purposes was project "which may have a significant effect on the environment," within meaning of this section, where, when approval was granted, planning was completed, preliminary conferences with city agencies had progressed "sufficiently," development was anticipated in near future, and annexation would result in urban growth. Bozung v. Local Agency Formation Commission of Ventura County (1975) 118 Cal.Rptr. 249, 529 P.2d 1017, 13 C.3d 263.

Word "significant," within requirement of this section for an environmental impact report only for project whose environmental effect can be described as "significant" is not a term of precision but encompasses a range of meaning. No Oil, Inc. v. City of Los Angeles (1974) 118 Cal.Rptr. 34, 529 P.2d 66.

Phrase "they intend to carry out" as used in this section means only that before an environmental impact report becomes required the government must have some minimal link with the activity either by direct proprietary interest or by permitting, regulating, or funding private activity. Friends of Mammoth v. Board of Sup'rs of Mono County (1972) 104 Cal.Rptr. 761, 502 P.2d 1049, 8 C.3d 247.

Since neither dictionary definition nor Environmental Quality Act itself provides court with a tool to use in interpreting word "project" as used in this section, supreme court turned to the National Environmental Policy Act on which the California Act appeared to be patterned. Id.

3. Report

In absence of any evidence showing that impact on environment of proposed project would not be mitigated as required in permit issued by board of supervisors, or any evidence to show that effects remaining after such mitigation would have substantial adverse impact on environment, conclusion of board of supervisors that project as permitted would have no substantial adverse impact on environment and thus that environmental impact report was not required was unassailable, and superior court exceeded its jurisdiction in issuing writ of mandate requiring environmental impact report. Running Fence Corp. v. Superior Court of California, Sonoma County (1975) 124 Cal.Rptr. 339, 51 C.A.3d 400.

Study report on proposed large real estate development, which was not intended to be an environmental impact statement and which did not discuss various subdivisions of the state Environmental Quality Act failed to literally or substantially comply therewith. Environmental Law Fund, Inc. v. Town of Corte Madera (1975) 122 Cal.Rptr. 282, 49 C.A.3d 105.

Environmental Quality Act requires the preparation of an environmental impact report whenever it can be fairly argued on basis of substantial evidence that project may have significant environmental impact. No Oil, Inc. v. City of Los Angeles (1974) 118 Cal.Rptr. 34, 529 P.2d 66.

Environmental Quality Act imposes a low threshold requirement for preparation of an environmental impact report. Id.

With respect to oil drilling project, test used by city which limited use of an environmental impact report to projects which may have an "important" or "momentous" effect of "semi-permanent" duration was erroneous. Id.

Where construction of multiple-unit condominium building was authorized without requirement of environmental impact report because of grandfather provisions of Environmental Quality Act, governmental action permitting sale of condominium units and hence occupancy by owners had no effect upon environment, in absence of showing to the contrary an EIR was not required as condition to approval of tentative subdivision map. Pacific Palisades Property Owners Ass'n v. City of Los Angeles (1974) 117 Cal.Rptr. 138, 42 C.A.3d 781.

No environmental impact report would be required with respect to phase of the street improvement project, involving removal of trees, which had already been completed; but at time of preparation of report on second phase of project, cumulative effect of both phases could be considered in compliance with 14 Cal.Adm.Code 15069 permitting preparation of a single report for multiple and phased projects. Hixon v. Los Angeles County (1974) 113 Cal.Rptr. 433, 38 C.A.3d 370.

Where final environmental impact report consisted of developer's draft together with written reports of county interim committee, county planning department, and air pollution control district, there was compliance with statutory requirement that the environmental impact report be prepared by the public agency. Id.

Where city was engaged in project of extracting subsurface water in a county distant from the city and the county was the area in which the ecological damage, if any, would occur, city was obliged to file environmental impact statement with the planning agencies of the county or counties where the project was to be constructed and where significant ecological impact might occur. Inyo County v. Yorty (1973) 108 Cal.Rptr. 377, 32 C.A.3d 795.

A local agency is required to prepare an environmental impact report when (1) it is carrying out a "project," and (2) the project may have a significant effect on the environment. Id.

County board of supervisors to which application was made for conditional use permit for purpose of constructing proposed multistory condominiums and stores and restaurant on a five and one-half acre parcel of land in predominantly mountainous and open range country were required to consider whether the proposed construction might have a significant effect on environment and, if so, to prepare an environmental impact report prior to its decision to grant the permit. Friends of Mammoth v. Board of Sup'rs of Mono County (1972) 104 Cal.Rptr. 761, 502 P.2d 1049, 8 C.3d 247.

Court has authority to consider adequacy of environmental impact report which has been filed with and accepted by planning commission, and with respect thereto the court can properly use instrument of injunction to deal with a need for effective equitable action. Environmental Defense Fund, Inc. v. Coastside County Water Dist. (1972) 101 Cal.Rptr. 197, 27 C.A.3d 695, supplemented on other grounds 104 Cal.Rptr. 714, 28 C.A.3d 512.

4. Private activities

Environmental impact report is required in approval by a local agency of a private project only when project would ordinarily have a significant effect upon the environment. Pacific Palisades Property Owners Ass'n v. City of Los Angeles (1974) 117 Cal.Rptr. 138, 42 C.A.3d 781.

Analysis of Environmental Quality Act of 1970 including this section shows legislative intent to include private activities for which a permit, lease or other entitlement is necessary. Friends of Mammoth v. Board of Sup'rs of Mono County (1972) 104 Cal.Rptr. 761, 502 P.2d 1049, 8 C.3d 247.

4.5 Evidence

Existence of factual controversy, uncertainty, conflicting assertions, arguments, or public controversy, cannot of themselves nullify local agency's adoption of negative declaration and require preparation of environmental impact report where there is no substantial evidence in record that project as designed and approved will fall within requirements of the Environmental Quality Act. Running Fence Corp. v. Superior Court of California, Sonoma County (1975) 124 Cal.Rptr. 339, 51 C.A.3d 400.

Where applicant for public use permit has tailored his project and is willing to accept conditions which appropriate agency finds will render project such that it will not have substantial adverse effect on environment, his admissions and confessions should not be turned against him to further delay project in absence of evidence that the project as designed and projected and approved will have substantial adverse impact as matter of law. Id.

5. Review

Where hearings were held before board of zoning appeals and county board of supervisors before issuance of negative declaration that project would not have substantial adverse effect on environment, lack of record of those proceedings precluded superior court from attempting to review sufficiency of evidence in determining whether to issue writ of mandate requiring environmental impact report. Running Fence Corp. v. Superior Court of California, Sonoma County (1975) 124 Cal.Rptr. 339, 51 C.A.3d 400.

Court does not have duty of passing on validity of conclusions expressed in environmental impact report filed with and accepted by planning commission, but only on sufficiency of report as an informative document. Environmental Defense Fund, Inc. v. Coastside County Water Dist. (1972) 101 Cal.Rptr. 197, 27 C.A.3d 695, supplemented on other grounds 104 Cal.Rptr. 714, 28 C.A.3d 512.

6. Rezoning

Rezoning is a phrase used to connote the amendment or enactment of different zoning regulations for particular areas, and as such, if a proposed enactment or amendment may have a significant effect on the environment an environmental impact report is required under § 21080, subd. (a) and this section. 56 Ops.Atty.Gen. 404, 9-26-73.

§ 21152. Local agency; approval or determination to carry out project; notice; contents; public inspection; posting

(a) Whenever a local agency approves or determines to carry out a project which is subject to the provisions of this division, it shall file notice of such approval or such determination with the county clerk of the county, or counties, in which the project will be located. Such notice shall indicate the determination of the local agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to the provisions of this division.

(b) Whenever a local agency determines that a project is not subject to the provisions of this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172, and it approves or determines to carry out such project, it, or the person specified in subdivision (b) or (c) of Section 21065, may file notice of such determination with the county clerk of the county, or counties, in which the project will be located. Any notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination attached to it issued by the local agency responsible for making the determination that a project is not subject to the provisions of this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the local agency.

(c) All notices filed pursuant to this section shall be available for public inspection, and a list of such notices shall be posted on a weekly basis in the office of the county clerk. Each such list shall remain posted for a period of 30 days.

(Added by Stats.1972, c. 1154, p. 2276, § 12, urgency, eff. Dec. 5, 1972. Amended by Stats.1974, c. 56, p. 124, § 2, urgency, eff. March 4, 1974.)

Former section 21152, added by Stats. 1972, c. 971, p. 1754, § 2, which specified contents of environmental impact report, was repealed by Stats.1972, c. 1154, p. 2276, § 11.5, urgency, eff. Dec. 5, 1972.

Section 18 of Stats.1972, c. 1154, p. 2280, provided: "Sections 11.5 and 12.5 of this act shall become operative at the same time as Chapter 971 of the Statutes of 1972 becomes effective."

Stats.1972, c. 971, becomes effective 61 days after final adjournment of 1972 regular session.

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 553.

Library references

Health and Environment ⟹25.10.

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1. In general

Agency's negative declaration that project will not have substantial adverse impact on environment and thus that environmental impact report is not required will be sustained unless as matter of law it appears that project as a whole will have substantial adverse impact on environment. Running Fence Corp. v. Superior Court of California, Sonoma County (1975) 124 Cal. Rptr. 339, 51 C.A.3d 400.

The legislative history of the Environmental Quality Act supports the view that environmental values are to be assigned greater weight than the needs of economic growth so that decision makers must assign greater priorities to environmental values than to economic needs, but the courts will not substitute their judgment for that of responsible agency. San Francisco Ecology Center v. City and County of San Francisco (1975) 122 Cal.Rptr. 100, 48 C.A.3d 584.

Where city was engaged in project of extracting subsurface water in a county distant from the city and the county was the area in which the ecological damage, if any, would occur, city was obliged to file environmental impact statement with the planning agencies of the county or counties where the project was to be constructed and where significant ecological impact might occur. Inyo County v. Yorty (1973) 108 Cal.Rptr. 377, 32 C.A.3d 795.

2. Evidence

In absence of any evidence showing that impact on environment of proposed project would not be mitigated as required in permit issued by board of supervisors, or any evidence to show that effects remaining after such mitigation would have substantial adverse impact on environment, conclusion of board of supervisors that project as permitted would have no substantial adverse impact on environment and thus that environmental impact report was not required was unassailable, and superior court exceeded its jurisdiction in issuing writ of mandate requiring environmental impact report. Running Fence Corp. v. Superior Court of California, Sonoma County (1975) 124 Cal.Rptr. 339, 51 C.A.3d 400.

§ 21153. Local agency; consultations prior to completion of impact report

Prior to completing an environmental impact report, every local agency shall consult with, and obtain comments from, any public agency which has jurisdiction by law with respect to the project, and may consult with any person who has special expertise with respect to any environmental impact involved.

(Added by Stats.1972, c. 1154, p. 2276, § 13, urgency, eff. Dec. 5, 1972.)

Former section 21153, added by Stats. 1972, c. 971, p. 1754, § 3, and which required local governmental agency to determine boundaries of the area affected by a project, was repealed by Stats.1972, c. 1154, p. 2276, § 12.5, urgency, eff. Dec. 5, 1972.

Operative date of repeal of former section 21153, see note under § 21152.

Similar provisions for state agencies, see § 21104.

1. In general

Under this section requiring local agency prior to completing environmental impact report to consult with and obtain comments from any public agency which has jurisdiction with respect to project and with any person who has special expertise with respect to environmental impact involved and guidelines for Environmental Quality Act requiring final report to contain comments received and the response to environmental points and specify why suggestions were not accepted, county was required in final environmental impact report regarding proposed subdivision to respond with specificity as to disposition of environmental issues raised to draft report and set forth reasons why such objections were rejected and why it considered development of project to be of overriding importance and its failure to do so rendered the final report fatally defective. People v. Kern County (1974) 115 Cal.Rptr. 67, 39 C.A.3d 830.

§ 21154. Issuance of project order by state; effect on impact report of local agency

Whenever any state agency, board, or commission issues an order which requires a local agency to carry out a project which may have a significant effect on the environment, any environmental impact report which the local agency may prepare shall be limited to consideration of those factors and alternatives which will not conflict with such order.

(Added by Stats.1972, c. 1154, p. 2276, § 14, urgency, eff. Dec. 5, 1972.)

§ 21155. Economic practices manual; development and contents

The Secretary of the Resources Agency shall develop an economic practices manual which may be used by local agencies in assessing the economic efficiency and fiscal impact of alternative land use proposals by local agencies and as an aid in evaluating private land use proposals.

The manual shall present economic and fiscal criteria for local agencies to use in developing comprehensive and multidisciplined programs and procedures for evaluating alternative land use policies and private land use proposals. The manual shall include a step-by-step program which local agencies may follow, including, but not limited to, sources of data, methods of summarizing and using the data, formulas for evaluating the economic efficiency and fiscal impact of land use decisions, a guideline on how to prepare a simple statement of results, and a means for equating economic factors with social and environmental factors.

The Secretary of the Resources Agency may obtain private counseling in the preparation of the manual. On or before January 1, 1975, the Secretary of the Resources Agency shall submit a proposed manual to the Legislature for its review. It is the intent of the Legislature hereby to permit the Legislature to review the manual and to comment thereon prior to its final adoption by the Secretary of the Resources Agency and its distribution to local agencies.

(Added by Stats.1973, c. 895, p. 1671, § 1.)

Library references

Zoning ⟹353.
C.J.S. Zoning §§ 202, 203.

CHAPTER 5. SUBMISSION OF INFORMATION

Sec.
21160. Application for lease, permit, license, etc.; data and information; purpose; trade secrets.
21161. Completion of impact report; notice; validity of project.

Chapter 5 was added by Stats.1972, c. 1154, p. 2276, § 15, urgency, eff. Dec. 5, 1972.

§ 21160. Application for lease, permit, license, etc.; data and information; purpose; trade secrets

Whenever any person applies to any public agency for a lease, permit, license, certificate, or other entitlement for use, the public agency may require that person to submit data and information which may be necessary to enable the public agency to determine whether the proposed project may have a significant effect on the environment or to prepare an environmental impact report.

If any or all of the information so submitted is a "trade secret" as defined in Section 6254.7 of the Government Code by those submitting that information, it shall not be included in the impact report or otherwise disclosed by any public agency. This section shall not be construed to prohibit the exchange of properly designated

[illegible] tion of [illegible] impact report.

(Added by Stats.1972, c. 1154, p. 2276, § 15, urgency, eff. Dec. 5, 1972.)

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Library references

Health and Environment ⟹25.5, 25.10.

§ 21161. Completion of impact report; notice; validity of project

Whenever a public agency has completed an environmental impact report, it shall cause a notice of completion of such report to be filed with the Secretary of the Resources Agency. The notice of completion shall briefly identify the project and shall indicate that an environmental impact report has been prepared. Failure to file the notice required by this section shall not affect the validity of a project.

(Added by Stats.1972, c. 1154, p. 2276, § 15, urgency, eff. Dec. 5, 1972.)

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

CHAPTER 6. LIMITATIONS

Sec.

21165. Lead agency; preparation of impact report.
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Chapter 6 was added by Stats.1972, c. 1154, p. 2277, § 16, urgency, eff. Dec. 5, 1972.

§ 21165. Lead agency; preparation of impact report

When a project is to be carried out or approved by two or more public agencies, the determination of whether the project may have a significant effect on the environment shall be made by the lead agency and such agency shall prepare, or cause to be prepared by contract, the environmental impact report for the project, if such a report is required by this division. In the event that a dispute arises as to which is the lead agency, any public agency may submit the question to the Office of Planning and Research, and the Office of Planning and Research shall designate the lead agency, giving due consideration to the capacity of such agency to adequately fulfill the requirements of this division.

(Added by Stats.1972, c. 1154, p. 2277, § 16, urgency eff. Dec. 5, 1972.)

Regulations for designation of lead agency, see 14 Cal.Adm.Code 15000 et seq.

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

Library references

Health and Environment ⟹25.5, 25.10.

1. In general

Local agency formation commission, not city, was "lead agency" charged with obligation to prepare environmental impact report on projected environmental effects of commission's approval or disapproval of city's proposed annexation of agricultural land with view toward land's development for residential, commercial and recreational uses. Bozung v. Local Agency Formation Commission of Ventura County (1975) 113 Cal.Rptr. 249, 529 P.2d 1017, 13 C.3d 263.

§ 21166. Subsequent impact report; conditions

When an environmental impact report has been prepared for a project pursuant to this division, no subsequent environmental impact report shall be required unless either of the following occurs:

(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.

(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.

(Added by Stats.1972, c. 1154, p. 2277, § 16, urgency, eff. Dec. 5, 1972.)

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

1. In general

Validation of development project, to the extent authorized by prior zone changes, did not exempt issuance of subsequent conditional use permit from requirements of Environmental Quality Act if the permit authorized substantial changes in the project from that which was authorized by the zone changes or if it substantially changed the circumstances under which the project was to be undertaken from those existing under the zone changes. Concerned Citizens of Palm Desert, Inc. v. Riverside County Bd. of Sup'rs (1974) 113 Cal.Rptr. 338, 38 C.A.3d 272.

§ 21167. Commencement of actions or proceedings; time

Any action or proceeding to attack, review, set aside, void, or annul the following acts or decisions of a public agency on the grounds of noncompliance with this division shall be commenced as follows:

(a) An action or proceeding alleging that a public agency is carrying out or has approved a project which may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment shall be commenced within 180 days of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days after commencement of the project.

(b) Any action or proceeding alleging that a public agency has improperly determined whether a project may have a significant effect on the environment shall be commenced within 30 days after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(c) Any action or proceeding alleging that an environmental impact report does not comply with the provisions of this division shall be commenced within 30 days after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(d) Any action or proceeding alleging that a public agency has improperly determined that a project is not subject to the provisions of this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172 shall be commenced within 35 days after the filing by the public agency, or person specified in subdivision (b) or (c) of Section 21065, of the notice authorized by subdivision (b) of Section 21108 or subdivision (b) of Section 21152. If such notice has not been filed, such action or proceeding shall be commenced within 180 days of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days after commencement of the project.

(e) Any action or proceeding alleging that any other act or omission of a public agency does not comply with the provisions of this division shall be commenced within 30 days after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(Added by Stats.1972, c. 1154, p. 2277, § 16, urgency, eff. Dec. 5, 1972. Amended by Stats.1974, c. 56, p. 125, § 3, urgency, eff. March 4, 1974.)

Underline indicates changes or additions by amendment

1974 Amendment. Substituted references "subdivision (a) of Section 21168 or subdivision (a) of Section 21152" for "Section 21168 or 21152" in subds. (b) and (c), and added subds. (d) and (e).

Law Review Commentaries

California Environmental Quality Act—significant effect or paper pollution? (1974) 5 Pacific L.J. 26.

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

1. In general

Where department of housing and community development received written legal advice from Attorney General to the effect that permits issued under Mobilehome Parks Act were subject to requirements of the Environmental Quality Act, but then issued permit without environmental inquiry, and where applicant, who had waited four months to ascertain whether state would require city authorities to make environmental inquiries, then incurred $40,000 of expenses in constructing the park on property zoned light industrial, the state was estopped by the doctrine of laches from rescinding the permit and preventing further construction of the mobile home park. People v. Department of Housing and Community Development (1975) 119 Cal.Rptr. 266, 45 C.A.3d 185.

Limitation provisions with respect to filing of actions under the Environmental Quality Act were not applicable to action which was filed with respect to a public agency project prior to the effective date of the limitation provisions. Inyo County v. Yorty (1973) 108 Cal.Rptr. 377, 32 C.A.3d 795.

§ 21167.5 Proof of service; filing with initial pleading

Proof of prior service by mail upon the public agency carrying out or approving the project of a written notice of the commencement of any action or proceeding described in Section 21167 identifying the project shall be filed concurrently with the initial pleading in such action or proceeding.

(Added by Stats.1972, c. 1154, p. 2277, § 16, urgency, eff. Dec. 5, 1972.)

§ 21168. Review of determination or decision of public agency; law governing; scope

Any action or proceeding to attack, review, set aside, void or annul a determination or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency, on the grounds of noncompliance with the provisions of this division shall be in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure.

In any such action, the court shall not exercise its independent judgment on the evidence but shall only determine whether the act or decision is supported by substantial evidence in the light of the whole record.

(Added by Stats.1972, c. 1154, p. 2277, § 16, urgency, eff. Dec. 5, 1972.)

1. In general

Where city airports commission adopted final environmental impact report for expansion of airport and approved the expansion program, and board of supervisors adopted final EIR for substantially the same reasons given by the commission, the trial court was not required to exercise its independent judgment on the evidence. San Francisco Ecology Center v. City and County of San Francisco (1975) 122 Cal. Rptr. 100, 48 C.A.3d 581.

Section 21168.5 and this section governing judicial review of agency action under Environmental Quality Act apply to all proceedings under Act, including those pending when judicial review sections became effective. No Oil, Inc. v. City of Los Angeles (1974) 118 Cal.Rptr. 34, 529 P.2d 66.

In passing on questions arising out of the Environmental Quality Act, it is duty of court to consider legal sufficiency of steps taken by local agency in determining whether or not any proposed action may have subsequent effects on environment, but it is not duty of court to determine validity of conclusions reached. Plan For Arcadia, Inc. v. Arcadia City Council (1974) 117 Cal.Rptr. 96, 42 C.A.3d 712.

§ 21168.5 Abuse of discretion

In any action or proceeding, other than an action or proceeding under Section 21168, to attack, review, set aside, void or annul a determination or decision of a public agency on the grounds of noncompliance with this division, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.

(Added by Stats.1972, c. 1154, p. 2277, § 16, urgency, eff. Dec. 5, 1972.)

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

Environmental protection: Attorney general's perspective. Evelle J. Younger (1974) 5 Pacific L.J. 19.

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1. In general

Judicial review of decision of governmental agency to follow conclusions in environmental impact report is limited to determining whether there has been an abuse of discretion. Bresnahan v. City of Pasadena (1975) 121 Cal.Rptr. 750, 48 C.A.3d 297.

Where department of housing and community development received written legal advice from Attorney General to the effect that permits issued under Mobilehome Parks Act were subject to requirements of the Environmental Quality Act, but then issued permit without environmental inquiry, and where applicant, who had waited four months to ascertain whether state would require city authorities to make environmental inquiries, then incurred $40,000 of expenses in constructing the park on property zoned light industrial, the state was estopped by the doctrine of laches from rescinding the permit and preventing further construction of the mobile home park. People v. Department of Housing and Community Development (1975) 119 Cal.Rptr. 266, 45 C.A.3d 185.

City council in approving oil drilling project in October of 1972 without a written determination concerning environmental impact of that project failed to comply with requirements of Environmental Quality Act that agency render a written determination whether project requires an environmental impact report before it gives final approval to project, and belated council resolution in January of 1973, despite its attempt to render determination retroactively, did not suffice to comply with requirement that environmental issues be considered and resolved before project is approved. No Oil, Inc. v. City of Los Angeles (1974) 118 Cal. Rptr. 34, 529 P.2d 66.

City council's use of an erroneous legal standard for determination of necessity of environmental impact report constituted a failure to proceed in manner required by law and constituted an abuse of discretion. Id.

Where action seeking writ of mandate sought to set aside and annul county's approval of final environmental impact report regarding proposed mountain subdivision on the ground of noncompliance with the Environmental Quality Act, court's inquiry was limited to whether there was prejudicial abuse of discretion. People v. Kern County (1974) 115 Cal.Rptr. 67, 39 C.A.3d 830.

Judicial review of agency's initial impact decision, as to whether environmental impact report is required, is limited to determining whether there was an abuse of discretion, and such abuse is established where the agency has not proceeded in the manner required by law or has reached a decision not supported by substantial evidence. Hixon v. Los Angeles County (1974) 113 Cal.Rptr. 433, 38 C.A.3d 370.

2. Substantial evidence

Court properly used substantial evidence test in reaching determination that city's conclusion that street-widening project would have no significant impact on environment was supported, and court was not required to independently review the evidence. Plan For Arcadia, Inc. v. Arcadia City Council (1974) 117 Cal.Rptr. 96, 42 C.A.3d 712.

3. Mandamus

Under the California Environmental Quality Act, mandamus will issue to set aside a permit which is issued for discretionary project without a determination whether the proposal has a significant environmental impact. People v. Department of Housing and Community Development (1975) 119 Cal.Rptr. 266, 45 C.A.3d 185.

4. Laches

When appropriate, laches is available to bar mandamus proceedings charging violation of environmental regulations. People v. Department of Housing and Community Development (1975) 119 Cal. Rptr. 266, 45 C.A.3d 185.

§ 21168.6 Mandate to public utilities commission; supreme court jurisdiction

In any action or proceeding under Sections 21168 or 21168.5 against the Public Utilities Commission the writ of mandate shall lie only from the Supreme Court to such commission.

(Added by Stats.1972, c. 1154, p. 2277, § 16, urgency, eff. Dec. 5, 1972.)

§ 21168.7 Declaration of existing law

Sections 21168 and 21168.5 are declaratory of existing law with respect to the judicial review of determinations or decisions of public agencies made pursuant to this division.

(Added by Stats.1972, c. 1154, p. 2277, § 16, urgency, eff. Dec. 5, 1972.)

§ 21169. Validation; issuance of lease, permit, etc., or project undertaken, etc.

Any project defined in subdivision (c) of Section 21065 undertaken, carried out or approved on or before the effective date of this section and the issuance by any public agency of any lease, permit, license, certificate or other entitlement for use executed or issued on or before the effective date of this section notwithstanding a failure to comply with this division, if otherwise legal and valid, is hereby confirmed, validated and declared legally effective. Any project undertaken by a person which was supported in whole or in part through contracts with one or more public agencies on or before the effective date of this section, notwithstanding a failure to comply with this division, if otherwise legal and valid, is hereby confirmed, validated and declared legally effective.

(Added by Stats.1972, c. 1154, p. 2277, § 16, urgency, eff. Dec. 5, 1972.)

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

Environmental protection: Attorney general's perspective. Evelle J. Younger (1974) 5 Pacific L.J. 19.

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½. Validity

Classification made by this section and § 21170 validating those private development projects undertaken by authority of permit or license from governmental body without compliance with requirements of Environmental Quality Act which were not under

[illegible] prior to December 5, 1972, and [illegible] attack, for which, if not validated substantial detriment would result, and not validating those projects under attack for which no substantial detriment would result from invalidation, was constitutional. Cooper v. Los Angeles County (1975) 122 Cal.Rptr. 464, 49 C.A.3d 34.

Urgency legislation designed to validate any project which had been approved and for which a permit had been issued prior to court decision holding that Environmental Quality Act's reporting requirement applied to private activities requiring government permits or other entitlements for use but which legislation by its terms excluded cases involving judicial proceedings initiated prior to effective date of § 21170 did not violate equal protection standards as it applied to proposed development excluded from operation of legislation by virtue of pending judicial proceedings. Russian Hill Improvement Ass'n v. Board of Permit Appeals (1974) 118 Cal.Rptr. 490, 44 C.A.3d 158, appeal dismissed 95 S.Ct. 2646.

Urgency legislation designed to save private developments from operation of court decision holding that Environmental Quality Act's requirement of environmental impact report applied to private projects with the exception of those involved in pending judicial proceedings did not delegate or confer any legislative function to the general public insofar as projects involved in litigation were concerned and was not invalid merely because it provided for implementation by actions of citizenry. Id.

1. In general

This section and § 21170 pertaining to private development projects, which were undertaken by authority of permit or license from governmental body and which did not comply with requirements of Environmental Quality Act, validate those projects which were not under legal attack prior to December 5, 1972, and those under attack at such time for which, if not validated, substantial detriment would result but such statutes do not validate those projects under attack at such time for which no substantial detriment would result from invalidation. Cooper v. Los Angeles County (1975) 122 Cal.Rptr. 464, 49 C.A.3d 34.

Remedial legislation, which was intended to relieve builder from hardship not of his own making, should have been liberally construed in favor of persons sought to be benefited thereby. Id.

In that city council's November 1 approval of tentative tract map for condominium project before consideration and approval of environmental impact report, a city and state requirement, was invalid, approval of project could not be validated under this section validating permits issued before December 5 if otherwise legal and valid. Aries Development Co. v. California Coastal Zone Conservation Commission (1975) 122 Cal.Rptr. 315, 48 C.A.3d 531.

Grandfather clause provided by urgency amendment to this section for project started before December 5, 1972 precluded petitioners from raising questions about alternate locations for building to be constructed on land leased by city and with respect to which city, in April 1971, authorized lessee to demolish buildings and construct new building. Bresnahan v. City of Pasadena (1975) 121 Cal.Rptr. 750, 48 C.A.3d 297.

Where trial court, after hearing, continued in effect its order restraining any act toward development of 50-unit motel complex on property well in advance of effective date of emergency legislation (§ 21170) providing that validation provision does not apply to project which has been determined in any judicial proceeding to be illegal because of noncompliance, trial court order determined [illegible] to project so that emergency legislation which validated certain governmental actions otherwise subject to Act did not apply and it was error to subsequently dissolve restraining order on ground that project was exempt. Burger v. Mendocino County (1975) 119 Cal.Rptr. 568, 45 C.A.3d 322.

Construction of condominium itself was not so separate from demolition of predecessor structure and excavation as to require a separate permit supported by environmental impact report, where there was no change in nature of project for construction of condominium structure from time that demolition of predecessor building was undertaken and excavation for new building commenced. Pacific Palisades Property Owners Ass'n v. City of Los Angeles (1974) 117 Cal.Rptr. 138, 42 C.A.3d 781.

Shopping center and parking lot projects were private projects within § 21065 and thus anything done prior to December 5, 1972, the effective date of Act's amendment pertaining to private projects, with respect to public agency approval or the issuance of any entitlement for use had been confirmed, validated and declared legally effective under express terms of Act, notwithstanding a failure to comply with Act. Plan For Arcadia, Inc. v. Arcadia City Council (1974) 117 Cal.Rptr. 96, 42 C.A.3d 713.

Under provision of this section validating projects which were undertaken or approved before provision's effective date of December 5, 1972, and which did not comply with the Act, Act applies to all projects which public agency retains discretion to approve or disapprove after expiration of moratorium provisions. People v. Kern County (1974) 115 Cal.Rptr. 67, 39 C.A.3d 830.

Conditional use permit was not validated by the 1972 urgency amendment of this section validating private projects undertaken and approved before effective date of amendment, on ground that although mandate proceeding was filed before effective date of validating statute a demurrer was sustained and amended petition was not final until after effective date of urgency amendment; fact that demurrer was sustained, with leave to amend, did not mean that there was no valid petition on file before effective date of the statute either alleging a cause of action or raising an issue of violation of the Environmental Quality Act. Concerned Citizens of Palm Desert, Inc. v. Riverside County Bd. of Sup'rs (1974) 113 Cal.Rptr. 338, 38 C.A.3d 272.

Where granting of conditional use permit and variance as well as approval of tentative tract map occurred long before effective date of 1972 urgency amendment of this section governing validity of projects, which were undertaken before effective date of amendment of this section and which do not comply with Act, such actions were shielded from attack for noncompliance for failure to prepare and consider environmental impact report. Id.

1.2 Purpose

Purpose of "grandfather clause" provided by urgency amendment to this section was to grant relief from hardship engendered by requiring environmental impact reports on projects already approved by the appropriate governmental bodies upon which other parties have acted to their detriment. Bresnahan v. City of Pasadena (1975) 121 Cal.Rptr. 750, 48 C.A.3d 297.

1.4 Definitions

Tentative tract approval which was conditional upon rezoning of property to permit construction of mountain subdivision and thus was not the final discretionary act of county did not constitute an issuance of an "entitlement for use" within meaning of provision of this section validating the issuance by any public agency of any entitlement for use issued before provision's effective date. People v. Kern County (1971) 115 Cal.Rptr. 67, 39 C.A.3d 830.

1.5 Grandfather rights

City's April, 1971 authorization to lessee of city land to demolish buildings on site and to build a new building pertained to "projects" within meaning of § 21065 and by reason of grandfather clause under this section applicable to projects started before December 5, 1972 they were legal and valid. Bresnahan v. City of Pasadena (App.1975) 121 Cal.Rptr. 750.

Where building permit was issued and suit to set aside permit for lack of environmental impact report was filed before effective date of statute validating project without report, if, prior to commencement of judicial proceedings and in good faith and in reliance upon issuance of public agency of permit, substantial construction has been performed and substantial liabilities for construction have been incurred, expenditure by builder of approximately $100,000 for demolition of existing apartment building and excavation, both necessary to construction of condominium satisfied requirements of the statute. Pacific Palisades Property Owners Ass'n v. City of Los Angeles (1974) 117 Cal.Rptr. 138, 42 C.A.3d 781.

2. Proceedings

Where city conditioned approval of plans for construction of building on land leased by city on preparation of an environmental impact report, and petitioners chose not to appear before the board of directors and oppose the report, petitioners failed to exhaust their administrative remedies and, having chosen to be silent when they had the right and opportunity to speak, petitioners could not speak at a time when the law required them to be silent. Bresnahan v. City of Pasadena (1975) 121 Cal.Rptr. 750, 48 C.A.3d 297.

Where county retained jurisdiction to grant or deny application to amend zoning ordinance to permit construction of mountain subdivision and zone change was not approved until after effective date of provision of this section validating projects which were undertaken or approved before provision's effective date and which did not comply with Act, environmental impact report was required for proposed project. People v. Kern County (1974) 115 Cal.Rptr. 67, 39 C.A.3d 830.

Pendency of mandate proceedings, which challenged issuance of conditional use permit and variance, prior to effective date of 1972 urgency amendment of this section did not deprive issuance of conditional use permit and variance and approval of tentative tract map of protection afforded by amendment, which validates certain prior actions from attack for noncompliance with Environmental Quality Act, where attack on permit, variance and tract map was barred by statute of limitations and laches. Concerned Citizens of Palm Desert, Inc. v. Riverside County Bd. of Sup'rs (1974) 113 Cal.Rptr. 338, 38 C.A.3d 257.

3. Petition

Fact that general demurrer, with leave to amend, to petition attacking validity of approval of private land development projects was sustained prior to effective date of 1972 urgency amendment of this section and that amended petition was not filed until after effective date of amendment did not validate zone change on ground that no valid petition was in effect on date of amendment either alleging a valid cause of action or raising a valid issue under the EQA, since initial petition raised issue of violation of Act within meaning of amendment and subsequent petition raised issue of violation of Act within meaning of amendment and subsequent petition raised back to original petitions as recovery was sought in both pleadings on the same general set of facts. Concerned Citizens of Palm Desert, Inc. v. Riverside County Bd. of Sup'rs (1974) 113 Cal.Rptr. 338, 38 C.A.3d 257.

§ 21170. Judicial proceedings in progress; effect

(a) Section 21169 shall not operate to confirm, validate or give legal effect to any project the legality of which was being contested in a judicial proceeding in which proceeding the pleadings, prior to the effective date of this section, alleged facts constituting a cause of action for, or raised the issue of, a violation of this division and which was pending and undetermined on the effective date of this section; provided, however, that Section 21169 shall operate to confirm, validate or give legal effect to any project to which this subdivision applies if, prior to the commencement of judicial proceedings and in good faith and in reliance upon the issuance by a public agency of any lease, permit, license, certificate or other entitlement for use, substantial construction has been performed and substantial liabilities for construction and necessary materials have been incurred.

(b) Section 21169 shall not operate to confirm, validate or give legal effect to any project which had been determined in any judicial proceeding, on or before the effective date of this section to be illegal, void or ineffective because of noncompliance with this division.

(Added by Stats.1972, c. 1154, p. 2277, § 10, urgency, eff. Dec. 5, 1972.)

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 659.

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Classification made by this section and § 21169 validating those private development projects undertaken by authority of permit or license from governmental body without compliance with requirements of Environmental Quality Act which were not under legal attack prior to December 5, 1972, and those under attack for which, if not validated substantial detriment would result, and not validating those projects under attack for which no substantial detriment would result from invalidation, was constitutional. Cooper v. Los Angeles County (1975) 122 Cal.Rptr. 464, 49 C.A.3d 34.

Urgency legislation designed to validate any project which had been approved and for which permit had been issued prior to court decision holding that Environmental Quality Act's reporting requirement applied

to private activities requiring government permits or other entitlements for use but which legislation by its terms excluded cases involving judicial proceedings initiated prior to effective date of this section did not violate equal protection standards. Environmental Law Fund, Inc. v. Town of Corte Madera (1975) 122 Cal.Rptr. 282, 49 C.A.3d 105.

Urgency legislation designed to validate any project which had been approved and for which a permit had been issued prior to court decision holding that Environmental Quality Act's reporting requirement applied to private activities requiring governmental permits or other entitlements for use but which legislation by its terms excluded cases involving judicial proceedings initiated prior to effective date of this section did not violate equal protection standards as it applied to proposed development excluded from operation of legislation by virtue of pending judicial proceedings. Russian Hill Improvement Ass'n v. Board of Permit Appeals, (1974) 118 Cal.Rptr. 490, 44 C.A.3d 158, appeal dismissed 95 S.Ct. 2646.

Urgency legislation designed to save private developments from operation of court decision holding that Environmental Quality Act's requirement of environmental impact report applied to private projects with the exception of those involved in pending judicial proceedings did not delegate or confer any legislative function to the general public insofar as projects involved in litigation were concerned and was not invalid merely because it provided for implementation by actions of citizenry. Id.

1. In general

This section and § 21169 pertaining to private development projects, which were undertaken by authority of permit or license from governmental body and which did not comply with requirements of Environmental Quality Act, validate those projects which were not under legal attack prior to December 5, 1972, and do not validate, at such time for which it not validated, substantial detriment would result but such statutes do not validate those projects under attack at such time for which no substantial detriment would result from invalidation. Cooper v. Los Angeles County (1975) 122 Cal.Rptr. 164, 49 C.A.3d 34.

Remedial legislation, which was intended to relieve builder from hardship not of his own making, should have been liberally construed in favor of persons sought to be benefited thereby. Id.

Where trial court, after hearing, continued in effect its order restraining any act toward development of 80-unit motel complex on property well in advance of effective date of emergency legislation under this section providing that validation provision does not apply to project which has been determined in any judicial proceeding to be illegal because of noncompliance, trial court order determined that the Environmental Quality Act applied to project so that emergency legislation which validated certain governmental actions otherwise subject to Act did not apply and it was error to subsequently dissolve restraining order on ground that project was exempt. Burger v. Mendocino County (1975) 119 Cal.Rptr. 568, 45 C.A.3d 322.

Where appellants did not request findings of fact, court of appeal must imply all findings necessary to support judgment and refuse relief if implied findings were supported by substantial evidence. Pacific Palisades Property Owners Ass'n v. City of Los Angeles (1974) 117 Cal.Rptr. 138, 42 C.A.3d 781.

Construction of condominium itself was not so separate from demolition of predecessor structure and excavation as to require a separate permit supported by environmental impact report, where there was no change in nature of project for construction of condominium structure from time that demolition of predecessor building was undertaken and excavation for new building commenced. Id.

Approval of tentative tract map and site development plan constituted "other entitlement for use" within this section providing, notwithstanding pendency of judicial proceeding, that project is validated if, prior to commencement of judicial proceedings and in good faith and in reliance on permit, certificate or "other entitlement for use", substantial construction has been performed and substantial liabilities for construction and materials have been incurred. Friends of Lake Arrowhead v. San Bernardino County Bd. of Sup'rs (1974) 113 Cal.Rptr. 539, 38 C.A.3d 497.

Zone changes, which were made without complying with Environmental Quality Act and pursuant to which developer expended some $220,000, exclusive of land acquisition costs, were validated by qualifying provision that the 1972 urgency amendment of this section validating projects undertaken and approved before effective date of amendment operates to validate any project if, prior to the commencement of judicial proceedings raising issues under Act, substantial liabilities have been incurred in reliance on any certificate or entitlement for use. Concerned Citizens of Palm Desert, Inc. v. Riverside County Bd. of Sup'rs (1974) 113 Cal.Rptr. 338, 38 C.A.3d 272.

2. Grandfather rights

Where building permit was issued and suit to set aside permit for lack of environmental impact report was filed before effective date of validating project without report, if, prior to commencement of judicial proceedings and in good faith and in reliance upon issuance of public agency of permit, substantial construction has been performed and substantial liabilities for construction have been incurred, expenditure by builder of approximately $100,000 for demolition of existing apartment building and excavation, both necessary to construction of condominium satisfied requirements of the statute. Pacific Palisades Property Owners Ass'n v. City of Los Angeles (1974) 117 Cal.Rptr. 138, 42 C.A.3d 781.

3. Substantial construction

In determining whether substantial detriment would result from invalidation of private development project, undertaken by authority of permit or license from governmental body, for failure to comply with requirements of Environmental Quality Act, in case of relatively small project comparing amount of construction and liability to total would be appropriate test of substantiality; however, construction or liability which was quantitatively substantial would meet statutory requirement for validation regardless of fact that in terms of large project such construction or liability might not constitute substantial percentage by comparison. Cooper v. Los Angeles County (1975) 122 Cal.Rptr. 164, 49 C.A.3d 34.

Phrase "substantial liabilities for construction and necessary material have been incurred," as used in statutes validating certain private development projects which were undertaken by authority of permit or license from governmental body and which did not comply with requirements of Environmental Quality Act, was unified clause, which should be read as collective singular, and did not require, for validation of project, both incurring of substantial liabilities for construction and incurring of substantial liabilities for necessary materials. Id.

Increased property tax liability attributable to rezoning did not come within statutory requirement that, prior to validation of certain private development projects where substantial detriment would result from invalidation, incurred liability constituting substantial detriment be for "construction and necessary materials." Id.

Evidence failed to establish expenditure of "substantial" sums within provision of urgency amendment of this section concerning validation of project for which substantial construction had been performed and substantial liabilities for construction and necessary materials had been incurred. Environmental Law Fund, Inc. v. Town of Corte Madera (1975) 122 Cal.Rptr. 282, 49 C.A.3d 105.

Expenditure of some $6,500 did not constitute "substantial" construction or incurring of liability for construction or materials of an 80-unit motel complex, so that this section directing validation if before commencement of legal proceedings and in reliance on permit substantial construction has been performed or substantial liabilities have been incurred did not validate issuance of building permit three days prior to institution of mandate proceeding to require the filing of environmental impact report. Burger v. Mendocino County (1975) 119 Cal.Rptr. 568, 45 C.A.3d 322.

4. Judgment

Where trial court was proceeding under erroneous interpretation that statutes validating certain private development projects which did not comply with requirements of Environmental Quality Act required, for validation of such projects, that construction substantial in relation to size of overall project had occurred, and that substantial liabilities for construction and for necessary materials had been incurred, and neither magnitude of construction that was accomplished in particular project in issue nor liability incurred was set out, reversal was required. Cooper v. Los Angeles County (1975) 122 Cal.Rptr. 464, 49 C.A.3d 34.

§ 21171. Moratorium provision; lease, permit, license, etc., and certain projects

This division, except for Section 21169, shall not apply to the issuance of any lease, permit, license, certificate or other entitlement for use for any project defined in subdivision (c) of Section 21065 or to any project undertaken by a person which is supported in whole or in part through contracts with one or more public agencies until the 121st day after the effective date of this section. This section shall not apply to any project to which Section 21170 is applicable or to any successor project which is the same as, or substantially identical to, such a project.

This section shall not prohibit or prevent a public agency, prior to the 121st day after the effective date of this section, from considering environmental factors in connection with the approval or disapproval of a project and from imposing reasonable fees in connection therewith.

(Added by Stats.1972, c. 1154, p. 2277, § 16, urgency, eff. Dec. 5, 1972.)

Law Review Commentaries

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

Friends of Mammoth: Vox populi or judicial social engineering. (1973) 1 Pepperdine L.Rev. 137.

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1. In general

Complaint could not be made, under Environmental Quality Act, of private projects with respect to anything occurring during 120-day moratorium for private projects under express provision of this section. Plan for Arcadia, Inc. v. Arcadia City Council (1974) 117 Cal.Rptr. 96, 42 C.A.3d 712.

Under this section providing 120-day moratorium period within which state planning and research of local agencies were to prepare guidelines for evaluation of private projects and for preparation of EIR, if project is approved during moratorium period, an EIR is not required, provided validity of project was not being contested by judicial proceeding commenced before effective date of the section. Friends of Lake Arrowhead v. San Bernardino County Bd. of Sup'rs (1974) 113 Cal. Rptr. 539, 38 C.A.3d 497.

The reference in this section to projects defined in subd. (c) of § 21065 would include private projects and certain public projects in the 121 day moratorium period. Op.Leg. Counsel, 1972 A.J. 7928.

A city or county may, under this section, enact its own ordinance requiring the preparation of impact reports or studies during the 121 day moratorium with respect to projects exempt during that time from environmental impact report requirements. Op.Leg.Counsel, 1972 A.J. 8227.

The reference to "projects" in this section includes private projects as well as certain public projects in the 121 day moratorium period. Op.Leg.Counsel, 1972 A.J. 7928.

2. Report

City which on March 13, 1973, within 120 days before moratorium had elapsed, approved preliminary plans submitted by lessee of city land for construction of building on lease site, did not legally need an environmental impact report with respect to construction of building by lessee. Bresnahan v. City of Pasadena (1975) 121 Cal. Rptr. 750, 48 C.A.3d 297.

§ 21172. Disasters; maintenance, repair, etc., property or facilities damaged; exemption

This division shall not apply to any project undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1, Title 2 of the Government Code.

(Added by Stats.1972, c. 1154, p. 2277, § 16, urgency, eff. Dec. 5, 1972.)

Law Review Commentaries

Friends of Mammoth: Vox populi or judicial social engineering. (1973) 1 Pepperdine L.Rev. 137.

§ 21172.5 Evaluation of projects and status of impact reports during moratorium period

Until the 121st day after the effective date of this section, any objectives, criteria and procedures adopted by public agencies in compliance with this division shall govern the evaluation of projects defined in subdivisions (a) and (b) of Section 21065 and the preparation of environmental impact reports on such projects when required by this division.

Any environmental impact report which has been completed or on which substantial work has been performed on or before the 121st day after the effective date of this section, if otherwise legally sufficient, shall, when completed, be deemed to be in compliance with this division and no further environmental impact report shall be required except as provided in Section 21166.

(Added by Stats.1972, c. 1154, p. 2277, § 16, urgency, eff. Dec. 5, 1972.)

Law Review Commentaries

Friends of Mammoth: Vox populi or judicial social engineering. (1973) 1 Pepperdine L.Rev. 137.

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1. In general

This section providing that any environmental impact report which has been completed or on which substantial work has been performed on or before 121st day after effective date of this section, when completed will be deemed to be in compliance with Division 13 and no further environmental report shall be required, except as otherwise provided, applies to EIR prepared on private projects in compliance with local requirements as well as to those prepared for public projects. Friends of Lake Arrowhead v. San Bernardino County Bd. of Sup'rs (1974) 113 Cal.Rptr. 539, 38 C.A.3d 497.

2. Report

Where a draft EIR was prepared and submitted to county evaluation committee, the committee independently evaluated and analyzed report and prepared and submitted its own EIR to county planning commission and, following public hearings, county commission considered the EIR before approving EIR and tentative tract map on December 14, 1972, procedure followed in preparation and consideration of the EIR and the EIR were validated by this section providing that any EIR on which substantial work has been performed on or before 121st day after statute's effective date (December 5, 1972) shall, when completed, be deemed to be in compliance with Division 13 and no environmental impact report shall be required. Friends of Lake Arrowhead v. San Bernardino County Bd. of Sup'rs (1974) 113 Cal.Rptr. 539, 38 C.A.3d 497.

§ 21173. Severability

If any provision of this division or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this division which can be given effect without the invalid provision or application thereof, and to this end the provisions of this division are severable.

(Added by Stats.1972, c. 1154, p. 2277, § 16, urgency, eff. Dec. 5, 1972.)

§ 21174. Construction of division; enforcement and administration of other provisions; coastal zone conservation

No provision of this division is a limitation or restriction on the power or authority of any public agency in the enforcement or administration of any provision of law which it is specifically permitted or required to enforce or administer including, but not limited to, the powers and authority granted to the California Coastal Zone Conservation Commission or any regional coastal zone conservation commission pursuant to Division 18 (commencing with Section 27000) of the Public Resources Code. To the extent of any inconsistency or conflict between the provisions of the California Coastal Zone Conservation Act of 1972, Division 18 (commencing with Section 27000) of the Public Resources Code, and the provisions of this division, the provisions of Division 18 (commencing with Section 27000) of the Public Resources Code shall control.

(Added by Stats.1972, c. 1154, p. 2277, § 16, urgency, eff. Dec. 5, 1972.)

1. In general

Fact that an environmental impact report has been filed does not in and of itself mandate that the conclusions in that report be followed; the decision lies with the governmental agency. Bresnahan v. City of Pasadena (1975) 121 Cal.Rptr. 759, 48 C.A.3d 297.

§ 21175. Local agency formation commission; confirmation, validation and legality of project approvals; time

In the event that a local agency formation commission, acting pursuant to the provisions of Chapter 6.6 (commencing with Section 54773) of Part 1 of Division 2 of Title 5 of, or pursuant to Division 1 (commencing with Section 56000) of Title 6 of, the Government Code, has approved a project without complying with this division, such approval is hereby confirmed, validated, and declared legally effective notwithstanding the failure to comply with this division; provided, that such approval shall have occurred prior to February 7, 1975.

(Added by Stats.1975, c. 222, p. —, § 2, urgency, eff. July 5, 1975.)

Section 4 of Stats.1975, c. 222, p. —, provided:

"Notwithstanding any other provision of law, any matter initiated pursuant to Chapter 6.6 (commencing with Section 54773) of Part 1 of Division 2 of Title 5 of, or pursuant to Division 1 (commencing with Section 56000) of Title 6 of, the Government Code, and pending before a local agency formation commission on February 7, 1975, may be continued by such local agency formation commission for such time as may be necessary to comply with the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code."

Library References

Health and Environment ⟹25.10.

§ 21176. Judicial proceedings pending or determined; time; effect on operation of § 21175

(a) Section 21175 shall not operate to confirm, validate, or give legal effect to any project, the legality of which was being contested in a judicial proceeding in which proceeding the pleadings, prior to February 7, 1975, alleged facts constituting a cause of action for, or raised the issue of, a violation of this division, and which was pending and undetermined on February 7, 1975.

(b) Section 21175 shall not operate to confirm, validate, or give legal effect to any project which had been determined in any judicial proceeding, on or before the effective date of this section, to be illegal, void, or ineffective because of noncompliance with this division.

(Added by Stats.1975, c. 222, p. —, § 3, urgency, eff. July 5, 1975.)

CALIFORNIA COASTAL LEGISLATION

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Division 20 (commencing with Section 30000) is added to the Public Resources Code, to read:

DIVISION 20. CALIFORNIA COASTAL ACT

CHAPTER 1. FINDINGS AND DECLARATIONS AND GENERAL PROVISIONS

30000. This division shall be known and may be cited as the California Coastal Act of 1976.

30001. The Legislature hereby finds and declares:

(a) That the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem.

(b) That the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of the state and nation.

(c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction.

30001.2. The Legislature further finds and declares that, notwithstanding the fact electrical generating facilities, refineries, and coastal-dependent developments, including ports and commercial fishing facilities, offshore petroleum and gas development, and liquefied natural gas facilities, may have significant adverse effects on coastal resources or coastal access, it may be necessary to locate such developments in the coastal zone in order to ensure that inland as well as coastal resources are preserved and that orderly economic development proceeds within the state.

30001.5. The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

(a) Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and manmade resources.

(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

(d) Assure priority for coastal-dependent development over other development on the coast.

(e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

30002. The Legislature further finds and declares that:

(a) The California Coastal Zone Conservation Commission, pursuant to the California Coastal Zone Conservation Act of 1972 (commencing with Section 27000), has made a detailed study of the coastal zone; that there has been extensive participation by other governmental agencies, private interests, and the general public in the study; and that, based on the study, the commission has prepared a plan for the orderly, long-range conservation, use, and management of the natural, scenic, cultural, recreational, and manmade resources of the coastal zone.

(b) Such plan contains a series of recommendations which require implementation by the Legislature and that some of those recommendations are appropriate for immediate implementation as provided for in this division while others require additional review.

30003. All public agencies and all federal agencies, to

the extent possible under federal law or regulations or the United States Constitution, shall comply with the provisions of this division.

30004. The Legislature further finds and declares that:

(a) To achieve maximum responsiveness to local conditions, accountability, and public accessibility, it is necessary to rely heavily on local government and local land use planning procedures and enforcement.

(b) To ensure conformity with the provisions of this division, and to provide maximum state involvement in federal activities allowable under federal law or regulations or the United States Constitution which affect California's coastal resources, to protect regional, state, and national interests in assuring the maintenance of the long-term productivity and economic vitality of coastal resources necessary for the well-being of the people of the state, and to avoid long-term costs to the public and a diminished quality of life resulting from the misuse of coastal resources, to coordinate and integrate the activities of the many agencies whose activities impact the coastal zone, and to supplement their activities in matters not properly within the jurisdiction of any existing agency, it is necessary to provide for continued state coastal planning and management through a state coastal commission.

30005. No provision of this division is a limitation on any of the following:

(a) Except as otherwise limited by state law, on the power of a city or county or city and county to adopt and enforce additional regulations, not in conflict with this act, imposing further conditions, restrictions, or limitations with respect to any land or water use or other activity which might adversely affect the resources of the coastal zone.

(b) On the power of any city or county or city and county to declare, prohibit, and abate nuisances.

(c) On the power of the Attorney General to bring an action in the name of the people of the state to enjoin any waste or pollution of the resources of the coastal zone or

1 any nuisance.
2 (d) On the right of any person to maintain an
3 appropriate action for relief against a private nuisance or
4 for any other private relief.
5 30006. The Legislature further finds and declares that
6 the public has a right to fully participate in decisions
7 affecting coastal planning, conservation, and
8 development; that achievement of sound coastal
9 conservation and development is dependent upon public
10 understanding and support; and that the continuing
11 planning and implementation of programs for coastal
12 conservation and development should include the widest
13 opportunity for public participation.
14 30007. Nothing in this division shall exempt local
15 governments from meeting the requirements of state
16 and federal law with respect to providing low- and
17 moderate-income housing, replacement housing,
18 relocation benefits, or any other obligation related to
19 housing imposed by existing law or any law hereafter
20 enacted.
21 *30007.5. The Legislature further finds and recognizes*
22 *that conflicts may occur between one or more policies of*
23 *the division. The Legislature therefore declares that in*
24 *carrying out the provisions of this division such conflicts*
25 *be resolved in a manner which on balance is the most*
26 *protective of significant coastal resources. In this context,*
27 *the Legislature declares that broader policies which, for*
28 *example, serve to concentrate development in close*
29 *proximity to urban and employment centers may be*
30 *more protective, overall, than specific wildlife habitat*
31 *and other similar resource policies.*

5 30008. This division shall constitute California's
6 coastal zone management program within the coastal
7 zone for purposes of the Federal Coastal Zone
8 Management Act of 1972 (16 U.S.C. 1451, et seq.) and any
9 other federal act heretofore or hereafter enacted or
10 amended that relates to the planning or management of
11 coastal zone resources *; provided, however, that pursuant*
12 *to the Federal Coastal Zone Management Act of 1972,*
13 *excluded from the coastal zone are lands the use of which*
14 *is by law subject solely to the discretion of or which is held*
15 *in trust by the federal government, its officers or agents.*

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19 30009. This division shall be liberally construed to
40 accomplish its purposes and objectives.

18 *30010. The Legislature hereby finds and declares that*
19 *this division is not intended, and shall not be construed*
1 *as authorizing the regional commission, the commission,*
2 *port governing body, or local government acting*
3 *pursuant to this division to exercise their power to grant*
4 *or deny a permit in a manner which will take or damage*
5 *private property for public use, without the payment of*
6 *just compensation therefor. This section is not intended*
7 *to increase or decrease the rights of any owner of*
8 *property under the Constitution of the State of California*
9 *or the United States.*

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CHAPTER 2. DEFINITIONS

30100. Unless the context otherwise requires, the definitions in this chapter govern the interpretation of this division.

30100.5. "Coastal county" means a county or city and county which lies, in whole or in part, within the coastal zone.

30101. "Coastal-dependent development or use" means any development or use which requires a site on, or adjacent to, the sea to be able to function at all.

30101.5. "Coastal development permit" means a permit for any development within the coastal zone that is required pursuant to subdivision (a) of Section 30600.

30102. "Coastal plan" means the California Coastal Zone Conservation Plan prepared and adopted by the California Coastal Zone Conservation Commission and submitted to the Governor and the Legislature on December 1, 1975, pursuant to the California Coastal Zone Conservation Act of 1972 (commencing with Section 27000).

30103. (a) "Coastal zone" means that land and water area of the State of California from the Oregon border to the border of the Republic of Mexico, specified on the maps identified and set forth in Section 17 of that chapter of the Statutes of the 1975–76 Regular Session enacting this division, extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea. In significant coastal estuarine, habitat, and recreational areas it extends inland to the first major ridgeline paralleling the sea or five miles from the mean high tide line of the sea, whichever is less, and in developed urban areas the zone generally extends inland less than 1,000 yards. The coastal zone does not include the area of jurisdiction of the San Francisco Bay Conservation and Development Commission, established pursuant to Title 7.2 (commencing with Section 66600) of the Government Code, nor any area contiguous thereto, including any river, stream, tributary, creek, or flood

control or drainage channel flowing into such area.

(b) The commission shall, within 60 days after its first meeting, prepare and adopt a detailed map, on a scale of one inch equals 24,000 inches for the coastal zone and shall file a copy of such map with the county clerk of each coastal county. The purpose of this provision is to provide greater detail than is provided by the maps identified in Section 17 of that chapter of the Statutes of the 1975–76 Regular Session enacting this division. The commission may adjust the inland boundary of the coastal zone the minimum *landward* distance necessary, but in no event more than 100 yards, to avoid bisecting any single lot or parcel or to conform it to readily identifiable natural or manmade features.

30105. (a) "Commission" means the California Coastal Commission. Whenever the term California Coastal Zone Conservation Commission appears in any law, it means the California Coastal Commission.

(b) "Regional commission" means any regional coastal commission. Whenever the term regional coastal zone conservation commission appears in any law, it means the regional coastal commission.

30106. "Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber

1 operations which are in accordance with a timber
2 harvesting plan submitted pursuant to the provisions of
3 the Z'berg-Nejedly Forest Practice Act of 1973
4 (commencing with Section 4511).
5 As used in this section, "structure" includes, but is not
6 limited to, any building, road, pipe, flume, conduit,
7 siphon, aqueduct, telephone line, and electrical power
8 transmission and distribution line.
9 30107. "Energy facility" means any public or private
10 processing, producing, generating, storing, transmitting,
11 or recovering facility for electricity, natural gas,
12 petroleum, coal, or other source of energy.

12 *30107.5. "Environmentally sensitive area" means any*
13 *area in which plant or animal life or their habitats are*
14 *either rare or especially valuable because of their special*
15 *nature or role in an ecosystem and which could be easily*
16 *disturbed or degraded by human activities and*
17 *developments.*

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19 30108. "Feasible" means capable of being
20 accomplished in a successful manner within a reasonable
21 period of time, taking into account economic,
22 environmental, social, and technological factors.
23 30108.2. "Fill" means earth or any other substance or
24 material, including pilings *placed for the purposes of*
25 *erecting structures thereon*, placed in a submerged area.
26 30108.4. "Implementing actions" means the
27 ordinances, regulations, or programs which implement
28 either the provisions of the certified local coastal program
29 or the policies of this division and which are submitted
30 pursuant to Section 30502.

21 30108.5. "Land use plan" means the relevant portions
22 of a local government's general plan, *or local coastal*
23 *element* which are sufficiently detailed to indicate the
24 kinds, location, and intensity of land uses, the applicable
25 resource protection and development policies and,
26 where necessary, a listing of implementing actions.

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29 *30108.55. "Local coastal element" is that portion of a*
30 *general plan applicable to the coastal zone which may be*
31 *prepared by local government pursuant to this division,*
32 *or such additional elements of the local government's*
33 *general plan prepared pursuant to subdivision (k) of*
34 *Section 65303 of the Government Code, as such local*
35 *government deems appropriate.*

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37 30108.6. "Local coastal program" means a local
38 government's land use plans, zoning ordinances, zoning
39 district maps, and implementing actions which, when
40 taken together, meet the requirements of, and

1 implement the provisions and policies of, this division at
2 the local level.
3 30109. "Local government" means any chartered or
4 general law city, chartered or general law county, or any
5 city and county.

30109.5. *Section 30109.5 of the Public Resources Code, as added by Senate Bill No. 1277, is repealed.*

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33 30110. "Permit" means any license, certificate,
34 approval, or other entitlement for use granted or denied
35 by any public agency which is subject to the provisions of
36 this division.
37 30111. "Person" means any individual, organization,
38 partnership, or other business association or corporation,
39 including any utility, and any federal, state, local
40 government, or special district or an agency thereof.

30112. "Port governing body" means the Board of Harbor Commissioners or Board of Port Commissioners which has authority over the Ports of Hueneme, Long Beach, Los Angeles, and San Diego Unified Port District.

30113. "Prime agricultural land" means those lands defined in Section 51201 of the Government Code.

30114. "Public works" means the following:

(a) All production, storage, transmission, and recovery facilities for water, sewerage, telephone, and other similar utilities owned or operated by any public agency or by any utility subject to the jurisdiction of the Public Utilities Commission, except for energy facilities.

(b) All public transportation facilities, including streets, roads, highways, public parking lots and structures, ports, harbors, airports, railroads, and mass transit facilities and stations, bridges, trolley wires, and other related facilities. For purposes of this division, neither the Ports of Hueneme, Long Beach, Los Angeles, nor San Diego Unified Port District nor any of the developments within these ports shall be considered public works.

(c) All publicly financed recreational facilities and any development by a special district.

(d) All community college facilities.

30115. "Sea" means the Pacific Ocean and all harbors, bays, channels, estuaries, salt marshes, sloughs, and other areas subject to tidal action through any connection with the Pacific Ocean, excluding nonestuarine rivers, streams, tributaries, creeks, and flood control and drainage channels. *"Sea" does not include the area of jurisdiction of the San Francisco Bay Conservation and Development Commission, established pursuant to Title 7.2 (commencing with Section 66600) of the Government Code, including any river, stream, tributary, creek, or flood control or drainage channel flowing directly or indirectly into such area.*

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31 30116. "Sensitive coastal resource areas" means those
32 identifiable and geographically bounded land and water
33 areas within the coastal zone of vital interest and
34 sensitivity. "Sensitive coastal resource areas" include
the following:

10 *(a) Special marine and land habitat areas, wetlands,*
11 *lagoons, and estuaries as mapped and designated in Part*
12 *4 of the coastal plan.*
13 *(b) Areas possessing significant recreational value.*
14 *(c) Highly scenic areas.*
15 *(d) Archaeological sites referenced in the California*
16 *Coastline and Recreation Plan or as designated by the*
17 *State Historic Preservation Officer.*
18 *(e) Special communities or neighborhoods which are*
19 *significant visitor destination areas.*
20 *(f) Areas that provide existing coastal housing or*
21 *recreational opportunities for low- and moderate-income*
22 *persons.*
23 *(g) Areas where divisions of land could substantially*
24 *impair or restrict coastal access.*
25 30118. "Special district" means any public agency,
26 other than a local government as defined in this chapter,
27 formed pursuant to general law or special act for the local
28 performance of governmental or proprietary functions
29 within limited boundaries. "Special district" includes, but
30 is not limited to, a county service area, a maintenance
31 district or area, an improvement district or improvement
32 zone, or any other zone or area, formed for the purpose
33 of designating an area within which a property tax rate
34 will be levied to pay for a service or improvement
35 benefiting that area.
36 30118.5. "Special treatment area" means an
37 identifiable and geographically bounded forested area
38 within the coastal zone that constitute a significant
39 habitat area, area of special scenic significance, and any
40 land where logging activities could adversely effect

1 public recreation area or the biological productivity of
2 any wetland, estuary, or stream especially valuable
3 because of its role in a coastal ecosystem.

4 30119. "State university or college" means the
5 University of California and the California State
6 University and Colleges.
7 30120. "Treatment works" shall have the same
8 meaning as set forth in the Federal Water Pollution
9 Control Act (33 U.S.C. 1251, et seq.) and any other federal
10 act which amends or supplements the Federal Water
11 Pollution Control Act.
12 *30121. "Wetland" means lands within the coastal*
13 *zone which may be covered periodically or permanently*
14 *with shallow water and include saltwater marshes,*
15 *freshwater marshes, open or closed brackish water*
16 *marshes, swamps, mudflats, and fens.*
17

CHAPTER 3. COASTAL RESOURCES PLANNING AND MANAGEMENT POLICIES

Article 1. General

30200. Consistent with the basic goals set forth in Section 30001.5, and except as may be otherwise specifically provided in this division, the policies of this chapter shall constitute the standards by which the adequacy of local coastal programs, as provided in Chapter 6 (commencing with Section 30500), and, ~~except as may be otherwise specifically provided in this division,~~ the permissibility of proposed developments subject to the provisions of this division are determined. All public agencies carrying out or supporting activities outside the coastal zone that could have a direct impact on resources within the coastal zone shall consider the effect of such actions on coastal zone resources in order to assure that these policies are achieved.

Article 2. Public Access

30210. In carrying out the requirement of ~~Section 4~~ *Section 2* of ~~Article X~~ *Article XV* of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

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30211. Development shall not interfere with the public's right of access to the sea where acquired through use, ~~custom,~~ or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

30211. Development shall not interfere with the public's right of access to the sea where acquired through use, custom, or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

30212. Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by ~~Section 4 of Article X~~ *Section 2 of Article XV* of the California Constitution.

30212.5. Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

34 30213. Lower cost visitor and recreational facilities
35 and housing opportunities for persons of low and
36 moderate income shall be protected, encouraged, and,
37 where feasible, provided. Developments providing
38 public recreational opportunities are preferred. New
39 housing in the coastal zone shall be developed in
40 conformity with the standards, policies, and goals of local

1 housing elements adopted in accordance with the
2 requirements of subdivision (c) of Section 65302 of the
3 Government Code.

Article 3. Recreation

30220. Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

30221. Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and forseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

30222. The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

30223. Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

30224. Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

35
36 Article 4. Marine Environment
37
38 30230. Marine resources shall be maintained,
39 enhanced, and, where feasible, restored. Special
40 protection shall be given to areas and species of special

1 biological or economic significance. Uses of the marine
2 environment shall be carried out in a manner that will
3 sustain the biological productivity of coastal waters and
4 that will maintain healthy populations of all species of
5 marine organisms adequate for long-term commercial,
6 recreational, scientific, and educational purposes.
7 30231. The biological productivity and the quality of
8 coastal waters, streams, wetlands, estuaries, and lakes
9 appropriate to maintain optimum populations of marine
10 organisms and for the protection of human health shall be
11 maintained and, where feasible, restored through, among
12 other means, minimizing adverse effects of waste water
13 discharges and entrainment, controlling runoff,
14 preventing depletion of ground water supplies and
15 substantial interference with surface waterflow,
16 encouraging waste water reclamation, maintaining
17 natural vegetation buffer areas that protect riparian
18 habitats, and minimizing alteration of natural streams.
19 30232. Protection against the spillage of crude oil, gas,
20 petroleum products, or hazardous substances shall be
21 provided in relation to any development or
22 transportation of such materials. Effective containment
23 and cleanup facilities and procedures shall be provided
24 for accidental spills that do occur.

25 30233. (a) The diking, filling, or dredging of open
26 coastal waters, wetlands, estuaries, and lakes shall be
27 permitted in accordance with other applicable provisions
28 of this division, where there is no feasible less
29 environmentally damaging alternative, and where
30 feasible mitigation measures have been provided to
31 minimize adverse environmental effects, and shall be
32 limited to the following:
33 (1) New or expanded port, energy, and
34 coastal-dependent industrial facilities, including
35 commercial fishing facilities.
36 (2) Maintaining existing, or restoring previously
37 dredged, depths in existing navigational channels,
38 turning basins, vessel berthing and mooring areas, and
39 boat launching ramps.
40 (3) In wetland areas only, entrance channels for new
1 or expanded boating facilities; and in a degraded
2 wetland, identified by the Department of Fish and Game
3 pursuant to subdivision (b) of Section 30411, for boating
4 facilities if, in conjunction with such boating facilities, a
5 substantial portion of the degraded wetland is restored
6 and maintained as a biologically productive wetland;
7 provided, however, that in no event shall the size of the
8 wetland area used for such boating facility, including
9 berthing space, turning basins, necessary navigation
10 channels, and any necessary support service facilities, be
11 greater than 25 percent of the total wetland area to be
12 restored.
13 (4) In open coastal waters, other than wetlands,
14 including streams, estuaries, and lakes, new or expanded
15 boating facilities.
16 (5) Incidental public service purposes, including, but
17 not limited to, burying cables and pipes or inspection of
18 piers and maintenance of existing intake and outfall lines.
19 (6) Mineral extraction, including sand for restoring
20 beaches, except in environmentally sensitive areas.
21 (7) Restoration purposes.
22 (8) Nature study, aquaculture, or similar
23 resource-dependent activities.
24 (b) Dredging and spoils disposal shall be planned and
25 carried out to avoid significant disruption to marine and
26 wildlife habitats and water circulation. Dredge spoils
27 suitable for beach replenishment should be transported
28 for such purposes to appropriate beaches or into suitable
29 longshore current systems.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

30234. Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.

30235. Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.

30236. Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

36
37 **Article 5. Land Resources**
38
39 30240. (a) Environmentally sensitive habitat areas
40 shall be protected against any significant disruption of

1 habitat values, and only uses dependent on such
2 resources shall be allowed within such areas.
3 (b) Development in areas adjacent to
4 environmentally sensitive habitat areas and parks and
5 recreation areas shall be sited and designed to prevent
6 impacts which would significantly degrade such areas,
7 and shall be compatible with the continuance of such
8 habitat areas.
9 30241. The maximum amount of prime agricultural
10 land shall be maintained in agricultural production to
11 assure the protection of the areas' agricultural economy,
12 and conflicts shall be minimized between agricultural
13 and urban land uses through all of the following:
14 (a) By establishing stable boundaries separating urban
15 and rural areas, including, where necessary, clearly
16 defined buffer areas to minimize conflicts between
17 agricultural and urban land uses.
18 (b) By limiting conversions of agricultural lands
19 around the periphery of urban areas to the lands where
20 the viability of existing agricultural use is already severely
21 limited by conflicts with urban uses and where the
22 conversion of the lands would complete a logical and
23 viable neighborhood and contribute to the establishment
24 of a stable limit to urban development.
25 (c) By developing available lands not suited for
26 agriculture prior to the conversion of agricultural lands.
27 (d) By assuring that public service and facility
28 expansions and nonagricultural development do not
29 impair agricultural viability, either through increased
30 assessment costs or degraded air and water quality.
31 (e) By assuring that all divisions of prime agricultural
32 lands, except those conversions approved pursuant to
33 subdivision (b) of this section, and all development
34 adjacent to prime agricultural lands shall not diminish the
35 productivity of such prime agricultural lands.

36 30242. All other lands suitable for agricultural use
37 shall not be converted to nonagricultural uses unless (1)
38 continued or renewed agricultural use is not feasible, or
39 (2) such conversion would preserve prime agricultural
40 land or concentrate development consistent with Section

1 30250. Any such permitted conversion shall be
2 compatible with continued agricultural use on
3 surrounding lands.
4 30243. The long-term productivity of soils and
5 timberlands shall be protected, and conversions of coastal
6 commercial timberlands in units of commercial size to
7 other uses or their division into units of noncommercial
8 size shall be limited to providing for necessary timber
9 processing and related facilities.
10 30244. Where development would adversely impact
11 archaeological or paleontological resources as identified
12 by the State Historic Preservation Officer, reasonable
13 mitigation measures shall be required..

Article 6. Development

8 30250. (a) New development, except as otherwise
9 provided in this division, shall be located within,
10 contiguous with, or in close proximity to, existing
11 developed areas able to accommodate it or, where such
12 areas are not able to accommodate it, in other areas with
13 adequate public services and where it will not have
14 significant adverse effects, either individually or
15 cumulatively, on coastal resources. In addition, land
16 divisions, other than leases for agricultural uses, outside
17 existing developed areas shall be permitted only where
18 50 percent of the usable parcels in the area have been
19 developed and the created parcels would be no smaller
20 than the average size of surrounding parcels.
21 (b) ~~New~~ *Where feasible, new* hazardous industrial
22 development shall be located away from existing
23 developed areas.
24 (c) Visitor-serving facilities that cannot feasibly be
25 located in existing developed areas shall be located in
26 existing isolated developments or at selected points of
27 attraction for visitors.

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37 30251. The scenic and visual qualities of coastal areas
38 shall be considered and protected as a resource of public
39 importance. Permitted development shall be sited and
40 designed to protect views to and along the ocean and

1 accordance with this section and Sections 30261 and 30262
2 if (1) alternative locations are infeasible or more
3 environmentally damaging; (2) to do otherwise would
4 adversely affect the public welfare; and (3) adverse
5 environmental effects are mitigated to the maximum
6 extent feasible.

30 30261. (a) Multicompany use of existing and new
31 tanker facilities shall be encouraged *to the maximum*
32 *extent feasible and legally permissible*, except where to
33 do so would result in increased tanker operations and
34 associated onshore development incompatible with the
35 land use and environmental goals for the area. New
36 tanker terminals outside of existing terminal areas shall
37 be ~~sited sufficiently offshore and so~~ situated as to avoid
38 risk to environmentally sensitive areas and shall use a
39 monobuoy system, unless an alternative type of system
40 can be shown to be environmentally preferable for a

1 specific site. Tanker facilities shall be designed to (1)
2 minimize the total volume of oil spilled, (2) minimize the
3 risk of collision from movement of other vessels, (3) have
4 ready access to the most effective feasible containment
5 and recovery equipment for oilspills, and (4) have
6 onshore deballasting facilities to receive any fouled
7 ballast water from tankers where operationally *or legally*
8 required.

9 (b) Only one liquefied natural gas terminal shall be
10 permitted in the coastal zone until engineering and
11 operational practices can eliminate any significant risk to
12 life due to accident or until guaranteed supplies of
13 liquefied natural gas and distribution system dependence
14 on liquefied natural gas are substantial enough that an
15 interruption of service from a single liquefied natural gas
16 facility would cause substantial public harm.

17 Until the risks inherent in liquefied natural gas
18 terminal operations can be sufficiently identified and
19 overcome and such terminals are found to be consistent
20 with the health and safety of nearby human populations,
21 terminals shall be built only at sites remote from human
22 population concentrations. Other unrelated
23 development in the vicinity of a liquefied natural gas
24 terminal site which is remote from human population
25 concentrations shall be prohibited. At such time as
26 liquefied natural gas marine terminal operations are
27 found consistent with public safety, terminal sites only in
28 developed or industrialized port areas may be approved.

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31 30262. Oil and gas development shall be permitted in
32 accordance with Section 30260, if the following conditions
33 are met:
34 (a) The development is performed safely and
35 consistent with the geologic conditions of the well site.
36 (b) New or expanded facilities related to such
37 development are consolidated, to the maximum extent
38 feasible and legally permissible, unless consolidation will
39 have adverse environmental consequences and will not
40 significantly reduce the number of producing wells,

1 support facilities, or sites required to produce the
2 reservoir economically and with minimal environmental
3 impacts.
4 (c) Environmentally safe and feasible subsea
5 completions are used when drilling platforms or islands
6 would substantially degrade coastal visual qualities unless
7 use of such structures will result in substantially less
8 environmental risks.
9 (d) Platforms or islands will not be sited where a
10 substantial hazard to vessel traffic might result from the
11 facility or related operations, determined in consultation
12 with the United States Coast Guard and the Army Corps
13 of Engineers.
14 (e) Such development will not cause or contribute to
15 subsidence hazards unless it is determined that
16 ~~repressuring operations will prevent~~ *adequate measures*
17 *will be undertaken to prevent* damage from such
18 subsidence.
19 (f) ~~All~~ *With respect to new facilities, all* oilfield brines
20 are reinjected into oil-producing zones unless the
21 Division of Oil and Gas of the Department of
22 Conservation determines to do so would adversely affect
23 production of the reservoirs and unless injection into
24 other subsurface zones will reduce environmental risks.
25 *Exceptions to reinjections will be granted consistent with*
26 *the Ocean Waters Discharge Plan of the State Water*
27 *Resources Control Board* and where adequate provision
28 is made for the elimination of petroleum odors and water
29 quality problems.

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30 ~~Monitoring~~ *Where appropriate, monitoring* programs
31 to record land surface and near-shore ocean floor
32 movements shall be initiated in locations of new
33 large-scale fluid extraction on land or near shore before
34 operations begin and shall continue until surface
35 conditions have stabilized. Costs of monitoring and
36 mitigation programs shall be borne by liquid and gas
37 extraction operators.

40 30263. (a) New or expanded refineries or
1 petrochemical facilities not otherwise consistent with the
2 provisions of this division shall be permitted if (1)
3 alternative locations are not feasible or are more
4 environmentally damaging; (2) adverse environmental
5 effects are mitigated to the maximum extent feasible; (3)
6 it is found that not permitting such development would
7 adversely affect the public welfare; (4) the facility is not
8 located in a highly scenic or seismically hazardous area,
9 on any of the Channel Islands, or within or ~~near~~
10 *contiguous to* environmentally sensitive areas; and (5)
11 the facility is sited so as to provide a sufficient buffer area
12 to minimize adverse impacts on surrounding property.
13 (b) In addition to meeting all applicable air quality
14 standards, new or expanded refineries or petrochemical
15 facilities shall be permitted in areas designated as air
16 quality maintenance areas by the State Air Resources
17 Board and in areas where coastal resources would be
18 adversely affected only if the negative impacts of the
19 project upon air quality are offset by reductions in
20 gaseous emissions in the area by the users of the fuels, or,
21 in the case of an expansion of an existing site, total site
22 emission levels, and site levels for each emission type for
23 which national or state ambient air quality standards
24 have been established do not increase.
25 (c) New or expanded refineries or petrochemical
26 facilities shall minimize the need for once-through
27 cooling by using air cooling to the maximum extent
28 feasible and by using treated waste waters from inplant
29 processes where feasible.

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36 30264. Notwithstanding any other provision of this
37 division, except ~~subdivision (b)~~ *subdivisions (b) and (c)*
38 of Section 30413, new or expanded thermal electric
39 generating plants may be constructed in the coastal zone
40 if the proposed coastal site has been determined by the

1 State Energy Resources Conservation and Development
2 Commission to have greater relative merit pursuant to
3 the provisions of Section 25516.1 than available
4 alternative sites and related facilities for an applicant's
5 service area which have been determined to be
6 acceptable pursuant to the provisions of Section 25516.

CHAPTER 4. CREATION, MEMBERSHIP, AND POWERS OF COMMISSION AND REGIONAL COMMISSIONS

Article 1. Creation, Membership of Commission and Regional Commission

30300. There is in the Resources Agency the California Coastal Commission and, until not later than ~~January 1, 1981~~ *June 30, 1979*, six regional coastal commissions. AB 2948

30301. The commission shall consist of the following 15 members:

(a) The Secretary of the Resources Agency.

(b) The Secretary of the Business and Transportation Agency.

(c) The Chairperson of the State Lands Commission.

(d) Six representatives of the public, who shall not be members of any regional commission, from the state at large. The Governor, the Senate Rules Committee, and the Speaker of the Assembly shall each appoint two of such members.

(e) Six representatives from the regional commissions, selected by each regional commission from among its members. Within 60 days after the termination of any regional commission pursuant to Section 30305, the member on the commission shall be replaced by a county supervisor or city councilperson who shall reside within a coastal county of such region, to be appointed as follows:

(1) Upon the termination of the first regional commission, the Governor shall appoint the first member under this subdivision.

(2) Upon the termination of the second regional commission, the Senate Rules Committee shall appoint the second member under this subdivision.

(3) Upon the termination of the third regional commission, the Speaker of the Assembly shall appoint the third member under this subdivision.

(4) Upon the termination of the fourth, fifth, and sixth regional commissions, the process of appointment of the members of commissions under paragraphs (1), (2), and (3) of this subdivision shall be repeated in that order.

In any event, each regional commission's representative on the commission shall continue to serve until the new member has been appointed pursuant to this subdivision.

30301.2. (a) The appointments of the Governor, the Senate Rules Committee, and the Speaker of the Assembly, *pursuant to subdivision (e) of Section 30301,* shall be made in the following manner: Within 30 days after the termination of a regional commission, the boards of supervisors and city *selection committee* of each county within the region shall nominate ~~a supervisor~~ *supervisors* or council ~~member~~ *members* from which the Governor, Senate Rules Committee or Speaker of the Assembly shall appoint a replacement. In regions composed of three counties, the boards of supervisors and the city selection committee in each county within the region shall each nominate one or more supervisors or council members. In regions composed of two counties, the boards of supervisors and the city selection committee in each county within the region shall each nominate no less than two supervisors and two council members. In regions composed of one county, the board of supervisor and city selection committee in the county shall nominate no less than three supervisors and three council members. Immediately upon selecting the nominees, the board of supervisors and city selection committee shall send the names of the nominees to either the Governor, the Senate Rules Committee, or the Speaker of the Assembly whoever will appoint the replacement.

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(b) Within 30 days after receiving the names of the nominees pursuant to subdivision (a), the Governor, the Speaker of the Assembly, or the Senate Rules Committee, whoever will appoint the replacement, shall either appoint one of the nominees or notify the boards of supervisors and city selection committees within the region that none of the nominees are acceptable and request the boards of supervisors and city selection committees to make additional nominees. Within 60 days after receipt of a notice rejecting all the nominees, the boards of supervisors and city selection committees within the region shall nominate and send to the appointing authority additional nominees pursuant to subdivision (a). Upon receipt of the names of the nominees, the appointing authority shall appoint one of the nominees.

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30301.5. (a) ~~Any member~~ *Members* of the commission serving under subdivision (a), (b), or (c) of Section 30301 *shall be nonvoting members and* may appoint a designee to serve at his or her pleasure who shall have all the powers and duties of such member pursuant to this division.

(b) Any county supervisor or city councilperson appointed to the commission pursuant to subdivision (e) of Section 30301, may, subject to the confirmation of his or her appointing power, appoint an alternate member to represent him or her on the commission. The alternate shall serve at the pleasure of the county supervisor or city councilperson who appointed him or her and shall have all the powers and duties of a member of the commission. Applicable provisions of Section 30314 shall apply to alternates appointed pursuant to this subdivision.

30302. The six regional commissions shall be constituted as follows:

(a) The North Coast Regional Commission for Del Norte, Humboldt, and Mendocino Counties shall consist of the following members:

(1) One supervisor and one city councilperson from each county.

(2) Six representatives of the public.

(b) The North Central Coast Regional Commission for Sonoma, Marin, and San Francisco Counties shall consist of the following members:

(1) One supervisor and one city councilperson from Sonoma County and Marin County.

(2) Two supervisors of the City and County of San Francisco.

(3) One delegate of the Association of Bay Area Governments.

(4) Seven representatives of the public.

(c) The Central Coast Regional Commission for San Mateo, Santa Cruz, and Monterey Counties shall consist of the following members:

(1) One supervisor and one city councilperson from each county.

(2) One delegate of the Association of Bay Area Governments.

(3) One delegate of the Association of Monterey Bay Area Governments.

(4) Eight representatives of the public.

(d) The South Central Coast Regional Commission for San Luis Obispo, Santa Barbara, and Ventura Counties shall consists of the following members:

(1) One supervisor and one city councilperson from each county.

(2) Six representatives of the public.

(e) The South Coast Regional Commission for Los Angeles and Orange Counties shall consist of the following members:

(1) One supervisor from each county.

(2) One city councilperson from the City of Los Angeles nominated by majority vote of such city council and appointed by the president of such city council.

(3) One city councilperson from Los Angeles County from a city other than Los Angeles.

(4) One city councilperson from Orange County.

(5) One delegate of the Southern California Association of Governments.

(6) Six representatives of the public.

(f) The San Diego Coast Regional Commission for San Diego County, shall consist of the following members:

(1) Two supervisors from San Diego County and two city councilpersons from San Diego County, at least one of whom shall be from a city which lies, in whole or in part, within the coastal zone.

(2) One city councilperson from the City of San Diego, selected by the city council of such city.

(3) One member of the San Diego Comprehensive Planning Organization.

(4) Six representatives of the public.

30303. The members of the regional commissions shall be selected or appointed as follows:

(a) All supervisors, by the board of supervisors on which they sit.

(b) All city councilpersons, except under paragraph (2) of subdivision (e) and paragraph (2) of subdivision (f) of Section 30302, by the city selection committee of their respective counties.

(c) All delegates of regional agencies, by their respective agency.

(d) All members representing the public at large, equally by the Governor, the Senate Rules Committee, and the Speaker of the Assembly; provided, however, that the extra member under paragraph (4) of subdivision (b) of Section 30302 shall be appointed by the Governor and the extra members under paragraph (4) of subdivision (c) of Section 30302 shall be appointed one by the Senate Rules Committee and one by the Speaker of the Assembly, respectively.

30304. A member of a regional commission who is also a supervisor from a county or city and county with a population greater than 400,000 may, subject to confirmation by his or her appointing power, appoint an alternate member to represent him or her at any regional commission meeting. The alternate shall serve at the pleasure of the member who appointed him or her and shall have all the powers and duties as a member of the regional commission, except that the alternate shall only participate and vote in meetings in the absence of the member who appointed him or her.

An alternate shall not be eligible for appointment to the commission as a regional representative to the commission.

30304.5. (a) The regional commission shall be established pursuant to the provisions of this chapter and shall, no later than January 11, 1977, select their representatives to the commission.

(b) A regional commission shall take no action, other than selecting a representative to the commission as provided in subdivision (a), and shall have no powers,

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duties or responsibilities pursuant to the provisions of this division unless and until the commission, pursuant to subdivision (c), has certified that the regional commission for any region is necessary to expedite the review of local coastal programs and coastal development permit applications pursuant to the provisions of this division.

(c) The commission shall review the ~~anticipated~~ *projected* workload relative to the processing and review of local coastal programs and coastal development permits within each region of the coastal zone. If the commission determines that its workload and the ~~anticipated~~ *projected* workload within any region is of such magnitude that unreasonable delays will result unless the appropriate regional commission is authorized to review and process local coastal programs and coastal development permit applications, the commission shall, by majority vote of its appointed members, certify that such regional commission is necessary to carry out the provisions of this division. Upon certification by the commission pursuant to this subdivision, the appropriate regional commission shall assume all the powers, duties and responsibilities provided in this division.

(d) In the absence of a certification pursuant to subdivision (c), the commission shall, within any region of the coastal zone, assume all the powers, duties, and responsibilities of the regional commission as provided in this division. After certification pursuant to subdivision (c), the powers, duties and responsibilities of the commission and the appropriate regional commission shall be exercised in the manner provided in this division.

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30305. Each regional commission shall terminate within 30 days after the last local coastal program required within its region pursuant to Chapter 6 (commencing with Section 30500) of this division has been certified and all implementing devices have become effective or ~~January 1, 1981~~ *June 30, 1979*, whichever is the earlier date. Upon the termination of any regional commission, the commission shall succeed to any and all of such regional commission's obligations, powers, duties, responsibilities, benefits, or legal interests.

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Article 2. Qualifications and Organization

30310. (a) It is the intent of the Legislature to provide, to the maximum extent possible, for a smooth transition and continuity between the coastal program established by the California Coastal Zone Conservation Act of 1972 (commencing with Section 27000) and this division. Except with respect to appointments made pursuant to subdivision (e) of Section 30301, at least one-half of each of the commission and regional commission member appointments by the Governor, the Senate Rules Committee, and the Speaker of the Assembly shall ~~, if possible,~~ be persons who on November 30, 1976, were serving as members of the California Coastal Zone Conservation Commission or regional coastal zone conservation commissions established by the California Coastal Zone Conservation Act of 1972 (commencing with Section 27000) *, unless such persons are not available for such appointment*.

(b) In making their appointments pursuant to this division, the Governor, the Senate Rules Committee, and the Speaker of the Assembly shall make good faith efforts to assure that their appointments, as a whole, reflect, to the greatest extent feasible, the economic, social, and geographic diversity of the state.

30311. Notwithstanding any other provision of law, each member of the commission and each regional commission shall be appointed or selected on or before January 2, 1977.

30312. The terms of office of commission and regional commission members shall be as follows:

(a) Any person qualified for membership because he or she holds a specified office as a locally elected official shall serve at the pleasure of his or her selecting or appointing authority; provided, however, that such membership shall cease when his or her term of office as a locally elected official ceases.

(b) Any member appointed by the Governor, the Senate Rules Committee, or the Speaker of the Assembly shall serve for two years at the pleasure of their appointing power. Such members may be reappointed for succeeding two-year periods

(c) Members of the commission who are representatives of a regional commission shall serve on the commission at the pleasure of the regional commission.

30313. Vacancies that occur shall be filled within 30 days after the occurrence of the vacancy, and shall be filled in the same manner in which the vacating member was selected or appointed.

30314. Except as provided in this section, members or alternates of the commission or any regional commission shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties to the extent that reimbursement for such expenses is not otherwise provided or payable by another public agency or agencies, and shall receive fifty dollars ($50) for each full day of attending meetings of the commission or of any regional commission. In addition, members or alternates of the commission shall receive twelve dollars and fifty cents ($12.50) for each hour actually spent in preparation for a commission meeting; provided, however, that for each meeting no more than eight hours of preparation time shall be compensated as provided herein.

An alternate shall be entitled to payment and reimbursement for the necessary expenses incurred in participating in regional commission or commission meetings; provided, however, that only the member or his or her alternate shall receive such payment and reimbursement, and if both the member and alternate

prepare for, in the case of alternates to the commission, attend, and participate in any portion of a regional commission or commission meeting, only the alternate shall be entitled to such payment and reimbursement.

30315. The commission and regional commission shall meet at least once a month at a place convenient to the public. All meetings of the commission and each regional commission shall be open to the public.

Unless otherwise specifically provided for in this division, a majority ~~affirmative vote~~ of the total ~~authorized~~ *appointed* membership of the commission or of the regional commission, as the case may be, shall constitute a quorum and shall be necessary to approve any action required or permitted under this division.

30316. The commission and each regional commission shall elect a chairperson and vice chairperson from among its members.

30317. The headquarters of the commission shall be in a coastal county, but it may meet and may exercise any or all of its powers in any part of the state.

The commission shall designate the location of the headquarters for each regional commission within the region of such regional commission. After the termination of a regional commission pursuant to Section 30305, the commission may maintain regional offices, if it finds that accessibility to, and participation by, the public will be better served or that the provisions of this division can be implemented more efficiently through the maintenance of such offices.

30318. Nothing in this division shall preclude or prevent any member or employee of the commission or any regional commission who is also an employee of another public agency, a county supervisor or city councilperson, member of the Association of Bay Area Governments, member of the Association of Monterey Bay Area Governments, delegate to the Southern California Association of Governments, or member of the San Diego Comprehensive Planning Organization, and who has in such designated capacity voted or acted upon a particular matter, from voting or otherwise acting upon

such matter as a member or employee of the commission or any regional commission, as the case may be. Nothing in this section shall exempt any such member or employee of the commission or any regional commission, from any other provision of this article.

Article 3. Powers and Duties

30330. The commission, unless specifically otherwise provided, shall have the primary responsibility for the implementation of the provisions of this division and is designated as the state coastal zone planning and management agency for any and all purposes, and may exercise any and all powers set forth in the Federal Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.) or any amendment thereto or any other federal act heretofore or hereafter enacted that relates to the planning or management of the coastal zone.

In addition to any other authority, the commission may, except for a facility defined in Section 25110, grant or issue any certificate or statement required pursuant to any such federal law that an activity of any person, including any local, state, or federal agency, is in conformity with the provisions of this division. *With respect to any project outside the coastal zone that may have a substantial effect on the resources within the jurisdiction of the San Francisco Bay Conservation and Development Commission, established pursuant to Title 7.2 (commencing with Section 66600) of the Government Code, and for which any certification is required pursuant to the Federal Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), such certification shall be issued by the Bay Conservation and Development Commission: provided however, the commission may review and submit comments for any such project which affects resources within the coastal zone.*

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30331. The commission is designated the successor in interest to all remaining obligations, powers, duties, responsibilities, benefits, and interests of any sort of the California Coastal Zone Conservation Commission and of the six regional coastal zone conservation commissions established by the California Coastal Zone Conservation Act of 1972 (commencing with Section 27000).

30333. The commission may adopt rules and regulations to carry out the purposes and provisions of this division, and to govern procedures of the commission and regional commissions.

Each regional commission may adopt any regulation or take any action it deems reasonable and necessary to carry out the provisions of this division; provided, however, that no regulation adopted by a regional commission shall take effect until the commission has first

30333.5. Notwithstanding any other provision of this division, the commission may, by a majority vote of the appointed members, remove any local coastal program or any portion thereof, any coastal development permit application or appeal therefrom, from any regional commission for direct consideration and action by the commission where to do so would expedite the review of such local coastal program or coastal development permit application pursuant to this division. The commission shall make such removal where it finds that the regional commission is not processing the local coastal program or any portion thereof, a coastal development permit application, or appeal therefrom, in a reasonably expeditious and timely manner.

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30334. The commission and each regional commission, subject to the approval of the commission, may do the following:

(a) Contract for any private professional or governmental services, if such work or services cannot be satisfactorily performed by its employees.

(b) Sue and be sued. The Attorney General shall represent the commission ~~any~~ *and* any regional commission in any litigation or proceeding before any court, board, or agency of the state or federal government.

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30334.5. In addition to the authority granted by section 30334, the commission may apply for and accept grants, appropriations, and contributions in any form.

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30335. The commission and each regional commission shall appoint an executive director who shall be exempt from civil service and shall serve at the pleasure of his or her appointing power. The commission shall prescribe the duties and salaries of each executive director, and, consistent with applicable civil service laws, shall appoint and discharge any officer, house staff counsel, or employee of the commission or any regional commission as it deems necessary to carry out the provisions of this division.

30336. The commission and each regional commission shall, to the maximum extent feasible, assist local governments in exercising the planning and regulatory powers and responsibilities provided for by this division where the local government elects to exercise such powers and responsibilities and requests assistance from the commission or regional commissions, and shall cooperate with and assist other public agencies in carrying out this division. Similarly, every public agency, including regional and state agencies and local

governments, shall cooperate with the commission and any regional commission and shall, to the extent their resources permit, provide any advice, assistance, or information the commission or regional commission may require to perform its duties and to more effectively exercise its authority.

30337. The commission shall, where feasible, and in cooperation with the affected agency, establish a joint development permit application system *and public hearing procedures* with permit issuing agencies ~~that includes application and public hearing procedures~~.

30338. By May 1, 1977, the commission, after full consultation with the State Water Resources Control Board, shall adopt regulations for the timing of its review of proposed treatment works pursuant to the provisions of subdivision (c) of Section 30412.

30339. The commission and each regional commission shall:

(a) Ensure full and adequate participation by all interested groups and the public at large in the commission's and each regional commission's work program.

(b) Ensure that timely and complete notice of commission and regional commission meetings and public hearings is disseminated to all interested groups and the public at large.

(c) Advise all interested group and the public at large as to effective ways of participating in commission and regional commission proceedings.

(d) Recommend to any local government preparing or implementing a local coastal program and to any state agency that is carrying out duties or responsibilities pursuant to the provisions of this division, and additional measures to assure open consideration and more effective public participation in such programs or activities.

30340. The commission shall be responsible for the management and budgeting of any and all funds that may be appropriated, allocated, granted, or in any other way made available to the commission or any regional

commission for expenditure.

30341. The commission or any regional commission, with the commission's approval, may prepare and adopt any additional plans and maps and undertake any studies it deems necessary and appropriate to better accomplish the purposes, goals, and policies of this division: provided, however, that such plans and maps shall only be adopted after public hearing.

30342. The commission shall evaluate progress being made toward implementation of the provisions of this division and shall submit a report to the Governor and Legislature on January 1st of every other year, commencing on January 1, 1979.

CHAPTER 5. STATE AGENCIES

Article 1. General

30400. It is the intent of the Legislature to minimize duplication and conflicts among existing state agencies carrying out their regulatory duties and responsibilities.

30401. Except as otherwise specifically provided in this division, enactment of this division

does not increase, decrease, duplicate or supersede the authority of any existing state agency.

This chapter shall not be construed to limit in any way the regulatory controls over development pursuant to Chapters 7 (commencing with Section 30500) and 8 (commencing with Section 30700), provided however, neither the commission nor any regional commission shall set standards or adopt regulations that duplicate regulatory controls established by any existing state agency pursuant to specific statutory requirements or authorization.

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30402. All state agencies shall carry out their duties and responsibilities in conformity with this division.

30403. It is the intent of the Legislature that the policies of this division and all local coastal programs prepared pursuant to Chapter 6 (commencing with Section 30500) should provide the common assumptions upon which state functional plans for the coastal zone are based in accordance with the provisions of Section 65036 of the Government Code.

30401. The commission shall

periodically, in the case of the State Energy Resources Conservation and Development Commission, the State Board of Forestry, the State Water Resources Control Board and the California regional water quality control boards, the State Air Resources Board and air pollution control districts, the Department of Fish and Game, the Department of Parks and Recreation, the Department of Navigation and Ocean Development, the Division of Mines and Geology, the Division of Oil and Gas, and the State Lands Commission, and may, with respect to any other state agency, submit recommendations designed to encourage it to carry out its functions in a manner consistent with this division. The recommendations may include proposed changes in administrative regulations, rules, and statutes.

Each such state agency shall review and consider such recommendations and shall, within six months after receipt and in the event the recommendations are not implemented, report to the Governor and the Legislature its action and reasons therefor. Such report shall also include the agency's ~~comment~~ *comments* on any legislation which may have been proposed by the commission.

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Article 2. State Agencies

30410. *(a)* The commission and the San Francisco Bay Conservation and Development Commission shall conduct a joint review of this division and Title 7.2 (commencing with Section 66600) of the Government Code to determine how the program administered by the San Francisco Bay Conservation and Development Commission shall be related to this division. Both commissions shall jointly present their recommendations to the Legislature not later than July 1, 1978.

(b) It is the intent of the Legislature that ~~nonappealable developments by~~ *the* ports under the jurisdiction of the San Francisco Bay Conservation and Development Commission, including the Ports of San Francisco, Oakland, Richmond, Redwood City, Encinal Terminals, and Benicia, should be treated no less favorably than the ports under the jurisdiction of the commission covered in Chapter 8 (commencing with Section 30700) under the terms of any legislation which is developed pursuant to such study.

30411. (a) The Department of Fish and Game and the Fish and Game Commission are the principal state agencies responsible for the establishment and control of wildlife and fishery management programs and neither the commission nor any regional commission shall establish or impose any controls with respect thereto that duplicate or exceed regulatory controls established by such agencies pursuant to specific statutory requirements or authorization.

(b) The Department of Fish and Game, in consultation with the commission and the Department of Navigation and Ocean Development, may study degraded wetlands and identify those which can most feasibly be restored in conjunction with development of a boating facility as provided in subdivision (a) of Section 30233. Any such study shall include consideration of all of the following:

(1) Whether the wetland is so severely degraded and its natural processes so substantially impaired that it is not capable of recovering and maintaining a high level of biological productivity without major restoration activities.

(2) Whether a substantial portion of the degraded wetland, but in no event less than 75 percent, can be restored and maintained as a highly productive wetland in conjunction with a boating facilities project.

(3) Whether restoration of the wetland's natural values, including its biological productivity and wildlife habitat features, can most feasibly be achieved and maintained in conjunction with a boating facility or whether there are other feasible ways to achieve such values.

30412. (a) In addition to the provisions set forth in Section 13142.5 of the Water Code, the provisions of this section shall apply to the commission and the State Water Resources Control Board and the California regional water quality control boards.

(b) The State Water Resources Control Board and the California regional water quality control boards are the state agencies with primary responsibility for the coordination and control of water quality. The State Water Resources Control Board has primary responsibility for the administration of water rights pursuant to applicable law. The commission shall assure that proposed development and local coastal programs shall not frustrate the provisions of this section. Neither the commission nor any regional commission shall, except as provided in subdivision (c), modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters

relating to water quality or the administration of water rights.

Except as provided in this section, nothing herein shall be interpreted in any way either as prohibiting or limiting the commission, regional commission, local government, or port governing body from exercising the regulatory controls over development pursuant to this division in a manner necessary to carry out the provisions of this division.

(c) Any development within the coastal zone or outside the coastal zone which provides service to any area within the coastal zone that constitutes a treatment work shall be reviewed by the commission and any permit it issues, if any, shall be determinative only with respect to the following aspects of such development:

(1) The siting and visual appearance of treatment works within the coastal zone.

(2) The geographic limits of service areas within the coastal zone which are to be served by particular treatment works and the timing of the use of capacity of treatment works for such service areas to allow for phasing of development and use of facilities consistent with this division.

(3) Development projections which determine the sizing of treatment works for providing service within the coastal zone.

The commission shall ~~determine whether the treatment works complies with the provisions~~ *make these determinations in accordance with the policies* of this division and shall make its final determination on a permit application for a treatment work prior to the final approval by the State Water Resources Control Board for the funding of such treatment works. Except as specifically provided in this subdivision, the decisions of the State Water Resources Control Board relative to the construction of treatment works shall be final and binding upon the commission and any regional commission.

(d) The commission shall provide or require reservations of sites for the construction of treatment

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works and points of discharge within the coastal zone adequate for the protection of coastal resources consistent with the provisions of this division.

(e) Nothing in this section shall require the State Water Resources Control Board to fund or certify for funding, any specific treatment works within the coastal zone or to prohibit the State Water Resources Control Board or any California regional water quality control board from requiring a higher degree of treatment at any existing treatment works.

30413. (a) In addition to the provisions set forth in subdivision (f) of Section 30241, and in Sections 25302, 25500, 25507, 25508, 25514, 25516.1, 25519, 25523, and 25526, the provisions of this section shall apply to the commission and the State Energy Resources Conservation and Development Commission with respect to matters within the statutory responsibility of the latter.

(b) The commission shall, prior to January 1, 1978, and after one or more public hearings, designate those specific locations within the coastal zone where the location of a facility as defined in Section 25110 would prevent the achievement of the objectives of this division; provided, however, that specific locations that are presently used for such facilities and reasonable expansion thereof shall not be so designated. Each such designation shall include a description of the boundaries of such locations, the objectives of this division which would be so affected, and detailed findings concerning the significant adverse impacts that would result from development of a facility in the designated area. The commission shall consider the conclusions, if any, reached by the State Energy Resources Conservation and Development Commission in its most recently promulgated comprehensive report issues pursuant to Section 25309. The commission shall transmit a copy of its report prepared pursuant to this subdivision to the State Energy Resources Conservation and Development Commission.

(c) The commission shall every two years revise and update the designations specified in subdivision (b) of this section. The provisions of *subdivision (b) of* this section shall not apply to any sites and related facilities specified in any notice of intention to file an application for certification filed with the State Energy Resources Conservation and Development Commission pursuant to Section 25502 prior to designation of additional locations made by the commission pursuant to this subdivision.

(d) Whenever the State Energy Resources Conservation and Development Commission exercises its siting authority and undertakes proceedings pursuant to the provisions of Chapter 6 (commencing with Section 25500) of Division 15 with respect to any thermal powerplant or transmission line to be located, in whole or in part, within the coastal zone, the commission shall participate in such proceedings and shall receive from the State Energy Resources Conservation and Development Commission any notice of intention to file an application for certification of a site and related facilities within the coastal zone. The commission shall analyze each notice of intent and shall, prior to completion of the preliminary report required by Section 25510, forward to the State Energy Resources Conservation and Development Commission a written report on the suitability of the proposed site and related facilities specified in such notice of intent. The commission's report shall contain a consideration of, and findings regarding, all of the following:

(1) The compatibility of the proposed site and related facilities with the goal of protecting coastal resources.

(2) The degree to which the proposed site and related facilities would conflict with other existing or planned coastal-dependent land uses at or near the site.

(3) The potential adverse effects that the proposed site and related facilities would have on aesthetic values.

(4) The potential adverse environmental effects on fish and wildlife and their habitats.

(5) The conformance of the proposed site and related facilities with certified local coastal programs in those jurisdictions which would be affected by any such development.

(6) The degree to which the proposed site and related facilities could reasonably be modified so as to mitigate potential adverse effects on coastal resources, minimize conflict with existing or planned coastal-dependent uses at or near the site, and promote the policies of this division.

(7) Such other matters as the commission deems appropriate and necessary to carry out the provisions of this division.

(e) The commission may, at its discretion, participate fully in other proceedings conducted by the State Energy Resources Conservation and Development Commission pursuant to its powerplant siting authority. In the event the commission participates in any public hearings held by the State Energy Resources Conservation and Development Commission, it shall be afforded full opportunity to present evidence and examine and cross-examine witnesses.

(f) The State Energy Resources Conservation and Development Commission shall forward a copy of all reports it distributes pursuant to Sections 25302 and 25306 to the commission and the commission shall, with respect to any report that relates to the coastal zone or coastal zone resources, comment on such reports, and shall in its comments include a discussion of the desirability of particular areas within the coastal zone as designated in such reports for potential powerplant development. The commission may propose alternate areas for powerplant development within the coastal zone and shall provide detailed findings to support the suggested alternatives.

30414. (a) The State Air Resources Board and local air pollution control districts established pursuant to state law and consistent with requirements of federal law are the principal public agencies responsible for the establishment of ambient air quality and emission standards and air pollution control programs. Neither the commission nor any regional commission shall modify any ambient air quality or emission standard established by the State Air Resources Board or any local air pollution control district *in establishing ambient air quality or emission standards*.

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(b) The State Air Resources Board and any local air pollution control district may recommend ways in which actions of the commission or any regional commission can complement or assist in the implementation of established air quality programs.

30415. The Director of the Office of Planning and Research shall, in cooperation with the commission and other appropriate state agencies, review the policies of this division. If the director determines that effective implementation of any policy requires the cooperative and coordinated efforts of several state agencies, he shall, *no later than July 1, 1978 and from time to time thereafter,* recommend to the appropriate agencies actions that should be taken to minimize potential duplication and conflicts and which could, if taken, better achieve effective implementation of such policy. The director shall, where appropriate and after consultation with the affected agency, recommend to the Governor and the Legislature how the programs, duties, ~~and~~ responsibilities, *and enabling legislation* of any state agency should be changed to better achieve the goals and policies of this division.

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30416. (a) The State Lands Commission, in carrying out its duties and responsibilities as the state agency responsible for the management of all state lands, including tide and submerged lands, in accordance with the provisions of Division 6 (commencing with Section 6001), shall, prior to certification by the commission pursuant to Chapters 6 (commencing with Section 30500) and 8 (commencing with Section 30700) review, and may comment on any proposed local coastal program or port master plan that could ~~effect~~ *affect* state lands.

(b) No power granted to any local government, port governing body, or special district, under this division, shall change the authority of the State Lands Commission over granted or ungranted lands within its jurisdiction or change the rights and duties of its lessees or permittees.

(c) Boundary settlements between the State Lands Commission and other parties and any exchanges of land in connection therewith shall not be a development within the meaning of this division.

(d) Nothing in this division shall amend or alter the terms and conditions in any legislative grant of lands, in trust, to any local government, port governing body, or special district; provided, however, that any development on such granted lands shall, in addition to the terms and conditions of such grant, be subject to the regulatory controls provided by Chapters 7 (commencing with Section 30600) and 8 (commencing with Section 30700).

30417. (a) In addition to the provisions set forth in Section 4551.5, the provisions of this section shall apply to the State Board of Forestry.

(b) Within 180 days after January 1, 1977, the commission shall identify special treatment areas within the coastal zone in order to assure that natural and scenic resources are adequately protected. The commission shall forward to the State Board of Forestry maps of the designated special treatment areas together with specific reasons for such designations and with recommendations designed to assist the State Board of Forestry in adopting rules and regulations which adequately protect the natural and scenic qualities of such special treatment areas.

30418. (a) Pursuant to Division 3 (commencing with Section 3000), the Division of Oil and Gas of the Department of Conservation is the principal state agency responsible for regulating the drilling, operation, maintenance, and abandonment of all oil, gas, and geothermal wells in the state. Neither the commission, regional commission, ~~or local government~~ *local government, port governing body, or special district* shall establish or impose such regulatory controls that duplicate or exceed controls established by the Division of Oil and Gas pursuant to specific statutory requirements or authorization.

This section shall not be construed to limit in any way, except as specifically provided, the regulatory controls over oil and gas development pursuant to Chapters 7 (commencing with Section 30600) and 8 (commencing with Section 30700).

(b) The Division of Oil and Gas of the Department of Conservation shall cooperate with the commission by providing necessary data and technical expertise regarding proposed well operations within the coastal zone.

CHAPTER 6. IMPLEMENTATION

Article 1. Local Coastal Program

30500. (a) Each local government lying, in whole or in part, within the coastal zone shall prepare a local coastal program for that portion of the coastal zone within its jurisdiction. However, any such local government may request the commission to prepare a local coastal program, or a portion thereof for the local government; provided, such request is submitted to the commission, in writing, not later than July 1, 1977. Each local coastal program prepared pursuant to this chapter shall contain a specific public access component to assure that maximum public access to the coast and public recreation areas is provided.

(b) Amendments to a local general plan for the purpose of developing a certified local coastal program shall not constitute an amendment of a general plan for purposes of Section 65361 of the Government Code.

(c) The precise content of each local coastal program shall be determined by the local government, consistent with Section 30501, in full consultation with the commission and an appropriate regional commission, and with full public participation.

30501. The commission shall, within 90 days after January 1, 1977, adopt, after public hearing, procedures for the preparation, submission, approval, appeal, certification, and amendment of any local coastal program, including, but not limited to, all of the following:

(a) A common methodology for the preparation of, and the determination of the scope of, the local coastal programs, taking into account the fact that local governments have differing needs and characteristics.

(b) A schedule for the processing of all local coastal programs and specific guidelines to be followed by each regional commission in establishing, within 30 days after the commission has adopted such guidelines, its own schedule for processing local coastal programs within its

region; however, in no event shall a local coastal program that is prepared by a local government be required to be submitted to any regional commission prior to July 1, 1978, or later than January 1, 1980.

Local coastal programs or portions thereof, prepared by the commission shall be completed not later than July 1, 1980, and certified not later than December 1, 1980.

(c) Recommended uses that are of more than local importance that should be considered in the preparation of local coastal programs. Such uses may be listed generally or the commission may, from time to time, recommend specific uses for consideration by any local government.

30502. (a) The commission, in consultation with affected local governments and the appropriate regional commissions, shall, not later than September 1, 1977, after public hearing, designate sensitive coastal resource areas within the coastal zone where the protection of coastal resources and public access requires, in addition to the review and approval of zoning ordinances, ~~and~~ the review and approval by the regional commissions and commission of other implementing actions.

(b) The designation of each sensitive coastal resource area shall be based upon a separate report prepared and adopted by the commission which shall contain all of the following:

(1) A description of the coastal resources to be protected and the reasons why the area has been designated as a sensitive coastal resource area.

(2) A specific determination that the designated area is of regional or statewide significance.

(3) A specific list of significant adverse impacts that could result from development where zoning regulations alone may not adequately protect coastal resources or access.

(4) A map of the area indicating its size and location.

(c) In sensitive coastal resource areas designated pursuant to this section, a local coastal program shall include the implementing actions adequate to protect the coastal resources enumerated in the findings of the sensitive coastal resource area report in conformity with the policies of this division.

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30502.5. The commission shall recommend to the Legislature for designation by ~~concurrent resolution~~ *statute* those sensitive coastal resource areas designated by the commission pursuant to Section 30502. Recommendation by the commission to the Legislature shall place the described area in the sensitive coastal resource area category for no more than two years, or a shorter period if the Legislature specifically rejects the recommendation. If two years pass and a recommended area has not been designated by ~~concurrent resolution~~ *statute*, it shall no longer be designated as a sensitive coastal resource area. ~~Such a concurrent resolution~~ *A bill proposing such a statute* may not be held in committee, but shall be reported from committee to the floor of each respective house with its recommendation within 60 days of referral to committee.

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30503. During the preparation, approval, certification, and amendment of any local coastal program, the public, as well as all affected governmental agencies, including special districts, shall be provided maximum opportunities to participate. Prior to submission of a local coastal program for approval, local governments shall hold a public hearing or hearings on that portion of the program which has not been subjected to public hearings within four years of such submission.

30504. Special districts, which issue permits or otherwise grant approval for development or which conduct development activities that may affect coastal resources, shall submit their development plans to the affected local government pursuant to Section 65401 of the Government Code. Such plans shall be considered by the affected local government in the preparation of its local coastal program.

30512. (a) The land use plan of a proposed local coastal program shall be submitted to the regional commission. The regional commission shall, within 90 days after the submittal, after public hearing, either approve or disapprove, in whole or in part, the land use plan. If the proposed land use plan is not acted upon within the 90-day period, it shall be deemed approved by the regional commission.

(b) Where a land use plan is disapproved, in whole or in part, the regional commission shall provide a written explanation and may suggest ways in which to modify the disapproved provisions. A local government may revise a disapproved land use plan and resubmit the revised version to the regional commission or it may appeal either the disapproved portion or revised version thereof to the commission. Where the proposed land use plan is approved, in whole or in part, the land use plan or the approved portion thereof shall, within 10 working days of such approval, be forwarded by the regional commission to the commission for certification.

(c) The commission shall, not less than 21 days nor more than 45 days after a land use plan has been submitted or appealed to it, determine by ~~a majority of members present~~ *majority vote*, after a public hearing, whether specific provisions of the land use plan raise a substantial issue as to conformity with the policies of Chapter 3 (commencing with Section 30200). If the commission finds no substantial issue, the decision of the regional commission shall be final, and in the case of regional commission approvals, the land use plan shall be deemed certified. If the commission determines a substantial issue is raised, it shall, following public hearing and within 60 days from receipt of the land use plan, either refuse certification or certify, in whole or in part, the land use plan.

(d) If the commission refuses certification, in whole or in part, it shall send a written explanation for such action to the appropriate local government and regional commission. A revised land use plan may be resubmitted directly to the commission for certification.

(c) A regional commission shall approve and the commission shall certify, or the commission shall approve and certify where there is no regional commission, a land use plan, or any amendments thereto, if such commission finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200) of this division.

30513. The local government shall submit to the regional commission and the commission the zoning ordinances, zoning district maps, and, where necessary, other implementing actions which are required pursuant to this chapter.

(a) If within 60 days after receipt of the zoning ordinances, zoning district maps, and other implementing actions, the regional commission, after public hearing, has not rejected the zoning ordinances, zoning district maps, or other implementing actions, they shall be deemed approved. A regional commission may only reject zoning ordinances, zoning district maps, or other implementing actions on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the regional commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection specifying the provisions of land use plan with which the rejected zoning ordinances do not conform or which it finds will not be adequately carried out together with its reasons for the action taken.

(b) The local government may revise and resubmit the rejected zoning ordinances, zoning district maps, or other implementing actions to the regional commission or it may, within 10 days after receipt of a notice of such rejection, appeal to the commission.

(c) Any aggrieved person may appeal to the commission within 10 working days after approval or rejection of the zoning ordinances, zoning district maps, or other implementing actions by a regional commission or after the zoning ordinances, zoning district maps, or other implementing actions are deemed approved due to the failure of the regional commission to act.

(d) An appeal pursuant to subdivision (b) or (c) shall specify the action which is being appealed, the specific provision of the certified land use plan with which the

zoning ordinances, zoning district maps, or other implementing actions either conform or do not conform or which will or will not be adequately carried out, and the appellant's reasons for such position. The commission, by majority vote of those present, may refuse to hear an appeal which it determines raises no substantial issue. If the commission refuses to hear an appeal, the action of the regional commission shall be final.

(e) In the absence of an appeal pursuant to subdivision (b) or (c), the commission, by a majority of those present, may, within 30 days after a zoning ordinance, zoning district map, or other implementing action has been approved by the regional commission, determine that a substantial issue is presented as to conformity with or adequacy to carry out the certified land use plan.

(f) If within 60 days after receipt of an appeal pursuant to subdivision (b) or (c) or within 30 days after a determination to review pursuant to subdivision (e), the commission, after public hearing, has not rejected the zoning ordinances, zoning district maps, or other implementing actions, such zoning ordinances, zoning district maps, or other implementing actions shall be deemed approved. The commission may only reject a zoning ordinance, zoning district map, or other implementing action on the grounds set forth in subdivision (a) and, if it does so, shall give written notice as provided in subdivision (a). The local government may revise and resubmit a rejected zoning ordinance, zoning district map, or other implementing action to the regional commission or directly to the commission in accordance with the provisions of this section.

30514. (a) A certified local coastal program and all local implementing ordinances, regulations, and other actions may be amended by the appropriate local government but no such amendment shall take effect until it has been certified by the commission.

(b) Any proposed amendment of a certified local coastal program shall be submitted to, and processed by, the appropriate regional commission and the commission, or the commission where there is no regional commission, in accordance with the provisions of Sections 30512 and 30513.

(c) The commission shall, by regulations, establish a procedure whereby proposed amendments to a certified local coastal program may be reviewed and designated by the executive director of the commission as being minor in nature. Proposed amendments that are designated as minor shall not be subject to the provisions of Sections 30512 and 30513 and shall take effect on the 10th working day after such designation. Amendments that allow changes in uses shall not be designated as minor.

(d) For the purpose of this section, an "amendment of a certified local coastal program" includes, but is not limited to, any action by the local government which authorizes a use of a parcel of land other than that designated in the certified local coastal program as a permitted use of such parcel.

30515. Any person authorized to undertake a public works project or proposing an energy facility development may request any local government to amend its certified local coastal program, if the purpose of the proposed amendment is to meet public needs of an area greater than that included within such certified local coastal program that had not been anticipated by the person making the request at the time the local coastal program was before the commission for certification. If, after review, the local government determines that the amendment requested would be in conformity with the policies of this division, it may amend its certified local coastal program as provided in Section 30514.

If the local government does not amend its local coastal program, such person may file with the commission a request for amendment which shall set forth the reasons why the proposed amendment is necessary and how such amendment is in conformity with the policies of this division. The local government shall be provided an opportunity to set forth the reasons for its action. The commission may, after public hearing, approve and certify the proposed amendment if it finds, after a careful balancing of social, economic, and environmental effects, that to do otherwise would adversely affect the public

welfare, that a public need of an area greater than that included within the certified local coastal program would be met, that there is no feasible, less environmentally damaging alternative way to meet such need, and that the proposed amendment is in conformity with the policies of this division.

30516. (a) Approval of a local coastal program shall not be withheld because of the inability of the local government to financially support or implement any policy or policies contained in this division; provided, however, that this shall not require the approval of a local coastal program allowing development not in conformity with the policies in Chapter 3 (commencing with Section 30200).

(b) Where a certified port master plan has been incorporated in a local coastal program in accordance with Section 30711 and the local coastal program is disapproved by the regional commission or the commission, such disapproval shall not apply to the certified port master plan.

30517. The commission or the regional commission may extend, for a period of not to exceed one year, except as provided for in Section 30518, any time limitation established by this chapter for good cause.

30518. If a local coastal program has not been certified and all implementing devices become effective on or before January 1, 1981, the commission may take any of the following actions, if it finds that, in the absence of a certified local coastal program, any new development in the coastal zone would not be in conformity within the jurisdiction of the affected local government and would be inconsistent with the policies of this division:

(a) Prohibit or otherwise restrict, by regulation, the affected local government from issuing any permit or any type of entitlement for use for any development with the coastal zone, or any portion thereof, of such local government.

(b) By regulation, extend the permit requirements of Chapter 7 (commencing with Section 30600) by requiring a permit from the commission for any development within any area of the coastal zone under the jurisdiction of the affected local government.

30519. Except for appeals to the commission, as provided in Section 30603, after a local coastal program, or any portion thereof, has been certified and all implementing actions within the area affected have become effective, the development review authority provided for in Chapter 7 (commencing with Section 30600) shall no longer be exercised by the regional commission or by the commission where there is no regional commission over any new development proposed within the area to which such certified local coastal program, or any portion thereof, applies and shall at that time be delegated to the local government that is implementing such local coastal program or any portion thereof.

(b) Subdivision (a) shall not apply to any development proposed or undertaken on any tidelands, submerged lands, or on public trust lands, whether filled or unfilled, lying within the coastal zone, nor shall it apply to any development proposed or undertaken within ports covered by Chapter 8 (commencing with Section 30700) or within any state university or college within the coastal zone; however, this section shall apply to any development proposed or undertaken by a port or harbor district or authority on lands or waters granted by the Legislature to a local government whose certified local coastal program includes the specific development plans for such district or authority.

30519.5. (a) The commission shall, from time to time, but at least once every five years after certification, review every certified local coastal program to determine whether such program is being effectively implemented in conformity with the policies of this division. If the commission determines that a certified local coastal program is not being carried out in conformity with any policy of this division it shall submit to the affected local government recommendations of corrective actions that should be taken. Such recommendations may include recommended amendments to the affected local government's local coastal program.

(b) Recommendations submitted pursuant to this section shall be reviewed by the affected local government and, if the recommended action is not taken, the local government shall, within one year of such submission, forward to the commission a report setting forth its reasons for not taking the recommended action. The commission shall review such report and, where appropriate, report to the Legislature and recommend legislative action necessary to assure effective implementation of the relevant policy or policies of this division.

30520. If the application of any local coastal program or part thereof is prohibited or stayed by any court, the permit authority provided for in Chapter 7 (commencing with Section 30600) shall be reinstated in the regional commission or in the commission where there is no regional commission. The reinstated permit authority shall apply as to any development which would be affected by the prohibition or stay.

30521. The Legislature hereby finds and declares that the early review of a limited number of local coastal programs may provide valuable experience for future review and processing of local coastal programs and that in consideration of the early commitments made by the involved local governments, any local coastal program prepared for that portion of a local jurisdiction designated as a pilot project area by the California Coastal Zone Conservation Commission between August 31, 1976, and October 31, 1976, shall receive priority from the regional commission and the commission by being processed ahead of other local coastal programs pursuant to the provisions of this chapter. Any such pilot project may be reviewed and approved by the appropriate regional commission and the commission without being subject to the procedures required by Section 30501; provided, that the proposed local coastal program, or portion thereof, is in conformity with the policies of Chapter 3 (commencing with Section 30200), serves as a useful model for future review of local coastal programs, and the regional commission has commenced formal review of the land use phase of a local coastal program by June 1, 1977.

30522. Nothing in this chapter shall permit the commission to certify a local coastal program which provides for a lesser degree of environmental protection than that provided by the plans and policies of any state regulatory agency.

CHAPTER 7. DEVELOPMENT CONTROLS

Article 1. General Provisions

30600. (a) In addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, on or after January 1, 1977, any person wishing to perform or undertake any development in the coastal zone, other than a facility subject to the provisions of Section 25500, shall obtain a coastal development permit.

(b) Prior to certification of its local coastal program, a local government may, with respect to any development within its area of jurisdiction in the coastal zone and consistent with the provisions of Sections 30604, 30620, and 30620.5, establish procedures for the filing processing, review, modification, approval, or denial of a coastal development permit. Such procedures may be incorporated and made a part of the procedures relating to any other appropriate land use development permit issued by the local government. A coastal development permit from a local government shall not be required by this subdivision for any development on tidelands, submerged lands, or on public trust lands, whether filled or unfilled, or for any development by a public agency for which a local government permit is not otherwise required.

(c) If prior to certification of its local coastal program, a local government does not exercise the option provided in subdivision (b), or a development is not subject to the requirements of subdivision (b), a coastal development permit shall be obtained from a regional commission, the commission on appeal, or the commission where there is no regional commission.

(d) After certification of its local coastal program, a coastal development permit shall be obtained from the local government as provided for in Section 30519.

30601. Prior to certification of the local coastal program and, where applicable, in addition to a permit from local government pursuant to subdivision (b) of

Section 30600, a coastal development permit shall be obtained from the regional commission, or the commission on appeal, or the commission where there is no regional commission, for any of the following:

(1) Developments between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.

(2) Developments not included within paragraph (1) located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

(3) Any development which constitutes a major public works project or a major energy facility.

30602. (a) Prior to certification of its local coastal program, any action taken by a local government on a coastal development permit application may be appealed by the executive director of the regional commission, any person, ~~and~~ *including the applicant, or* any two members of the regional commission or the commission to the regional commission. Such action shall become final after the 20th working day after receipt of the notice required by subdivision (c) of Section 30620.5, unless an appeal is filed within that time.

(b) Any action taken by a regional commission on a coastal development permit application pursuant to this section or Section 30600, may be appealed to the commission, in accordance with the provisions of subdivision (a) of Section 30625. Such action shall become final after the 10th working day, unless an appeal is filed within that time.

30603. (a) After certification of its local coastal

program, an action taken by a local government on a coastal development permit application may be appealed to the commission for any of the following:

(1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.

(2) Developments approved by the local government not included within paragraph (1) of this subdivision located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

(3) Developments approved by the local government not included within paragraph (1) or (2) of this subdivision located in a sensitive coastal resource area if the allegation on appeal is that the development is not in conformity with the implementing actions of the certified local coastal program.

(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).

(5) Any development which constitutes a major public works project or a major energy facility.

(b) The grounds for an appeal pursuant to paragraph (1) of subdivision (a) shall be limited to the following:

(1) The development fails to provide adequate physical access or public or private commercial use or interferes with such uses.

(2) The development fails to protect public views from any public road or from a recreational area to, and along, the coast.

(3) The development is not compatible with the established physical scale of the area.

(4) The development may significantly alter existing natural landforms.

(5) The development does not comply with shoreline erosion and geologic setback requirements.

(c) The standard of review for any development reviewed pursuant to subdivision (a) ~~or (b)~~ *(3)* shall be in conformity with the implementing actions of the certified local coastal program.

Such action shall become final after the 10th working day, unless an appeal is filed within that time.

30604. (a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

(b) After certification of the local coastal program a coastal development permit shall be issued if the issuing agency or the commission on appeal finds that the proposed development is in conformity with the certified local coastal program.

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that such development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

(d) Nothing in this division shall authorize the denial of a coastal development permit on grounds that a portion of the proposed development not within the coastal zone will have adverse environmental impacts outside the coastal zone; provided, however, that the portion of the proposed development within the coastal zone shall meet the requirements of this chapter.

30605. To promote greater efficiency for the planning of any public works or state university or college development projects and as an alternative to project-by-project review, plans for public works or state university or college long-range land use development plans may be submitted to the regional commission and the commission for review in the same manner prescribed for the review of local coastal programs as set forth in Chapter 6 (commencing with Section 30500). If

any such plan for public works or state university or college development project is submitted prior to certification of the local coastal programs for the jurisdictions affected by the proposed public works, the commission shall certify whether such proposed plan is consistent with the provisions of Chapter 3 (commencing with Section 30200). The commission shall, by regulation, provide for the submission and distribution to the public, prior to public hearings on the plan, detailed environmental information sufficient to enable the commission to determine the consistency of the plans with the policies of this division. If any such plan for public works is submitted after the certification of local coastal programs, any such plan shall be approved by the commission only if it finds, after full consultation with the affected local governments, that the proposed plan for public works is in conformity with certified local coastal programs in jurisdictions affected by the proposed public works. Each state university or college shall coordinate and consult with local government in the preparation of long-range development plans so as to be consistent, to the fullest extent feasible, with the appropriate local coastal program. Where a plan for a public works or state university or college development project has been certified by the commission, any subsequent review by the commission of a specific project contained in such certified plan shall be limited to imposing conditions consistent with Sections 30607 and 30607.1. A certified long-range development plan may be amended by the state university or college, but no such amendment shall take effect until it has been certified by the commission. Any proposed amendment shall be submitted to, and processed by, the regional commission or the commission in the same manner as prescribed for amendment of a local coastal program.

30606. Prior to the commencement of any development pursuant to Section 30605, the public agency proposing the public works project, or state university or college, shall notify the commission and other interested persons, organizations, and

governmental agencies of the impending development and provide data to show that it is consistent with the certified public works plan or long-range development plan. No development shall take place within 30 working days after such notice.

30607. Any permit that is issued or any development or action approved on appeal, pursuant to this chapter, shall be subject to reasonable terms and conditions in order to ensure that such development or action will be in accordance with the provisions of this division.

30607.1. Where any dike and fill development is permitted in wetlands in conformity with this division, mitigation measures shall include, at a minimum, either acquisition of equivalent areas of equal or greater biological productivity or opening up equivalent areas to tidal action; provided, however, that if no appropriate restoration site is available, an in-lieu fee sufficient to provide an area of equivalent productive value or surface areas shall be dedicated to an appropriate public agency, or such replacement site shall be purchased before the dike or fill development may proceed. Such mitigation measures shall not be required for temporary or short-term fill or diking; provided, that a bond or other evidence of financial responsibility is provided to assure that restoration will be accomplished in the shortest feasible time.

30608. (a) No person who has obtained a vested right in a development prior to the *effective* date ~~on which~~ *of* this division ~~is chaptered by the Secretary of State~~ or who has obtained a permit from the California Coastal Zone Conservation Commission pursuant to the California Coastal Zone Conservation Act of 1972 (commencing with Section 27000) shall be required to secure approval for the development pursuant to this division; provided, however, that no substantial change may be made in any such development without prior approval having been obtained under this division.

(b) If construction of the exempted development has not in good faith been pursued within three years after a claim of exemption has been requested and approved by the regional commission, the commission on appeal, or the commission where there is no regional commission, the vested right shall be presumed to have been abandoned and the development shall be required to be approved in accordance with the provisions of this division.

30609. Where, prior to January 1, 1977, a permit was issued and expressly made subject to recorded terms and conditions that are not dedications of land or interests in land for the benefit of the public or a public agency pursuant to the California Coastal Zone Conservation Act of 1972 (commencing with Section 27000), the owner of real property which is the subject of such permit may apply for modification or elimination of the recordation of such terms and conditions pursuant to the provisions of this division. Such application shall be made in the same manner as a permit application. In no event, however, shall such a modification or elimination of recordation result in the imposition of terms or conditions which are more restrictive than those imposed at the time of the initial grant of the permit. Unless modified or deleted pursuant to this section, any condition imposed on a permit issued pursuant to the former California Coastal Zone Conservation Act of 1972 (commencing with Section 27000) shall remain in full force and effect.

30610. Notwithstanding any provision in this division to the contrary, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas:

(a) Improvements to existing single-family residences; provided, however, that the commission shall specify, by regulation, those classes of development which involve a risk of adverse environmental effect and shall require that a coastal development permit be obtained under this chapter.

(b) Maintenance dredging of existing navigation channels or moving dredged material from such channels to a disposal area outside the coastal zone, pursuant to a permit from the United States Army Corps of Engineers.

(c) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of such repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance that

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involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained under this chapter.

(d) Any category of development, or any category of development within a specifically defined geographic area, that the commission, by regulation, after public hearing, and by two-thirds vote of its ~~total authorized membership~~ *appointed members*, has described or identified and with respect to which the commission has found that there is no potential for any significant adverse effect, either individually or cumulatively, on coastal resources or on public access to, or along, the coast and that such exclusion will not impair the ability of local government to prepare a local coastal program.

(e) The installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and any development approved pursuant to this division; provided, that the commission may, where necessary, require reasonable conditions to mitigate any adverse impacts on coastal resources, including scenic resources.

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30610.5. Urban land areas shall, pursuant to the provisions of this section, be excluded from the permit provisions of this chapter.

(a) Upon the request of a local government, an urban land area, as specifically identified by such local government, shall, after public hearing, be excluded by the commission from the permit provisions of this chapter where both of the following conditions are met:

(1) The area to be excluded is either a residential area zoned and developed to a density of four or more dwelling units per acre on or before January 1, 1977, or a commercial or industrial area zoned and developed for such use on or before January 1, 1977.

(2) The commission finds both of the following:

(i) Locally permitted development will be infilling or replacement and will be in conformity with the scale, size, and character of the surrounding community.

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(ii) There is no potential for significant adverse effects, either individually or cumulatively, on public access to the coast or on coastal resources from any locally permitted development; provided, however, that no area may be excluded unless more than 50 percent of the lots are built upon, to the same general density or intensity of use.

(b) Every exclusion granted under subdivision (a) of this section and subdivision (d) of Section 30610 shall be subject to terms and conditions to assure that no significant change in density, height, or nature of uses will occur without further proceedings under this division, and an order granting an exclusion under subdivision (d) of Section 30610, but not under subdivision (a) of this section may be revoked at any time by the commission, if the conditions of exclusion are violated. Tide and submerged land, beaches, and lots immediately adjacent to the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, and all lands and waters subject to the public trust shall not be excluded under either subdivision (a) of this section or subdivision (d) of Section 30610.

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30611. When immediate action by ~~public agencies~~ *a person or public agency performing a public service* is required to protect life and public property from imminent danger, or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by natural disaster, serious accident, or in other cases of emergency, the requirements of obtaining any permit under this division may be waived upon notification of the executive director of the commission of the type and location of the work within three days of the disaster or discovery of the danger, whichever occurs first. Nothing in this section authorizes permanent erection of structures valued at more than twenty-five thousand dollars ($25,000).

Article 2. Development Control Procedures

30620. (a) By January 30, 1977, the commission shall, consistent with the provisions of this chapter, prepare interim procedures for the submission, review, and appeal of coastal development permit applications and of claims of exemption. Such procedures shall include, but are not limited to, the following:

(1) Application and appeal forms.

(2) Reasonable provisions for notification to the regional commission, the commission, and other interested persons of any action taken by a local government pursuant to this chapter, in sufficient detail to assure that a preliminary review of such action for conformity with the provisions of this chapter can be made.

(3) Interpretive guidelines designed to assist local governments, the regional commissions, the commission, and persons subject to the provisions of this chapter in determining how the policies of this division shall be applied in the coastal zone prior to certification of local coastal programs; provided however, that such guidelines shall not supersede, enlarge, or diminish the powers or authority of any regional commission, the commission, or any other public agency.

(b) Not later than May 1, 1977, the commission shall, after public hearing, adopt permanent procedures that include the components specified in subdivision (a) and shall transmit a copy of such procedures to each local government within the coastal zone and shall make them readily available to the public. The commission may thereafter, from time to time, and, except in cases of emergency, after public hearing, modify or adopt additional procedures or guidelines as it deems necessary to better carry out the provisions of this division.

(c) The commission may require a reasonable filing

fee and the reimbursement of expenses for the processing by the regional commission or the commission of any application for a coastal development permit under this division. The funds received under this subdivision shall be expended by the commission only when appropriated by the Legislature.

30620.5. (a) A local government may exercise the option provided in subdivision (b) of Section 30600: provided it does so for the entire area of its jurisdiction within the coastal zone and after it establishes procedures for the issuance of coastal development permits. Such procedures shall incorporate, where applicable, the interpretive guidelines issued by the commission pursuant to Section 30620.

(b) If a local government elects to exercise the option provided in subdivision (b) of Section 30600, the local government shall, by resolution adopted by the governing body of such local government, notify the appropriate regional commission and the commission and shall take appropriate steps to assure that the public is properly notified of such action. The provisions of subdivision (b) of Section 30600 shall take effect and shall be exercised by the local government on the 10th working day after the date on which the resolution required by this subdivision is adopted.

(c) Every local government exercising the option provided in subdivision (b) of Section 30600, shall within five working days notify the appropriate regional commission and any person who, in writing, has requested such notification, in the manner prescribed by the commission pursuant to Section 30620, of any coastal development permit it issues.

(d) Within five working days of receipt of the notice required by subdivision (c), the executive director of the regional commission shall post, at a conspicuous location in the regional commission's office, a description of the coastal development permit issued by the local government. Within 15 working days of receipt of such notice, the executive director shall, in the manner prescribed by the commission pursuant to subdivision (a) of Section 30620, provide notice of the locally issued coastal development permit to members of the regional commission, and the commission.

30620.6. The commission shall, not later than August 1, 1978, and after public hearing, adopt public notice and appeal procedures for the review of development projects appealable pursuant to Sections 30603 and 30715. The commission shall send copies of such procedures to every local government within the coastal zone and shall make them readily available to the public.

30621. The regional commission or the commission shall provide for a de novo public hearing on applications for coastal development permits and any appeals brought pursuant to this division and shall give to any affected person a written public notice of the nature of the proceeding and of the time and place of the public hearing. Notice shall also be given to any person who requests, in writing, such notification. A hearing on any coastal development permit application or an appeal shall be set no earlier than 21 days nor later than 42 days after the date on which the application or appeal is filed with the regional commission or the commission.

30622. A regional commission or the commission shall act upon the coastal development permit application or an appeal within 21 days after the conclusion of the hearing pursuant to Section 30621. Any action by a regional commission shall become final after the 10th working day, unless an appeal is filed with the commission within such time.

30623. If an appeal of any action on any development by any regional commission, any local government, or port governing body is filed with the regional commission or the commission, the operation and effect of such action shall be stayed pending a decision on appeal.

30624. The commission shall provide, by regulation, for the issuance of *coastal development* permits by the executive director of ~~coastal development~~ the commission or any regional commission without compliance with the procedures specified in this chapter in cases of emergency, *other than an emergency provided for under Section 30611*, or for improvements to any existing structure not in excess of twenty-five thousand dollars ($25,000), and any other developments not in excess of twenty thousand dollars ($20,000). Such permit for nonemergency development shall not be effective until after reasonable public notice and adequate time for the review of such issuance has been provided. If any two members of the regional commission or the commission so request, at the first meeting following the issuance of such permit, such issuance shall not be effective, and, instead, the application shall be set for a public hearing pursuant to the provisions of this chapter.

No monetary limitations shall be required for emergencies covered by the provisions of this section.

30625. (a) Except as otherwise specifically provided in subdivision (a) of Section 30602, any appealable action on a coastal development permit or claim of exemption for any development by a local government or a regional commission or port governing body may be appealed to the commission by an applicant, any aggrieved person except in the case of denials by a regional commission, or any two members of the commission. The regional commission, with respect to appeals pursuant to subdivision (a) of Section 30602, or the commission may approve, modify, or deny such proposed development, and if no action is taken within ~~15 working days after notice of appeal has been filed, the~~ *the time limit specified in Sections 30621 and 30622, the* decision of the regional commission, the local government, or port governing body, as the case may be, ~~shall become final unless the 15/day period is waived by the applicant.~~ *shall*

become final, unless the time limit in Section 30621 or 30622 is waived by the applicant.

For purposes of this division, failure by any regional commission to act within any time limit specified in this division shall constitute an "action taken".

(b) The regional commission with respect to appeals pursuant to subdivision (a) of Section 30602, or the commission shall hear an appeal unless it determines that the appeal raises no substantial issue, or it finds the following:

(1) With respect to appeals pursuant to subdivision (a) of Section 30602, that no significant question exists as to conformity with Chapter 3 (commencing with Section 30200).

(2) With respect to appeals to the commission after certification of a local coastal program, that no significant question exists as to conformity with the certified local coastal program.

(3) With respect to appeals to the commission after certification of a port master plan, that no significant question exists as to conformity with the certified port master plan.

(c) Decisions of the commission, where applicable, shall guide the regional commissions, local governments, or port governing bodies in their future actions under the provisions of this division.

30626. The commission may, by regulation, provide for the reconsideration of the terms and conditions of any coastal development permit granted by a regional commission or the commission solely for the purpose of correcting any information contained in such terms and conditions.

CHAPTER 8. PORTS

Article 1. Findings and General Provisions

30700. For purposes of this division, notwithstanding any other provisions of this division except as specifically stated in this chapter, ~~the policies and procedures which~~ *this chapter shall* govern those portions of the Ports of Hueneme, Long Beach, Los Angeles, and San Diego Unified Port District, located within the coastal zone excluding any wetland, estuary, or existing recreation area indicated in Part IV of the coastal plan, are contained within this chapter.

30700.5. The definitions of Chapter 2 (commencing with Section 30100) and the provisions of ~~Chapters 7 (commencing with Section 30600) and~~ *Chapter* 9 (commencing with Section 30800) and Section 30900 shall apply to this chapter.

30701. The Legislature finds and declares that:

(a) The ports of the State of California constitute one of the state's primary economic and coastal resources and are an essential element of the national maritime industry.

(b) The location of the commercial port districts within the State of California are well established, and for many years such areas have been devoted to transportation and commercial, industrial, and manufacturing uses consistent with federal, state, and local regulations. Coastal planning requires no change in the number or location of the established commercial port districts. Existing ports shall be encouraged to modernize and construct necessary facilities within their boundaries in order to minimize or eliminate the necessity for future dredging and filling to create new ports in new areas of the state.

Article 2. Policies

30702. For purposes of this division, the policies of the state with respect to providing for port-related developments consistent with coastal protection in the port areas to which this chapter applies, which require no commission permit after certification of a port master plan and which, *except as provided in Section 30715*, are not appealable to the commission after certification of a master plan, are set forth in this chapter.

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30703. The California commercial fishing industry is important to the State of California; therefore, ports shall not eliminate or reduce existing commercial fishing harbor space, unless the demand for commercial fishing facilities no longer exists or adequate alternative space has been provided. Proposed recreational boating facilities within port areas shall, to the extent it is feasible to do so, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.

30705. (a) Water areas may be diked, filled, or dredged when consistent with a certified port master plan only for the following:

(1) Such construction, deepening, widening, lengthening, or maintenance of ship channel approaches, ship channels, turning basins, berthing areas, and facilities as are required for the safety and the accommodation of commerce and vessels to be served by port facilities.

(2) New or expanded facilities or waterfront land for port-related facilities.

(3) New or expanded commercial fishing facilities or recreational boating facilities.

(4) Incidental public service purposes, including, but not limited to, burying cables or pipes or inspection of piers and maintenance of existing intake and outfall lines.

(5) Mineral extraction, including sand for restoring beaches, except in biologically sensitive areas.

(6) Restoration purposes or creation of new habitat areas.

(7) Nature study, mariculture, or similar resource-dependent activities.

(8) Minor fill for improving shoreline appearance or public access to the water.

(b) The design and location of new or expanded facilities shall, to the extent practicable, take advantage of existing water depths, water circulation, siltation patterns, and means available to reduce controllable sedimentation so as to diminish the need for future dredging.

(c) Dredging shall be planned, scheduled, and carried out to minimize disruption to fish and bird breeding and migrations, marine habitats, and water circulation. Bottom sediments or sediment elutriate shall be analyzed for toxicants prior to dredging or mining, and where water quality standards are met, dredge spoils may be deposited in open coastal water sites designated to minimize potential adverse impacts on marine organisms, or in confined coastal waters designated as fill sites by the master plan where such spoil can be isolated and contained, or in fill basins on upland sites. Dredge material shall not be transported from coastal waters into estuarine or fresh water areas for disposal.

30706. In addition to the other provisions of this chapter, the policies contained in this section shall govern filling seaward of the mean high tide line within the jurisdiction of ports:

(a) The water area to be filled shall be the minimum necessary to achieve the purpose of the fill.

(b) The nature, location, and extent of any fill, including the disposal of dredge spoils within an area designated for fill, shall minimize harmful effects to coastal resources, such as water quality, fish or wildlife resources, recreational resources, or sand transport systems, and shall minimize reductions of the volume, surface area, or circulation of water.

(c) The fill is constructed in accordance with sound safety standards which will afford reasonable protection to persons and property against the hazards of unstable geologic or soil conditions or of flood or storm waters.

(d) The fill is consistent with navigational safety.

30707. New or expanded tanker terminals shall be designed and constructed to do all of the following:

(a) Minimize the total volume of oil spilled ~~in normal operations and accidents~~.

(b) Minimize the risk of collision from movement of other vessels.

(c) Have ready access to the ~~best available~~ *most effective feasible* oilspill containment and recovery equipment.

(d) Have onshore deballasting facilities to receive any fouled ballast water from tankers where operationally *or legally* required.

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30708. All port-related developments shall be located, designed, and constructed so as to:

(a) Minimize substantial adverse environmental impacts.

(b) Minimize potential traffic conflicts between vessels.

(c) Give highest priority to the use of existing land space within harbors for port purposes, including, but not limited to, navigational facilities, shipping industries, and necessary support and access facilities.

(d) Provide for other beneficial uses consistent with the public trust, including, but not limited to, recreation and wildlife habitat uses, to the extent feasible.

(e) Encourage rail service to port areas and multicompany use of facilities.

Article 3. Implementation; Master Plan

30710. Within 90 days after January 1, 1977, the commission shall, after public hearing, adopt, certify, and file with each port governing body a map delineating the present legal geographical boundaries of each port's jurisdiction within the coastal zone. The commission shall, within such 90-day period, adopt and certify after public hearing, a map delineating boundaries of any wetland, estuary, or existing recreation area indicated in Part IV of the coastal plan within the geographical boundaries of each port.

30711. (a) A port master plan that carries out the provisions of this chapter shall be prepared and adopted by each port governing body, and for informational purposes, each city, county, or city and county which has a port within its jurisdiction shall incorporate the certified port master plan in its local coastal program. A port master plan shall include all of the following:

(1) The proposed uses of land and water areas, where known.

(2) The projected design and location of port land areas, water areas, berthing, and navigation ways and systems intended to serve commercial traffic within the area of jurisdiction of the port governing body.

(3) An estimate of the effect of development on habitat areas and the marine environment, a review of existing water quality, habitat areas, and quantitative and qualitative biological inventories, and proposals to minimize and mitigate any substantial adverse impact.

(4) Proposed projects listed as appealable in Section 30715 in sufficient detail to be able to determine their consistency with the policies of Chapter 3 (commencing with Section 30200) of this division.

(5) Provisions for adequate public hearings and public participation in port planning and development decisions.

(b) A port master plan shall contain information in sufficient detail to allow the commission to determine its adequacy and conformity with the applicable policies of this division.

30712. In the consideration and approval of a proposed port master plan, the public, interested organizations, and governmental agencies shall be encouraged to submit relevant testimony, statements, and evidence which shall be considered by the port governing body. The port governing body shall publish notice of the completion of the draft master plan and submit a copy thereof to the commission and shall, upon request, provide copies to other interested persons, organizations, and governmental agencies. Thereafter, the port governing body shall hold a public hearing on the draft master plan not earlier than 30 days and not later than 90 days following the date the notice of completion was published.

30713. Ports having completed a master plan prior to January 1, 1977, shall submit a copy thereof to the commission and hold a public hearing in accordance with the provisions of Section 30712 for the purpose of reviewing such master plan for conformity with the applicable provisions of this division and, if necessary, adopting such changes as would conform such plan to the applicable provisions of this division. Notice of completion of a master plan shall not be filed prior to January 2, 1977.

30714. After public notice, hearing, and consideration of comments and testimony received pursuant to Sections 30712 and 30713, the port governing body shall adopt its master plan and submit it to the commission for certification in accordance with this chapter; ~~within~~. *Within* 90 days after the submittal, the commission, after public hearing, shall certify such plan or portion of a plan and reject any portion of a plan which is not certified. If the commission fails to take action within the 90-day period, the port master plan shall be deemed certified. The commission shall certify such plan or portion of a plan if the commission finds both of the following:

(a) The master plan or certified portions thereof conforms with and carries out the policies of this chapter.

(b) Where a master plan or certified portions thereof provide for any of the developments listed as appealable in Section 30715 of this chapter, such development or developments are in conformity with all of the policies of Chapter 3 (commencing with Section 30200) of this division.

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30715. Until such time as a port master plan or any portion thereof has been certified, the commission and regional commissions shall permit developments within ports as provided for in ~~Article 1~~ *Chapter 7* (commencing with Section 30600) ~~of Chapter 7~~. After a port master plan or any portion thereof has been certified, the permit authority of the commission provided in Chapter 7 (commencing with Section 30600) shall no longer be exercised by the regional commission or by the commission over any new development contained in such a certified plan or any portion thereof and shall at that time be delegated to the appropriate port governing body, except that approvals of any of the following categories of development by the port governing body may be appealed to the commission:

(a) Developments for the storage, transmission, and processing of liquefied natural gas and crude oil in such quantities as would have a significant impact upon the oil and gas supply of the state or nation or both the state and nation. A development which has a significant impact shall be defined in the master plans.

(b) Waste water treatment facilities, except for such facilities which process waste water discharged incidental to normal port activities or by vessels.

(c) Roads or highways which are not principally for internal circulation within the port boundaries.

(d) Office and residential buildings not principally devoted to administration of activities within the port; hotels, motels, and shopping facilities not principally devoted to the sale of commercial goods utilized for water-oriented purposes; commercial fishing facilities; and recreational small craft marina related facilities.

(e) Oil refineries.

(f) Petrochemical production plants.

30715.5. No development within the area covered by the certified port master plan shall be approved by the port governing body unless it finds that the proposed development conforms with such certified plan.

30716. (a) A certified port master plan may be amended by the port governing body, but no such amendment shall take effect until it has been certified by the commission. Any proposed amendment shall be submitted to, and processed by, the commission in the same manner as provided for submission and certification of a port master plan.

(b) The commission shall, by regulation, establish a procedure whereby proposed amendments to a certified port master plan may be reviewed and designated by the executive director of the commission as being minor in nature *and need not comply with Section 30714*. Such amendments shall take effect on the 10th working day after the executive director designates such amendments as minor.

30717. The governing bodies of ports shall inform and advise the commission in the planning and design of appealable developments authorized under this chapter, and prior to commencement of any appealable development, the governing body of a port shall notify the commission and other interested persons, organizations, and governmental agencies of the approval of a proposed appealable development and indicate how it is consistent with the appropriate port master plan and this division. An approval of the appealable development by the port governing body pursuant to a certified port master plan shall become effective after the 10th working day after notification of its approval, unless an appeal is filed with the commission within that time. Appeals shall be filed and processed by the commission in the same manner as appeals from local government actions as set forth in Chapter 7 (commencing with Section 30600) of this division. No appealable development shall take place until the approval becomes effective.

30718. For developments approved by the commission in a certified master plan, but not appealable under the provisions of this chapter, the port governing body shall forward all environmental impact reports and negative declarations prepared pursuant to the Environmental Quality Act of 1970 (commencing with Section 21000) or any environmental impact statements prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) to the commission in a timely manner for comment.

30719. Any development project or activity authorized or approved pursuant to the provisions of this chapter shall be deemed certified by the commission as being in conformity with the coastal zone management program insofar as any such certification is requested by any federal agency pursuant to the Federal Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), National Oceanic and Atmospheric Administration, and

memoranda of understanding between the state and federal governments relative thereto.

30720. If the application of any port master plan or part thereof is prohibited or stayed by any court, the permit authority provided for in Chapter 7 (commencing with Section 30600) shall be reinstated in the regional commission or in the commission where there is no regional commission. The reinstated permit authority shall apply as to any development which would be affected by the prohibition or stay.

CHAPTER 9. JUDICIAL REVIEW, ENFORCEMENT, AND PENALTIES

Article 1. General Provisions

30800. The provisions of this chapter shall be in addition to any other remedies available at law.

30801. Any aggrieved person shall have a right to judicial review of any decision or action of the commission or a regional commission by filing a petition for a writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure, within 60 days after such decision or action has become final.

For purposes of this section and subdivision (c) of Section 30513 and Section 30625, an "aggrieved person" means any person who, in person or through a representative, appeared at a public hearing of the commission, regional commission, local government, or port governing body in connection with the decision or action appealed, or who, by other appropriate means prior to a hearing, informed the commission, regional commission, local government, or port governing body of the nature of his concerns or who for good cause was unable to do either. "Aggrieved person" includes the applicant for a permit and, in the case of an approval of a local coastal program, the local government involved.

30802. Any person, including an applicant for a permit or the commission, aggrieved by the decision or action of a local government that is implementing a

certified local coastal program or certified port master plan, which decision or action may not be appealed to the commission, shall have a right to judicial review of such decision or action by filing a petition for writ of mandate in accordance with the provisions of Section 1094.5 of the Code of Civil Procedure within 60 days after the decision or action has become final. The commission may intervene in any such proceeding upon a showing that the matter involves a question of the conformity of a proposed development with a certified local coastal program or certified port master plan or the validity of a local government action taken to implement a local coastal program or certified port master plan. Any local government or port governing body may request that the commission intervene. Notice of any such action against a local government or port governing body shall be filed with the commission within five working days of the filing of such action. When an action is brought challenging the validity of a local coastal program or certified port master plan, a preliminary showing shall be made prior to proceeding on the merits as to why such action should not have been brought pursuant to the provisions of Section 30801.

30803. Any person may maintain an action for declaratory and equitable relief to restrain any violation of this division. On a prima facie showing of a violation of this division, preliminary equitable relief shall be issued to restrain any further violation of this division. No bond shall be required for an action under this section.

30804. Any person may maintain an action to enforce the duties specifically imposed upon the commission, any regional commission, any governmental agency, any special district, or any local government by this division. No bond shall be required for an action under this section.

30805. Any person may maintain an action for the recovery of civil penalties provided for in Section 30820 or 30821.

30806. Any civil action under this division by, or against, a city, county, or city and county, the

commission, regional commission, special district, or any other public agency shall, upon motion of either party, be transferred to a county or city and county not a party to the action or to a county or city and county other than that in which the city, special district, or any other public agency which is a party to the action is located.

30807. Any person may maintain an action seeking an order to remove a local coastal program or any portion thereof, any coastal development permit application, or appeal therefrom, from the appropriate regional commission's consideration and to require that such local coastal program or any portion thereof, coastal development permit application or appeal therefrom, be reviewed and processed by the commission. The court may grant such order where to do so would better carry out the purposes of this division and where the court determines that such order would expedite the review of such local coastal program or any portion thereof, or of such coastal development permit application, or appeal therefrom.

30808. In addition to any other remedy provided by this article, any person, including the commission may bring an action to restrain a violation of the terms and conditions of an urban exclusion imposed pursuant to Section 30610.5. In any such action the court may grant whatever relief it deems appropriate to ensure compliance with the terms and conditions of the urban exclusion.

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Article 2. Penalties

30820. Any person who violates any provision of this division shall be subject to a civil fine of not to exceed ten thousand dollars ($10,000).

30821. In addition to any other penalties, any person who intentionally and knowingly performs any development in violation of this division shall be subject to a civil fine of not less than fifty dollars ($50) nor more than five thousand dollars ($5,000) per day for each day in which such violation occurs.

30822. Where a person has intentionally and knowingly violated any provision of this division, the commission may maintain an action, in addition to Section 30801, for exemplary damages and may recover an award, the size of which is left to the discretion of the court. In exercising its discretion, the court shall consider the amount of liability necessary to deter further violations.

30823. Any funds derived by the commission or regional commission under this article shall be expended for carrying out the provisions of this division, when appropriated by the Legislature.

CHAPTER 10. SEVERABILITY

39900. If any provision of this division or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the division which can be given effect without the invalid provision or application, and to this end the provisions of this division are severable.

SEC. 2. Section 4551.5 of the Public Resources Code is amended to read:

4551.5. Rules and regulations shall apply to the conduct of timber operations and shall include, but shall not be limited to, measures for fire prevention and control, for soil erosion control, for water quality and watershed control, for flood control, for stocking, for protection against timber operations which unnecessarily destroy young timber growth or timber productivity of the soil, for prevention and control of damage by forest insects, pests, and disease, for the protection of natural and scenic qualities in special treatment areas identified pursuant to subdivision (b) of Section 30417, and for the preparation of timber harvesting plans. In developing these rules, the board shall solicit and consider recommendations from the State Forester, recommendations from the Department of Fish and Game relating to the protection of fish and wildlife, recommendations from the State Water Resources Control Board and the California regional water quality control boards relating to water quality, recommendations from the State Air Resources Board and local air pollution control districts relating to air pollution control, and recommendations of the California Coastal Commission relating to the protection of natural and scenic coastal zone resources in special treatment areas.

SEC. 3. Section 25103 of the Public Resources Code is amended to read:

25103. "Coastal zone" means the "coastal zone" as defined in Section 30103.

SEC. 4. Section 25115 of the Public Resources Code is repealed.

SEC. 7. Section 25507 of the Public Resources Code is amended to read:

25507. If any alternative site and related facility proposed in the notice is proposed to be located, in whole or in part, within the coastal zone and ~~if a permit for such a site and related facility is required to be obtained from the California Coastal Commission~~, the commission shall transmit a copy of the notice to the California Coastal Commission. The California Coastal Commission shall analyze the notice and prepare the report and findings prescribed by subdivision (d) of Section 30413 prior to completion of the preliminary report required by Section 25510.

SEC. 8. Section 25508 of the Public Resources Code is amended to read:

25508. The commission shall cooperate with, and render advice to, the California Coastal Commission in studying applications for any site and related facility proposed to be located, in whole or in part, within the coastal zone, if requested by the California Coastal Commission. The California Coastal Commission may participate in public hearings on the notice and on the application for site and related facility certification as an interested party in such proceedings.

SEC. 9. Section 25514 of the Public Resources Code is amended to read:

25514. No later than 120 days after distribution of the preliminary report, a final report shall be prepared and distributed. The final report shall include, but not be limited to, all of the following:

(a) The findings and conclusions of the commission regarding the conformity of alternative sites and related facilities designated in the notice or presented at the informational hearing or hearings and reviewed by the commission with both of the following:

(1) The 10-year forecast of statewide and service area electric power demands adopted pursuant to subdivision (b) of Section 25309, except as provided in Section 25514.5.

(2) The provisions of any state law or local or regional ordinance or regulation, including any long-range land use plans or guidelines adopted by the state or by any local or regional planning agency, which would be applicable but for the exclusive authority of the commission to certify sites and related facilities; and the standards adopted by the commission pursuant to Section 25216.3.

(b) Any findings and comments submitted by the California Coastal Commission pursuant to Section 25507 and subdivision (d) of Section 30413.

(c) The commission's findings on the acceptability *and relative merit* of each alternative siting proposal designated in the notice or presented at the hearings and reviewed by the commission. *The specific findings of relative merit shall be made pursuant to the provisions of Sections 25502 to 25516, inclusive.* In its findings on any alternative siting proposal, the commission may specify modification in the design, construction, location, or other conditions which will meet the standards, policies, and guidelines established by the commission.

(d) Any conditions, modifications, or criteria proposed for any site and related facility proposal resulting from the commission's evaluation pursuant to subdivision (c) of Section 25512.

SEC. 10. Section 25516.1 is added to the Public Resources Code, to read:

25516.1. If a site and related facility found to be acceptable by the commission pursuant to Section 25516 is located in the coastal zone, no application for certification may be filed pursuant to Section 25519, unless the commission has determined pursuant to Section 25514, that such site and related facility have greater relative merit than available alternative sites and related facilities for an applicant's service area which have been determined to be acceptable by the commission pursuant to Section 25516.

SEC. 11. Section 25519 of the Public Resources Code is amended to read:

25519. (a) In order to obtain certification for a site and related facility, an application for certification of such site and related facility shall be filed with the commission. Such application shall be in a form prescribed by the commission and shall be filed with the commission no later than 18 months before any construction is to commence. Such application shall be for a site and related facility which has been found to be acceptable by the commission parsuant to Section 25516, or for an additional facility at a site which has been designated a potential multiple-facility site pursuant to Section 25514.5 and found to be acceptable pursuant to Sections 25516 and 25516.5. An application for an additional facility at a potential multiple-facility site shall be subject to the conditions and review specified in Section 25520.5. An application may not be filed for a site and related facility, if there is no suitable alternative for the site and related facility which was previously found to be acceptable by the commission, unless the commission has approved the notice based on the one site as specified in Section 25516.

(b) The commission, upon its own motion or in response to the request of any party, may require the applicant to submit any information, document, or data, in addition to the attachments required by subdivision

(i), which it determines is reasonably necessary to make any decision on the application.

(c) Upon receipt of the application, the commission shall undertake studies and investigations necessary to comply with the environmental impact reporting procedures established pursuant to Section 21100. For purposes of preparation and approval of the environmental impact report on a proposed site and related facility, the commission shall be the lead agency as provided in Section 21165. Except as otherwise provided in Division 13 (commencing with Section 21000), the environmental impact report shall be completed within one year after receipt of the application.

(d) If the site and related facility specified in the application is proposed to be located in the coastal zone, the commission shall transmit a copy of the application to the California Coastal Commission for its review and comments.

(e) Upon receipt of an application, the commission shall forward the application to local governmental agencies having land use and related jurisdiction in the area of the proposed site and related facility. Such local agencies shall review the application and submit comments on, among other things, the design of the facility, architectural and aesthetic features of the facility, access to highways, landscaping and grading, public use of lands in the area of the facility, and other appropriate aspects of the design, construction, or operation of the proposed site and related facility.

(f) Upon receipt of an application, the commission shall cause a summary of the application to be published in a newspaper of general circulation in the county in which the site and related facilities, or any part thereof, designated in the application, is proposed to be located. The commission shall transmit a copy of the application to each federal and state agency having jurisdiction or special interest in matters pertinent to the proposed site and related facilities, and to the Attorney General.

(g) The adviser shall require that adequate notice is

given to the public and that the procedures specified by this division are complied with.

(h) For any proposed site and related facility requiring a certificate of public convenience and necessity, the commission shall transmit a copy of the application to the Public Utilities Commission and request the comments and recommendations of the Public Utilities Commission on the economic, financial, rate, system reliability, and service implications of the proposed site and related facility. In the event the commission requires modification of the proposed facility, the commission shall consult with the Public Utilities Commission regarding the economic, financial, rate, system reliability, and service implications of such modifications.

(i) The commission shall transmit a copy of the application to any governmental agency not specifically mentioned in this act, but which it finds has any information or interest in the proposed site and related facilities, and shall invite the comments and recommendations of each such agency. The commission shall request any relevant laws, ordinances, or regulations which any such agency has promulgated or administered.

(j) An application for certification of any site and related facilities shall contain a listing of every federal agency from which any approval or authorization concerning the proposed site is required, specifying the approvals or authorizations obtained at the time of the application and the schedule for obtaining any approvals or authorizations pending.

SEC. 12. Section 25523 of the Public Resources Code is amended to read:

25523. The commission shall prepare a written decision after a public hearing or hearings on an application, which shall include all of the following:

(a) Specific provisions relating to the manner in which the proposed facility is to be designed, sited, and operated in order to protect environmental quality and assure public health and safety, and in the case of a site to be located in the coastal zone, to meet the objectives

of Division 20 (commencing with Section 30000) as may be specified in the report submitted by the California Coastal Commission pursuant to subdivision (d) of Section 30413, unless the commission specifically finds that ~~to do so~~ *the adoption of the provisions specified in the report* would result in greater adverse effect on the environment or ~~the mitigation measures proposed~~ *that the provision proposed in the report* would not be feasible.

(b) Findings regarding the conformity of the proposed site and related facilities with standards adopted by the commission pursuant to Section 25216.3 and subdivision (d) of Section 25402, with public safety standards and the applicable air and water quality standards, and with other relevant local, regional, state, and federal standards, ordinances, or laws. If the commission finds that there is noncompliance with any state, local, or regional ordinance or regulation in the application, it shall consult and meet with the state, local, or regional governmental agency concerned to attempt to correct or eliminate the noncompliance. If the noncompliance cannot be corrected or eliminated, the commission shall inform the state, local, or regional governmental agency if it makes the findings required by Section 25525.

(c) Provision for restoring the site as necessary to protect the environment, if the commission denies approval of the application.

(d) Findings regarding the conformity of the proposed facility with the 10-year forecast of statewide and service area electric power demands adopted pursuant to subdivision (b) of Section 25309.

SEC. 13. Section 25526 of the Public Resources Code is amended to read:

25526. The commission shall not approve as a site for a facility any location designated by the California Coastal Commission pursuant to subdivision (b) of Section 30413 *, unless the California Coastal Commission first finds that such use is not inconsistent with the primary uses of such land and that there will be no*

substantial adverse environmental effects and the approval of any public agency having ownership or control of such land is obtained.

SEC. 14. Section 402.1 of the Revenue and Taxation Code is amended to read:

402.1. In the assessment of land, the assessor shall consider the effect upon value of any enforceable restrictions to which the use of the land may be subjected. Such restrictions shall include, but are not limited to: (a) zoning; (b) recorded contracts with governmental agencies other than those provided for in Section 422; (c) permit authority of, and permits issued by, governmental agencies exercising land use powers concurrently with local governments, including the California coastal commissions, the San Francisco Bay Conservation and Development Commission, and the Tahoe Regional Planning Agency; (d) ~~permits issued by~~ *development controls of* a local government in accordance with any local coastal program certified pursuant to Division 20 (commencing with Section 30000) of the Public Resources Code; (e) environmental constraints applied to the use of land pursuant to provisions of statutes.

There shall be a rebuttable presumption that restrictions will not be removed or substantially modified in the predictable future and that they will substantially equate the value of the land to the value attributable to the legally permissible use or uses.

Grounds for rebutting the presumption may include but are not necessarily limited to the past history of like use restrictions in the jurisdiction in question and the similarity of sales prices for restricted and unrestricted land. The possible expiration of a restriction at a time certain shall not be conclusive evidence of the future removal or modification of the restriction unless there is no opportunity or likelihood of the continuation or renewal of the restriction, or unless a necessary party to the restriction has indicated an intent to permit its expiration at that time.

In assessing land where the presumption is unrebutted, the assessor shall not consider sales of otherwise

comparable land not similarly restricted as to use as indicative of value of land under restriction, unless the restrictions have a demonstrably minimal effect upon value.

In assessing land under an enforceable use restriction wherein the presumption of no predictable removal or substantial modification of the restriction has been rebutted, but where the restriction nevertheless retains some future life and has some effect on present value, the assessor may consider, in addition to all other legally permissible information, representative sales of comparable land not under restriction but upon which natural limitations have substantially the same effect as restrictions.

For the purposes of this section:

(a) "Comparable lands" are lands which are similar to the land being valued in respect to legally permissible uses and physical attributes.

(b) "Representative sales information" is information from sales of a sufficient number of comparable lands to give an accurate indication of the full cash value of the land being valued.

It is hereby declared that the purpose and intent of the Legislature in enacting this section is to provide for a method of determining whether a sufficient amount of representative sales information is available for land under use restriction in order to ensure the accurate assessment of such land. It is also hereby declared that the further purpose and intent of the Legislature in enacting this section and Section 1630 of the Revenue and Taxation Code is to avoid an assessment policy which, in the absence of special circumstances, considers uses for land which legally are not available to the owner and not contemplated by government, and that these sections are necessary to implement the public policy of encouraging and maintaining effective land use planning. Nothing in this statute shall be construed as requiring the assessment of any land at less than as required by Section 401 of this code or as prohibiting the use of representative comparable sales information on land under similar

restrictions when such information is available.

SEC. 15. Section 13142.5 is added to the Water Code, to read:

13142.5. In addition to any other policies established pursuant to this division, the policies of the state with respect to water quality as it relates to the coastal marine environment are that:

(a) Waste water discharges shall be treated to protect present and future beneficial uses, and, where feasible, to restore past beneficial uses of the receiving waters. Highest priority shall be given to improving or eliminating discharges that adversely affect any of the following:

(1) Wetlands, estuaries, and other biologically sensitive sites.

(2) Areas important for water contact sports.

(3) Areas that produce shellfish for human consumption.

(4) Ocean areas subject to massive waste discharge.

Ocean chemistry and mixing processes, marine life conditions, other present or proposed outfalls in the vicinity, and relevant aspects of areawide waste treatment management plans and programs, but not of convenience to the discharger, shall for the purposes of this section, be considered in determining the effects of such discharges. Toxic and hard-to-treat substances should be pretreated at the source if such substances would be incompatible with effective and economical treatment in municipal treatment plants.

(b) For each new or expanded coastal powerplant or other industrial installation using seawater for cooling, heating, or industrial processing, the best available site, design, technology, and mitigation measures feasible shall be used to minimize the intake and mortality of all forms of marine life.

(c) Where otherwise permitted, new warmed or cooled water discharges into coastal wetlands or into areas of special biological importance, including marine reserves and kelp beds, shall not significantly alter the overall ecological balance of the receiving area.

(d) Independent baseline studies of the existing marine system should be conducted in the area that could be affected by a new or expanded industrial facility using seawater in advance of the carrying out of the development.

(g) Adequately treated reclaimed water should, where feasible, be made available to supplement existing surface and underground supplies and to assist in meeting future water requirements of the coastal zone, and that consideration, in statewide programs of financial assistance for water pollution or water quality control, shall be given to providing optimum water reclamation and use of reclaimed water.

SEC. 28. Section 16 of Senate Bill No. 1277 is amended to read:

SEC. 16. There is no appropriation made by this act for the 1976–77 fiscal year pursuant to Section 2231 of the Revenue and Taxation Code. However, the Legislature acknowledges that there may be direct planning and administrative costs as set forth in Section 2207 of the Revenue and Taxation Code as a result of this act in the 1976–77 fiscal year, but that such costs are indeterminable at this time. It is the intent of the Legislature that such costs to local government shall be reimbursed by the state. If such state-mandated local costs result from the enactment of this act or from executive orders issued pursuant to this act in the 1976–77 fiscal year or subsequent years, reimbursement shall be provided pursuant to Section 2231 of the Revenue and Taxation Code in the annual state budget process, except that claims for such costs which may be incurred in the 1976–77 fiscal year shall be submitted to the State Controller by October 31, 1977.

If the Legislature fails to provide full funds for state-mandated local costs approved by the State Controller as costs qualified for reimbursement under Section 2231 of the Revenue and Taxation Code in the annual state budget process or in special legislation during the 1976–77 fiscal year ~~and each year~~ subsequent in which state-mandated local costs ~~have been~~ so approved,

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the dates specified for the submission of the local coastal program, the implementation of a local coastal program, and the performance of any other duty required of local government or an executive order to be performed after January 1, 1977, under the provisions of Division 20 (commencing with Section 30000) of the Public Resources Code, shall be postponed by the number of years elapsing between the date the local coastal program implementing act or duty is to be performed and the year in which such funds are provided. In the event that state-mandated costs are not funded by the Legislature, the provisions of Section 30518 of the Public Resources Code shall not be affected, except that any local government whose costs are not funded may elect that the California Coastal Commission implement either subdivision (a) or (b) of Section 30518 of the Public Resources Code.

It is the policy of the state that a major portion of the funds, but in no event less than 50 percent, received by the state from the federal government for the period following July 1, 1977, pursuant to the Federal Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), shall be used for the development and implementation of local coastal programs.

Funds appropriated by the Legislature for the purpose of, and pursuant to, this section together with *no less than 50 percent of* any federal funds legally available for such purposes, shall be deposited in a local government coastal planning assistance account in the General Fund. The commission shall review and analyze all claims submitted and shall submit to the State Controller its recommendation. The State Controller shall consider the report of the commission and review claims submitted by any local government pursuant to this section to determine whether such claim planning and administrative costs are directly attributable to the operation of this act. Any such claimed costs found to be directly attributable to the operation of this act shall, when appropriated by the Legislature, be charged against and paid from the local government coastal planning assistance account.

SEC. 29. Section 17 of Senate Bill No. 1277 is amended to read:

SEC. 17. The coastal zone, as generally defined in Section 30103 of the Public Resources Code, shall include the land and water areas as shown on the ~~attached~~ map prepared by the California Coastal Zone Conservation Commission titled "California Coastal Zone" dated August 11, 1976, and on file with the Secretary of State.

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SEC. 30. This act shall become effective only if Senate Bill No. 1277 is enacted by the Legislature at its 1975–76 Regular Session, and in such case, at the same time as Senate Bill No. 1277 takes effect.

SEC. 31. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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THE PORTER-COLOGNE WATER WUALITY CONTROL ACT

THE PORTER-COLOGNE WATER QUALITY CONTROL ACT

And Related Code Sections (Including 1973 Amendments)

JULY 1974

California State Water Resources Control Board

STATE OF CALIFORNIA

RONALD REAGAN
Governor

THE RESOURCES AGENCY

STATE WATER RESOURCES CONTROL BOARD

The State Water Resources Control Board was established by the 1967 Legislature (Stats. 1967, Chap. 284). The Board is divided into two statutory divisions: Water Rights and Water Quality, each with a division chief. In addition, a Legal Division and Divisions of Planning and Research and Administrative Services have been established.

The Board succeeded to the functions of the former State Water Rights Board and the State Water Quality Control Board, which were abolished. The formation of the Board resulted in the coordination of the water rights, water pollution, and water quality functions of the State Government. Water pollution and water quality are now taken into account in conjunction with availability of unappropriated water whenever applications for appropriation of water are considered.

The Board may represent state or local agencies in any matters involving the Federal Government which are within the scope of its powers and duties.

W. W. ADAMS, *Chairman*
RONALD B. ROBIE, *Vice Chairman*
ROY E. DODSON, JR.
MRS. CARL H. (JEAN) AUER
W. DON MAUGHAN
BILL B. DENDY, *Executive Officer*

Regional Water Quality Control Boards

The State is divided into nine regions, each with a regional board composed of nine members appointed by the Governor for terms of four years. The boards are authorized to adopt regional water quality control plans, prescribe waste discharge requirements, and perform other functions concerning water quality control within their respective regions, subject to State Board review or approval.

This pamphlet contains only those portions of the Water Code which concern the organization of the State Board, water quantity-quality relationships, water reclamation and ground water investigations by the Department of Water Resources (an independent agency), and water quality control. Administration by the State Board of water rights and statutory procedures for the determination of water rights are covered in other parts of the Water Code and are explained in other publications of the Board.

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STATE WATER RESOURCES CONTROL BOARD

WATER CODE
DIVISION 1, CHAPTER 2

Article 3. State Water Resources Control Board
(Article heading added by Stats. 1957, Ch. 1932; amended by Stats. 1967, Ch. 284)

174. The Legislature hereby finds and declares that in order to provide for the orderly and efficient administration of the water resources of the state it is necessary to establish a control board which shall exercise the adjudicatory and regulatory functions of the state in the field of water resources.

It is also the intention of the Legislature to combine the water rights and the water pollution and water quality functions of state government to provide for consideration of water pollution and water quality, and availability of unappropriated water whenever applications for appropriation of water are granted or waste discharge requirements or water quality objectives are established.

(Added by Stats. 1967, Ch. 284.)

175. There is in the Resources Agency the State Water Resources Control Board consisting of five members appointed by the Governor. One of the members appointed shall be an attorney admitted to practice law in this state who is qualified in the fields of water supply and water rights, one shall be a registered civil engineer under the laws of this state who is qualified in the fields of water supply and water rights, one shall be a registered professional engineer under the laws of this state who is experienced in sanitary engineering and who is qualified in the field of water quality, one shall be qualified in the field of water quality, and one member shall not be required to have specialized experience.

Each member shall represent the state at large and not any particular portion thereof and shall serve full time. The appointments so made by the Governor shall be subject to confirmation by the Senate at the next regular or special session of the Legislature, and the refusal or failure of the Senate to confirm an appointment shall create a vacancy in the office to which the appointment was made.

(Formerly 185. Added by Stats. 1956 (Ex. Sess.), Ch. 52; renumbered by Stats. 1957, Ch. 1932; amended by Stats. 1961, Ch. 2037, Stats. 1967, Ch. 284, by Stats. 1969, Ch. 482, and by Stats. 1972, Ch. 565.)

NOTE: This section modified by Section 13388, added by Stats. 1972, Ch. 1256, which reads:

Notwithstanding any other provision of this division or Section 175, no person shall be a member of the state board or a regional board if he receives or has received during the previous two years a significant portion of his income directly or indirectly from any person subject to waste discharge requirements or applicants for waste discharge requirements pursuant to this chapter. This section shall become operative on March 1, 1973.

175.5. (a) No member of the board shall participate in any board action pursuant to Article 2 (commencing with Section 13320) of Chapter 5 of Division 7 which involves himself or any waste discharger

with which he is connected as a director, officer or employee, or in which he has a direct personal financial interest within the meaning of Section 1120 of the Government Code.

(b) No board member shall participate in any proceeding before any regional board as a consultant or in any other capacity on behalf of any waste discharger.

(c) Upon request of any person or on his own initiative the Attorney General may file a complaint in the superior court for the county in which the board has its principal office alleging that a board member has knowingly violated this section and the facts upon which the allegation is based and asking that the member be removed from office. Further proceedings shall be in accordance as near as may be with rules governing civil actions. If after trial the court finds that the board member has knowingly violated this section it shall pronounce judgment that the member be removed from office.

(Amended by Stats. 1971, Ch. 793.)

176. The annual salary of the members of the board is provided for by Chapter 6 (commencing at Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code. Each member of the board shall receive the necessary traveling and other expenses incurred by him in the performance of his official duties out of appropriations made for the support of the board. When necessary the members of the board may travel within or without the State.

(Formerly 186. Added by Stats. 1956 (Ex. Sess.), Ch. 52; amended and renumbered by Stats. 1957, Ch. 1932.)

177. The members of the State Water Rights Board in office on the operative date of the 1967 act amending this section shall continue as members of the State Water Resources Control Board, and their terms shall expire as follows: one member on January 15, 1969, one member on January 15, 1970, and one member on January 15, 1971. The terms of the two additional members of the board provided for by the 1967 act amending Section 175 first appointed by the Governor shall expire as follows: one member on January 15, 1972, and one member on January 15, 1969. Thereafter all members of the board shall be appointed for terms of four years. Vacancies shall be immediately filled by the Governor for the unexpired portion of the terms in which they occur.

(Formerly 187. Added by Stats. 1956 (Ex. Sess.), Ch. 52; renumbered by Stats. 1957, Ch. 1932; amended by Stats. 1967, Ch. 284.)

178. The members of the board may be removed from office by the Legislature, by concurrent resolution adopted by a majority vote of all members elected to each house, for dereliction of duty or corruption or incompetency.

(Formerly 188. Added by Stats. 1956 (Ex. Sess.), Ch. 52; renumbered by Stats. 1957, Ch. 1932.)

179. The board succeeds to and is vested with all of the powers, duties, purposes, responsibilities, and jurisdiction vested in the Department and Director of Public Works, the Division of Water Resources of the Department of Public Works, the State Engineer, the State Water Quality Control Board, or any officer or employee thereof, under Division 2 (commencing with Section 1000), except Part 4 (commencing with Section 4000) and Part 6 (commencing with Section 5900) thereof; and Division 7 (commencing with Section 13000) of this code, or any other law under which permits or licenses to appropriate water are issued, denied, or revoked or under which the functions of water pollution and quality control are exercised.

(Formerly 189. Added by Stats. 1956 (Ex. Sess.), Ch. 52; renumbered by Stats. 1957, Ch. 1932; amended by Stats. 1967, Ch. 284.)

179.6. The board, or representatives authorized by the board to do so, may call, conduct or attend conferences or hearings, official or unofficial, within or without this state, or otherwise participate in such conferences or hearings with interested persons, agencies or officers, of this or any other state, or with the Congress of the United States, congressional committees, or officers of the federal government, concerning any matter within the scope of the power and duties of the board.

(Added by Stats. 1967, Ch. 284.)

179.7. As to any matter involving the United States, its departments or agencies, which is within the scope of the power and duties of the board, the board may represent the interest of the state or any county, city, state agency or public district upon their request, and to that end may correspond, confer and cooperate with the United States, its departments or agencies, and where necessary the board members, or authorized representatives, may travel either within or without the state.

(Added by Stats. 1967, Ch. 284.)

180. Before entering upon the duties of his office, each member of the board shall execute an official bond to the State in the penal sum of twenty-five thousand dollars ($25,000) conditioned upon the faithful performance of his duties.

(Formerly 190. Added by Stats. 1956 (Ex. Sess.), Ch. 52; renumbered by Stats. 1957, Ch. 1932.)

181. The board shall maintain its headquarters at Sacramento and may establish branch offices in such parts of the state as the board deems necessary. The board shall hold meetings at such times and at such places as shall be determined by it. The Governor shall designate the time and place for the first meeting of the board. Three members of the board shall constitute a quorum for the purpose of transacting any business of the board.

(Formerly 191. Added by Stats. 1956 (Ex. Sess.), Ch. 52; renumbered by Stats. 1957, Ch. 1932; amended by Stats. 1957, Ch. 947. See notes following Section 127. Amended by Stats. 1967, Ch. 284 and Ch. 1656.)

182. The Governor shall designate the chairman of the board from the membership of the board. The person so designated shall hold the office of chairman at the pleasure of the Governor. The board shall elect a vice chairman.

(Formerly 192. Added by Stats. 1956 (Ex. Sess.), Ch. 52; renumbered by Stats. 1957, Ch. 1932; amended by Stats. 1967, Ch. 284.)

183. The board may hold any hearings and conduct any investigations in any part of the state necessary to carry out the powers vested in it, and for such purposes has the powers conferred upon heads of departments of the state by Article 2 (commencing with Section 11180), Chapter 2, Part 1, Division 3, Title 2 of the Government Code.

Any hearing or investigation by the board may be conducted by any member upon authorization of the board, and he shall have the powers granted to the board by this section, but any final action of the board shall be taken by a majority of all the members of the board, at a meeting duly called and held.

All hearings held by the board or by any member thereof shall be open and public.

(Formerly 193. Added by Stats. 1956 (Ex. Sess.), Ch. 52; renumbered by Stats. 1957, Ch. 1932; amended by Stats. 1957, Ch. 1824. See second note following Section 127. Amended by Stats. 1967, Ch. 284. Stats. 1969, Chs. 482 and 800, and Stats. 1971, Ch. 1288.)

184. The Department of Water Resources shall have an interest and may appear as a party in any hearing held by the board and may commence or appear in any judicial proceeding brought to inquire into the validity of any action, order, or decision of the board.

(Formerly 194. Added by Stats. 1956 (Ex. Sess.), Ch. 52; renumbered by Stats. 1957, Ch. 1932.)

185. The board shall adopt rules for the conduct of its affairs in conformity, as nearly as practicable, with the provisions of Chapter 4.5 (commencing at Section 11371), Part 1, Division 3, Title 2 of the Government Code.

(Former 185 added by Stats. 1956 (Ex. Sess.), Ch. 52; renumbered 175 by Stats. 1957, Ch. 1932. Present 185 formerly 195. Added by Stats. 1956 (Ex. Sess.), Ch. 52; renumbered by Stats. 1957, Ch. 1932, and amended by Stats. 1969, Chs. 482 and 800.)

186. The board shall have such powers, and may employ such legal counsel and other personnel and assistance, as may be necessary or convenient for the exercise of its duties authorized by law.

For the purpose of administration, the board shall organize itself, with the approval of the Governor, in the manner it deems necessary properly to segregate and conduct the work of the board. The work of the board shall be divided into at least two divisions, known as the Division of Water Rights and the Division of Water Quality. The board shall appoint a chief of each division, who shall supervise the work thereof and act as technical adviser to the board on functions under his jurisdiction.

The Attorney General shall represent the board and the state in litigation concerning affairs of the board unless another state agency, represented by the Attorney General, is a party to the action. In such case the legal counsel of the board shall represent the board. Sections 11041, 11042, and 11043 of the Government Code are not applicable to the State Water Resources Control Board. The legal counsel of the board shall advise and furnish legal services, except representation in litigation, to the regional boards upon their request.

(Former 186 added by Stats. 1956 (Ex. Sess.), Ch. 52; amended and renumbered 176 by Stats. 1957, Ch. 1932. Former 186, as amended by Stats. 1957, Ch. 2424, repealed by Stats. 1959, Ch. 616. Present 186 formerly 196. Added by Stats. 1956 (Ex. Sess.), Ch. 52; renumbered by Stats. 1957, Ch. 1932; amended by Stats 1967, Ch. 284, and Stats. 1962, Ch. 482, 1962, Ch. 482, Stats. 1971, Ch. 794.)

187. The board, regional water quality control boards, the Department of Water Resources, and other state agencies shall, to the fullest extent possible, exchange records, reports, material, and any other information relating to water, water rights, water pollution or quality, or any areas of mutual concern, to the end that unnecessary duplication of effort may be avoided.

(Former 187 added by Stats. 1956 (Ex. Sess.), Ch. 52; renumbered 177 by Stats. 1957, Ch. 1932. Present 187 formerly 197. Added by Stats. 1956 (Ex. Sess.), Ch. 52; renumbered by Stats. 1957, Ch. 1932; amended by Stats. 1967, Ch. 284.)

188. The board may expend money appropriated for the administration of the laws the administration of which is committed to the board.

Such expenditures by the board shall be made in accordance with law in carrying on the work for which the appropriations were made.

(Former 188 added by Stats. 1956 (Ex. Sess.), Ch. 52; renumbered 178 by Stats. 1957, Ch. 1932. Present 188 added by Stats. 1957, Ch. 1932.)

188.5. The board shall publish biennial progress reports relating to the activities of the board and California regional water quality control boards.

(Formerly 13020.1; amended and renumbered by Stats. 1967, Ch. 284, and Stats. 1969, Ch. 482.)

1242.5. The board, subject to the provisions of Section 100 and whenever it is in the public interest, may approve appropriation by storage of water to be released for the purpose of protecting or enhancing the quality of other waters which are put to beneficial uses.

(Added by Stats. 1969, Ch. 482.)

1243. The use of water for recreation and preservation and enhancement of fish and wildlife resources is a beneficial use of water. In determining the amount of water available for appropriation for other beneficial uses, the board shall take into account, whenever it is in the public interest, the amounts of water required for recreation and the preservation and enhancement of fish and wildlife resources.

The board shall notify the Department of Fish and Game of any application for a permit to appropriate water. The Department of Fish and Game shall recommend the amounts of water, if any, required for the preservation and enhancement of fish and wildlife resources and shall report its findings to the board.

This section shall not be construed to affect riparian rights.

(Added by Stats. 1959, Ch. 2048; amended by Stats. 1967, Ch. 284, and Stats. 1972, Ch. 360.)

1243.5. In determining the amount of water available for appropriation, the board shall take into account, whenever it is in the public interest, the amounts of water needed to remain in the source for protection of beneficial uses, including any uses specified to be protected in any relevant water quality control plan established pursuant to Division 7 (commencing with Section 13000) of this code.

This section shall not be construed to affect riparian rights.

(Added by Stats. 1969, Ch. 482.)

1257. In acting upon applications to appropriate water, the board shall consider the relative benefit to be derived from (1) all beneficial uses of the water concerned including, but not limited to, use for domestic, irrigation, municipal, industrial, preservation and enhancement of fish and wildlife, recreational, mining and power purposes, and any uses specified to be protected in any relevant water quality control plan, and (2) the reuse or reclamation of the water sought to be appropriated, as proposed by the applicant. The board may subject such appropriations to such terms and conditions as in its judgment will best develop, conserve, and utilize in the public interest, the water sought to be appropriated.

(Added by Stats. 1955; amended by Stats. 1957, Ch. 1932 and Ch. 2082, Stats. 1959, Ch. 2048, Stats. 1969, Ch. 482, and by Stats. 1970, Ch. 157.)

1258. In acting upon applications to appropriate water, the board shall consider water quality control plans which have been established pursuant to Division 7 (commencing with Section 13000) of this code, and may subject such appropriations to such terms and conditions as it finds are necessary to carry out such plans.

(Added by Stats. 1967, Ch. 284 and amended by Stats. 1969, Ch. 482.)

DIVISION 2, PART 3

CHAPTER 2.5. ADJUDICATIONS TO PROTECT THE QUALITY OF GROUND WATER

(Added by Stats. 1969, Ch. 482.)

2100. After the department [of water resources] has submitted to the board recommendations for the protection of the quality of ground water pursuant to Section 12617.1 or 12923.1 of this code, or in reliance upon investigation by any governmental agency, the board may file an action in the superior court to restrict pumping, or to impose physical solutions, or both, to the extent necessary to prevent destruction of or irreparable injury to the quality of such water. In such action, all of the claimants to the use of the affected water known to the board, except claimants to the use of minor quantities of water as defined in Section 2102, shall be named as defendants. In any watershed or ground water basin wherein (a) all or substantially all of the rights to water have been adjudicated and the court has retained continuing jurisdiction arising from the adjudication, or (b) wherein such action is pending, any such proceedings by the board shall be undertaken only by intervention by the board in such existing action.

2101. (a) Before filing or intervening in any such action the board shall hold a public hearing on the necessity for restricting ground water pumping or for a physical solution in order to protect the quality of water from destruction or irreparable injury. The board shall serve notice of such hearing as provided in Section 6066 of the Government Code and shall mail a copy of such notice to each producer of ground water within the area proposed for investigation, to the extent that such producers of ground water are known to the board, at least 15 days prior to the date of such hearing, except that notice need not be mailed to producers of minor quantities of water as defined in Section 2102.

(b) In the event the board decides that the rights to the use of the ground water must be adjudicated in order to require the restriction of pumping or physical solution necessary to preserve it from destruction or irreparable injury to quality, the board shall first determine whether any local public agency overlying all or a part of the ground water basin will undertake such adjudication of water rights. If such local agency commences an adjudication, the board shall take no further action, except that the board may, through the Attorney General, become a party to such action.

(c) In the event no local agency commences such action within 90 days after notice of the decision of the board, the board shall file such action.

2102. As used in this article, "minor quantities of water" refers to the extraction by any person of not to exceed 10 acre-feet of ground water annually.

230. The department, either independently or in cooperation with any person or any county, state, federal, or other agency, or upon the request of the State Water Resources Control Board, to the extent funds are allocated therefor, shall conduct surveys and investigations relating to the reclamation of water from wastes for beneficial purposes, including but not limited to the determination of quantities of such water presently wasted, and possibilities of use of such water for recharge of underground storage or for agricultural or industrial uses; and shall report to the Legislature and to the appropriate California regional water quality control board thereon, annually.

(Added by Stats. 1949, Ch. 1552; amended by Stats. 1967, Ch. 1446 and Ch. 1447, and by Stats. 1969, Ch. 482.)

231. The department, either independently or in cooperation with any person or any county, state, federal or other agency, shall investigate and survey conditions of damage to quality of underground waters, which conditions are or may be caused by improperly constructed, abandoned or defective wells through the interconnection of strata or the introduction of surface waters into underground waters. The department shall report to the appropriate California regional water quality control board its recommendations for minimum standards of well construction in any particular locality in which it deems regulation necessary to protection of quality of underground water, and shall report to the Legislature from time to time, its recommendations for proper sealing of abandoned wells.

(Added by Stats. 1949, Ch. 1552; amended by Stats. 1969, Ch. 482.)

* * *

12617.1. The department, in making investigations and plans for water projects and for the solution of the water problems of the state pursuant to Sections 12616 and 12617, shall include plans and recommendations for the protection of the quality of the waters affected, including downstream waters, with respect to all sources of impairment and factors affecting quality. In doing so, the department shall cooperate with counties, cities, state agencies, and public districts to the end that planning for water quality control shall be coordinated to the maximum extent possible. Such plans and recommendations shall be transmitted to the State Water Resources Control Board and to the appropriate California regional water quality control boards for their consideration in the adoption of state policy for water quality control, water quality control plans, and waste discharge requirements.

(Added by Stats. 1969, Ch. 482.)

* * *

12923.1. The results of the investigations and studies conducted and the plans and design criteria developed by the department pursuant to this article shall be transmitted to the State Water Resources Control Board and to the appropriate California regional water quality control boards for their consideration in the adoption of state policy for water quality control, water quality control plans and waste discharge requirements.

(Added by Stats. 1969, Ch. 482.)

DIVISION 7. WATER QUALITY

(Former Division 7 repealed by Stats. 1969, Ch. 482 which added Division 7 commencing with Section 13000.)

CHAPTER 1. POLICY

13000. The Legislature finds and declares that the people of the state have a primary interest in the conservation, control, and utilization of the water resources of the state, and that the quality of all the waters of the state shall be protected for use and enjoyment by the people of the state.

The Legislature further finds and declares that activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.

The Legislature further finds and declares that the health, safety and welfare of the people of the state requires that there be a statewide program for the control of the quality of all the waters of the state; that the state must be prepared to exercise its full power and jurisdiction to protect the quality of waters in the state from degradation originating inside or outside the boundaries of the state; that the waters of the state are increasingly influenced by interbasin water development projects and other statewide considerations; that factors of precipitation, topography, population, recreation, agriculture, industry and economic development vary from region to region within the state; and that the statewide program for water quality control can be most effectively administered regionally, within a framework of statewide coordination and policy.

13001. It is the intent of the Legislature that the state board and each regional board shall be the principal state agencies with primary responsibility for the coordination and control of water quality. The state board and regional boards in exercising any power granted in this division shall conform to and implement the policies of this chapter and shall, at all times, coordinate their respective activities so as to achieve a unified and effective water quality control program in this state.

13002. No provision of this division or any ruling of the state board or a regional board is a limitation:

(a) On the power of a city or county or city and county to adopt and enforce additional regulations, not in conflict therewith, imposing further conditions, restrictions, or limitations with respect to the disposal of waste or any other activity which might degrade the quality of the waters of the state.

(b) On the power of any city or county or city and county to declare, prohibit, and abate nuisances.

(c) On the power of the Attorney General, at the request of a regional board, the state board, or upon his own motion, to bring an action in the name of the people of the State of California to enjoin any pollution or nuisance.

(d) On the power of a state agency in the enforcement or administration of any provision of law which it is specifically permitted or required to enforce or administer.

(e) On the right of any person to maintain at any time any appropriate action for relief against any private nuisance as defined in the Civil Code or for relief against any contamination or pollution.

Chapter 1.5. Short Title

13020. This division shall be known and may be cited as the Porter-Cologne Water Quality Control Act.

Chapter 2. Definitions

13050. As used in this division:

(a) "State board" means the State Water Resources Control Board.

(b) "Regional board" means any California regional water quality control board for a region as specified in Section 13200.

(c) "Person" also includes any city, county, district, the state or any department or agency thereof. "Person" includes the United States, to the extent authorized by federal law.

(d) "Waste" includes sewage, and any/all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation of whatever nature, including such waste placed within containers of whatever nature prior to, and for purposes of, disposal.

(Amended by Stats. 1970, Ch. 202.)

Note. The Porter-Cologne Act provides that it is intended to implement the legislative recommendations in a report of the State Water Resources Control Board to the Legislature which in turn contains a note that the definition of waste is intended to include all interpretations of the Attorney General of "sewage", "industrial waste", and "other waste" under the former act. These terms were interpreted to include all of the following:

1. Drainage from inoperative and abandoned mines. 26 Ops. Cal. Atty. Gen. 88; see also 37 Ops. Cal. Atty. Gen. 163.
2. Drainage, flow or seepage containing debris or eroded earth from logging operations; waste materials in dumps; drainage from agricultural operations; liquids from a stratum intercepted by a well which flows through the well into another stratum. 27 Ops. Cal. Atty. Gen. 182.
3. Discharge of water from a hydroelectric plant. 43 Ops. Cal. Atty. Gen. 302.
4. Changes in the physical or chemical characteristics of receiving waters caused by extraction of sand, gravel or other materials from a streambed. 32 Ops. Cal. Atty. Gen. 139.
5. Waste from construction operations, dumped in waters of the state. 16 Ops. Cal. Atty. Gen. 125.

(e) "Waters of the state" means any water, surface or underground, including saline waters, within the boundaries of the state.

(f) "Beneficial uses" of the waters of the state that may be protected against quality degradation include, but are not necessarily limited to, domestic, municipal, agricultural and industrial supply; power generation; recreation; esthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.

(g) "Quality of the water" or "quality of the waters" refers to chemical, physical, biological, bacteriological, radiological, and other properties and characteristics of water which affect its use.

(h) "Water quality objectives" means the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area.

(i) "Water quality control" means the regulation of any activity or factor which may affect the quality of the waters of the state and includes the prevention and correction of water pollution and nuisance.

(j) "Water quality control plan" consists of a designation or establishment for the waters within a specified area of (1) beneficial uses to be protected, (2) water quality objectives, and (3) a program of implementation needed for achieving water quality objectives.

(k) "Contamination" means an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. "Contamination" shall include any equivalent effect resulting from the disposal of waste, whether or not waters of the state are affected.

(*l*) "Pollution" means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects: (1) such waters for beneficial uses, or (2) facilities which serve such beneficial uses. "Pollution" may include "contamination."

(m) "Nuisance" means anything which: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, and (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and (3) occurs during or as a result of the treatment or disposal of wastes.

(n) "Reclaimed water" means water which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur.

(o) "Citizen or domiciliary" of the State of California includes a foreign corporation having substantial business contacts in the State of California or which is subject to service of process in this state.

(Amended by Stats. 1969, Ch. 800.)

Chapter 3. State Water Quality Control

Article 1. State Water Resources Control Board

13100. There is in the Resources Agency the State Water Resources Control Board, the Water Quality Advisory Committee, and the California regional water quality control boards. The organization, membership, and some of the duties of the state board are provided for in Article 3 (commencing with Section 174) of Chapter 2 of Division 1 of this code.

Article 2. Water Quality Advisory Committee

(Added by Stats. 1969, Ch. 482. Repealed by Stats. 1972, Ch. 813.

Article 3. State Policy for Water Quality Control

13140. The state board shall formulate and adopt state policy for water quality control. Such policy shall be adopted in accordance with

the provisions of this article and shall be in conformity with the policies set forth in Chapter 1 (commencing with Section 13000).

13141. State policy for water quality control adopted or revised in accordance with the provisions of this article, and regional water quality control plans approved or revised in accordance with Section 13245, shall become a part of the California Water Plan effective when such state policy for water quality control, and such regional water quality control plans have been reported to the Legislature at any session thereof.

13142. State policy for water quality control shall consist of all or any of the following:

(a) Water quality principles and guidelines for long-range resource planning, including ground water and surface water management programs and control and use of reclaimed water.

(b) Water quality objectives at key locations for planning and operation of water resource development projects and for water quality control activities.

(c) Other principles and guidelines deemed essential by the state board for water quality control. (Amended by Stats. 1971, Ch. 1288).

13143. State policy for water quality control shall be periodically reviewed and may be revised.

13144. During the process of formulating or revising state policy for water quality control the state board shall consult with and carefully evaluate the recommendations of concerned federal, state, and local agencies.

13145. The state board shall take into consideration the effect of its actions pursuant to this chapter on the California Water Plan as adopted or revised pursuant to Division 6 (commencing with Section 10000) of this code, and on any other general or coordinated governmental plan looking toward the development, utilization, or conservation of the waters of the state.

13146. State offices, departments and boards, in carrying out activities which affect water quality, shall comply with state policy for water quality control unless otherwise directed or authorized by statute, in which case they shall indicate to the state board in writing their authority for not complying with such policy.

13147. The state board shall not adopt state policy for water quality control unless a public hearing is first held respecting the adoption of such policy. At least 60 days in advance of such hearing the state board shall notify any affected regional boards, unless notice is waived by such boards, and shall give notice of such hearing by publication within the affected region pursuant to Section 6061 of the Government Code. The regional boards shall submit written recommendations to the state board at least 20 days in advance of the hearing. (Amended by Stats. 1971, Ch. 1288).

Article 4. Other Powers and Duties of the State Board

13160. The state board is designated as the state water pollution control agency for all purposes stated in the Federal Water Pollution Control Act and any other federal act, heretofore or hereafter enacted, and is (a) authorized to give any certificate or statement required by any federal agency pursuant to any such federal act that there is reasonable assurance that an activity of any person subject to the jurisdiction of the state board will not reduce water quality below applicable standards, and (b) authorized to exercise any powers delegated to the state by the Federal Water Pollution Control Act (33 U.S.C. 466, et seq.) and acts amendatory thereto. (Amended by Stats. 1971, Ch. 1288).

13160.1. The state board may establish a reasonable fee schedule to cover the cost of giving any certificate which is required or authorized by any federal law with respect to the effect of any existing or proposed facility, project, or construction work upon the quality of waters of the state, including certificates requested by applicants for a federal permit or license pursuant to subdivision (b) of Section 21 of the Federal Water Pollution Control Act and certificates requested pursuant to Section 169 of the Internal Revenue Code, as amended in 1969, with respect to water pollution control facilities. (Added by Stats. 1971, Ch. 1288).

13161. The state board shall annually determine state needs for water quality research and recommend projects to be conducted.

13162. The state board shall administer any statewide program of research in the technical phases of water quality control which may be delegated to it by law and may accept funds from the United States or any person to that end. The state board may conduct such a program independently, or by contract or in cooperation with any federal or state agency, including any political subdivision of the state, or any person or public or private organization.

13163. (a) The state board shall coordinate water-quality-related investigations of state agencies, recognizing that other state agencies have primary statutory authority for such investigations, and shall consult with the concerned regional boards in implementing this section.

(b) The state board from time to time shall evaluate the need for water-quality-related investigations to effectively develop and implement statewide policy for water quality control and shall transmit its recommendations for investigations to affected or concerned federal, state, and local agencies. The affected state agencies shall comply with the recommendations or shall advise the state board in writing why they do not comply with such recommendations.

(c) State agencies shall submit to the state board plans for and results of all investigations that relate to or have an effect upon water quality for review and comment.

13164. The state board shall formulate, adopt and revise general procedures for the formulation, adoption and implementation by regional boards of water quality control plans. During the process of formulating or revising such procedures, the state board shall consult with an evaluate the recommendations of any affected regional boards. (Amended by Stats. 1972, Ch. 813.)

13165. The state board may require any state or local agency to investigate and report on any technical factors involved in water quality control; provided that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained therefrom.

13166. The state board, with the assistance of the regional boards, shall prepare and implement a statewide water quality information storage and retrieval program. Such program shall be coordinated and integrated to the maximum extent practicable with data storage and retrieval programs of other agencies.

13167. The state board shall implement a public information program on matters involving water quality, and shall maintain an information file on water quality research and other pertinent matters.

13168. The state board shall allocate to the regional boards from funds appropriated to the state board such part thereof as may be necessary for the administrative expenses of such boards. The regional boards shall submit annual budgets to the state board. Subject to the provisions of Chapter 3 (commencing with Section 13291) of Part 3, Division 3, Title 2 of the Government Code and any other laws giving the Department of Finance fiscal and budgetary control over state departments generally, the state board shall prepare an annual budget concerning its activities and the activities of the regional boards.

13169. (a) The state board may adopt regulations governing the testing, licensing and use of any chemical, or any other substance, for removing, dispersing or otherwise cleaning up oil or any residuary product of petroleum in or on any of the waters of the state. Such regulations shall be adopted in conformity, as nearly as practicable, with the provisions of Chapter 4.5 (commencing with Section 11371), Part 1, Division 3, Title 2 of the Government Code.

(b) The state board may establish a schedule of fees to cover the cost of testing and licensing the use of any substance for the purposes specified in subdivision (a), to be paid by the applicant for licensing of any such substance.

(c) The proper use of any such substance in accordance with the state board's regulations shall be supervised and enforced by the Department of Fish and Game. The user shall pay to the Department of Fish and Game the cost of such supervisory and enforcement services and all related administrative and incidental costs, as computed by that department, within 30 days after billing. Deputies of the Department of Fish and Game shall have all the powers and authority of a peace officer to make arrests for violations of regulations adopted by the state board pursuant to this section.

(d) Any person who uses any chemical or other substance in violation of any regulation adopted by the state board pursuant to this section shall be guilty of a misdemeanor. Each day's continuance of such violation shall constitute a separate offense.

13170. The state board may adopt water quality control plans in accordance with the provisions of Sections 13240 to 13244, inclusive, insofar as they are applicable, for waters for which water quality standards are required by the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto. Such plans, when adopted, supersede any regional water quality control plans for the same waters to the extent of any conflict. (Added by Stats. 1971, Ch. 1288).

13171. The state board may establish a Water Quality Coordinating Committee, consisting of at least one member of each of the nine regional boards, to assist the state board in carrying o[illegible]s responsibilities in water quality control.

(Added by Stats. 1972, Ch. 813.)

Chapter 4. Regional Water Quality Control

Article 1. Organization and Membership of Regional Boards

13200. The state is divided, for the purpose of this division, into nine regions:

(a) North Coast region, which comprises all basins including Lower Klamath Lake and Lost River Basins draining into the Pacific Ocean from the California-Oregon state line southerly to the southerly boundary of the watershed of Estero de San Antonio and Stemple Creek in Marin and Sonoma Counties.

(b) San Francisco Bay region, which comprises San Francisco Bay, Suisun Bay, from Sacramento River and San Joaquin River westerly from a line which passes between Collinsville and Montezuma Island and follows thence the boundary common to Sacramento and Solano Counties and that common to Sacramento and Contra Costa Counties to the westerly boundary of the watershed of Markley Canyon in Contra Costa County, all basins draining into the bays and rivers westerly from this line, and all basins draining into the Pacific Ocean between the southerly boundary of the north coastal region and the southerly boundary of the watershed of Pescadero Creek in San Mateo and Santa Cruz Counties.

(c) Central Coast region, which comprises all basins, including Carrizo Plain in San Luis Obispo and Kern Counties, draining into the Pacific Ocean from the southerly boundary of the watershed of Pescadero Creek in San Mateo and Santa Cruz Counties to the southeasterly boundary, located in the westerly part of Ventura County, of the watershed of Rincon Creek.

(d) Los Angeles region, which comprises all basins draining into the Pacific Ocean between the southeasterly boundary, located in the westerly part of Ventura County, of the watershed of Rincon Creek and a line which coincides with the southeasterly boundary of Los Angeles County from the ocean to San Antonio Peak and follows thence the divide between San Gabriel River and Lytle Creek drainages to the divide between Sheep Creek and San Gabriel River drainages.

(e) Santa Ana region, which comprises all basins draining into the Pacific Ocean between the southeasterly boundary of the Los Angeles region and a line which follows the drainage divide between Muddy and Moro Canyons from the ocean to the summit of San Joaquin Hills; thence along the divide between lands draining into Newport Bay and into Laguna Canyon to Niguel Road; thence along Niguel Road and Los Aliso Avenue to the divide between Newport Bay and Aliso Creek drainages; thence along that divide and the southeasterly boundary of the Santa Ana River drainage to the divide between Baldwin Lake and Mojave Desert drainages; thence along that divide to the divide between Pacific Ocean and Mojave Desert drainages.

(f) San Diego region, which comprises all basins draining into the Pacific Ocean between the southern boundary of the Santa Ana region and the California-Mexico boundary.

(g) Central Valley region, which comprises all basins including Goose Lake Basin draining into the Sacramento and San Joaquin Rivers to the easterly boundary of the San Francisco Bay region near Collinsville. The Central Valley region shall have section offices in the Sacramento Valley and the San Joaquin Valley.

(h) Lahontan region, which comprises all basins east of the Santa Ana, Los Angeles and Central Valley regions from the California-Oregon boundary to the southerly boundary located in Los Angeles and San Bernardino Counties of the watersheds draining into Antelope Valley, Mojave River Basin and Dry Lake Basin near Ivanpah.

(i) Colorado River Basin region, which comprises all basins east of the Santa Ana and San Diego regions draining into the Colorado River, Salton Sea and local sinks from the southerly boundary of the Lahontan region to the California-Mexico boundary.

The regions defined and described in this section shall be as precisely delineated on official maps of the department and include all of the areas within the boundaries of the state.

For purposes of this section the boundaries of the state extend three nautical miles into the Pacific Ocean from the line of mean lower low water marking the seaward limits of inland waters and three nautical miles from the line of mean lower low water on the mainland and each offshore island.

Nothing in this section shall limit the power conferred by this chapter to regulate the disposal of waste into ocean waters beyond the boundaries of the state.

13201. (a) There is a regional board for each of the regions described in Section 13200. Each board shall consist of the following nine members appointed by the Governor, each of whom shall represent and act on behalf of all the people and shall reside or have a principal place of business within the region:

(1) One person associated with water supply, conservation, and production.

(2) One person associated with irrigated agriculture.

(3) One person associated with industrial water use.

(4) One person associated with municipal government.

(5) One person associated with county government.

(6) One person from a responsible nongovernmental organization associated with recreation, fish, or wildlife.

(7) Three persons not specifically associated with any of the foregoing categories, two of whom shall have special competence in areas related to water quality problems.

(b) Insofar as practicable, appointments shall be made in such manner as to result in representation on the board from all parts of the region.

13202. Each member of a regional board shall be appointed for a term of four years. Vacancies shall be immediately filled by the Governor for the unexpired portion of the terms in which they occur.

13203. The official designation of each regional board shall be: California Regional Water Quality Control Board, (region name).

13204. Each regional board shall hold at least six regular meetings each calendar year and such additional special meetings or hearings as

shall be called by the chairman or any two members of the regional board.

(Amended by Stats. 1970, Ch. 918.)

13205. Each member of the regional boards shall be entitled to receive his actual necessary expenses for each day while on official business of the board.

13206. Public officers, whether elected or appointed, may be appointed to, and may serve contemporaneously as members of, a regional board.

13207. (a) No member of a regional board shall participate in any board action pursuant to Article 4 (commencing with Section 13260) of Chapter 4, or Article 1 (commencing with Section 13300) of Chapter 5, of this division which involves himself or any waste discharger with which he is connected as a director, officer or employee, or in which he has a direct personal financial interest within the meaning of Section 1120 of the Government Code.

(b) No board member shall participate in any proceeding before any regional board or the state board as a consultant or in any other capacity on behalf of any waste discharger.

(c) Upon request of any person or on his own initiative the Attorney General may file a complaint in the superior court for the county in which the regional board has its principal office alleging that a board member has knowingly violated this section and the facts upon which the allegation is based and asking that the member be removed from office. Further proceedings shall be in accordance as near as may be with rules governing civil actions. If after trial the court finds that the board member has knowingly violated this section it shall pronounce judgment that the member be removed from office.

Article 2. General Provisions Relating to Powers and Duties of Regional Boards

13220. Each regional board shall:

(a) Establish an office.

(b) Select one of its members as chairman at the first regular meeting held each year.

(c) Appoint as its confidential employee, exempt from civil service, under paragraph (5) of subdivision (a) of Section 4 of Article XXIV of the Constitution, and fix the salary of, an executive officer who shall meet technical qualifications as defined by the State Water Resources Control Board. The executive officer shall serve at the pleasure of the regional board.

(d) Employ such other assistants as may be determined necessary to assist the executive officer.

13221. Members of the regional board shall be empowered to administer oaths and issue subpoenas for the attendance and giving of testimony by witnesses and for the production of evidence in any proceeding before the board in any part of the region. The provisions of Chapter 3 (commencing with Section 1075) of Part I of Division 2 of this code shall apply to regional boards within their own regions, where they shall have the same power as the state board within the state.

13222. Pursuant to such guidelines as the state board may establish,

each regional board shall adopt regulations to carry out its powers and duties under this division.

13223. (a) Each regional board may delegate any of its powers and duties vested in it by this division to its executive officer excepting only the following: (1) the promulgation of any regulation; (2) the issuance, modification, or revocation of any water quality control plan, water quality objectives, or waste discharge requirement; (3) the issuance, modification, or revocation of any cease and desist order; (4) the holding of any hearing on water quality control plans; and (5) the application to the Attorney General for judicial enforcement but excluding cases of specific delegation in a cease and desist order and excluding the cases described in subdivision (c) of Section 13002 and Sections 13304 and 13340.

(b) Whenever any reference is made in this division to any action that may be taken by a regional board, such reference includes such action by its executive officer pursuant to powers and duties delegated to him by the regional board.

(Amended by Stats. 1970, Ch. 918.)

13224. Each regional board may issue policy statements relating to any water quality matter within its jurisdiction.

13225. Each regional board, with respect to its region, shall:

(a) Obtain coordinated action in water quality control, including the prevention and abatement of water pollution and nuisance.

(b) Encourage and assist in self-policing waste disposal programs, and upon application of any person, advise the applicant of the condition to be maintained in any disposal area or receiving waters into which the waste is being discharged.

(c) Require as necessary any state or local agency to investigate and report on any technical factors involved in water quality control or to obtain and submit analyses of water; provided that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained therefrom.

(d) Request enforcement by appropriate federal, state and local agencies of their respective water quality control laws.

(e) Recommend to the state board projects which the regional board considers eligible for any financial assistance which may be available through the state board.

(f) Report to the state board and appropriate local health officer any case of suspected contamination in its region.

(g) File with the state board, at its request, copies of the record of any official action.

(h) Take into consideration the effect of its actions pursuant to this chapter on the California Water Plan adopted or revised pursuant to Division 6 (commencing with Section 10000) of this code and on any other general or coordinated governmental plan looking toward the development, utilization or conservation of the water resources of the state.

(i) Encourage regional planning and action for water quality control.

Article 3. Regional Water Quality Control Plans

13240. Each regional board shall formulate and adopt water quality control plans for all areas within the region. Such plans shall conform to the policies set forth in Chapter 1 (commencing with Section 13000) of this division and any state policy for water quality control. During the process of formulating such plans the regional boards shall consult with and consider the recommendations of affected state and local agencies. Such plans shall be periodically reviewed and may be revised.

13241. Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following:

(a) Past, present, and probable future beneficial uses of water.

(b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.

(c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.

(d) Economic considerations.

13242. The program of implementation for achieving water quality objectives shall include, but not be limited to:

(a) A description of the nature of actions which are necessary to achieve the objectives, including recommendations for appropriate action by any entity, public or private.

(b) A time schedule for the actions to be taken.

(c) A description of surveillance to be undertaken to determine compliance with objectives.

13243. A regional board, in a water quality control plan or in waste discharge requirements, may specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted.

13244. The regional boards shall not adopt any water quality control plan unless a public hearing is first held, after the giving of notice of such hearing by publication in the affected county or counties pursuant to Section 6061 of the Government Code. When the plan proposes to prohibit discharges of waste pursuant to Section 13243, similar notice shall be given by publication pursuant to Section 6061.3 of the Government Code.

13245. A water quality control plan, or a revision thereof adopted by a regional board, shall not become effective unless and until it is approved by the state board. The state board may approve such plan, or return it to the regional board for further consideration and resubmission to the state board. Upon resubmission the state board may either approve or, after a public hearing in the affected region, revise and approve such plan.

(Amended by Stats. 1971, Ch. 1288.)

13246. The state board shall act upon any water quality control plan within 60 days after the regional board has submitted such plan to the state board, or 90 days after resubmission of such plan.

13247. State offices, departments, and boards, in carrying out activities which may affect water quality, shall comply with water quality control plans approved or adopted by the state board unless otherwise directed or authorized by statute, in which case they shall indicate to the regional boards in writing their authority for not complying with such plans.

(Amended by Stats. 1971, Ch. 1288.)

Article 4. Waste Discharge Requirements

13260. (a) Any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the state, other than into a community sewer system, and any person who is a citizen, domiciliary, or political agency or entity of this state discharging waste or proposing to discharge waste outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region, shall file with the regional board of that region a report of the discharge, containing such information as may be required by the board. No report need be filed when such requirement is waived pursuant to Section 13269.

(b) Every such person discharging waste shall file with the regional board of that region a report of any material change or proposed change in the character, location, or volume of the discharge.

(c) Each report under this section shall be sworn to or submitted under penalty of perjury.

(d) Each report under this section shall be accompanied by a filing fee of not to exceed one thousand dollars ($1,000) according to a reasonable fee schedule established by the state board.

(e) When a report filed by any person pursuant to this section is not adequate in the judgment of the regional board, the board may require such person to supply such additional information as it deems necessary.

13261. Any person failing to furnish a report under Section 13260 when so requested by a regional board is guilty of a misdemeanor.

(Amended by Stats. 1970, Ch. 918.)

13262. The Attorney General, at the request of the regional board, shall petition the superior court for the issuance of a temporary restraining order, temporary injunction, or permanent injunction, or combination thereof, as may be appropriate, requiring any person not complying with Section 13260 to comply therewith.

13263. (a) The regional board, after any necessary hearing, shall prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change therein, except discharges into a community sewer system, with relation to the conditions existing from time to time in the disposal area or receiving waters upon or into which the discharge is made or proposed. The requirements shall implement relevant water quality control plans, if any have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241.

(b) A regional board, in prescribing requirements, need not authorize the utilization of the full waste assimilation capacities of the receiving waters.

(c) The requirements may contain a time schedule, subject to revision in the discretion of the board.

(d) The board may prescribe requirements although no discharge report has been filed.

(e) Upon application by any affected person or on its own motion, the regional board may review and revise requirements. All requirements shall be reviewed periodically.

(f) The regional board shall notify in writing the person making or proposing the discharge or the change therein of the discharge requirements to be met. After receipt of such notice, the person so notified shall provide adequate means to meet such requirements.

(g) No discharge of waste into the waters of the state, whether or not such discharge is made pursuant to waste discharge requirements, shall create a vested right to continue such discharge. All discharges of waste into waters of the state are privileges, not rights.

13264. (a) No person shall initiate any new discharge of waste or make any material change in any discharge prior to the filing of the report required by Section 13260 nor shall any such person do so thereafter and prior to: (1) the issuance of waste discharge requirements pursuant to Section 13263, (2) the expiration of 120 days after his compliance with Section 13260, or (3) the regional board's waiver pursuant to Section 13269, whichever of (1), (2), or (3) occurs first.

(b) The Attorney General, at the request of a regional board, shall petition the superior court for the issuance of a temporary restraining order, preliminary injunction, or permanent injunction, or combination thereof, as may be appropriate, prohibiting forthwith any person who is violating or threatening to violate this section from: (1) discharging the waste in question, or (2) making any material change therein, whichever of (1) or (2) is applicable.

(Amended by Stats. 1970, Ch. 918.)

13265. Any person discharging waste in violation of Section 13264, after such violation has been called to his attention in writing by the regional board, is guilty of a misdemeanor. Each day of such discharge shall constitute a separate offense.

13266. Pursuant to such regulations as the regional board may prescribe, each city, county, or city and county shall notify the regional board of the filing of a tentative subdivision map, or of any application for a building permit which may involve the discharge of waste, other than discharges into a community sewer system and discharges from dwellings involving five-family units or less.

13267. (a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating thereto or authorized by this division, may investigate the quality of any waters of the state within its region.

(b) In such an investigation, the regional board may require that any person discharging or proposing to discharge waste within its region or any citizen or domiciliary, or political agency or entity of this state discharging or proposing to discharge waste outside of its region that could affect the quality of waters within its region shall

furnish, under penalty of perjury, such technical or monitoring program reports as the board may specify; provided that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained therefrom.

When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available to governmental agencies for use in making studies; provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report.

(c) In such an investigation, the regional board may inspect the facilities of any such person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with. Such inspection shall be made with the consent of the owner or possessor of such facilities or, if such consent is refused, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of Code of Civil Procedure; provided, however, that in the event of an emergency affecting the public health or safety such inspection may be made without consent or the issuance of a warrant.

(Amended by Stats. 1970, Ch. 918.)

13268. Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267 or falsifying any information provided therein is guilty of a misdemeanor.

13269. The provisions of subdivisions (a) and (b) of Section 13260, subdivision (a) of Section 13263, or subdivision (a) of Section 13264 may be waived by a regional board as to a specific discharge or a specific type of discharge where such waiver is not against the public interest. Such waiver shall be conditional and may be terminated at any time by the board.

Chapter 5. Enforcement and Implementation

Article 1. Administrative Enforcement and Remedies by Regional Boards

13300. Whenever a regional board finds that a discharge of waste is taking place or threatening to take place that violates or will violate requirements prescribed by the regional board or the state board, or that the waste collection, treatment, or disposal facilities of a discharger are approaching capacity, the board may require the discharger to submit for approval of the board, with such modifications as it may deem necessary, a detailed time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements.

(Amended by Stats. 1971, Ch. 1288.)

13301. When a regional board finds that a discharge of waste is taking place or threatening to take place in violation of requirements or discharge prohibitions prescribed by the regional board or the state board, the board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the board, or (c) in the event of a threatened violation, take appropriate remedial or preventive action. In the event of an existing or threatened violation of waste discharge requirements in the operation of a community sewer system, cease and desist orders may restrict or prohibit the volume, type, or concentration of waste that might be added to such system by dischargers who did not discharge into the system prior to the issuance of the cease and desist order. Cease and desist orders may be issued directly by a board, after notice and hearing, or in accordance with the procedure set forth in Section 13302.

(Amended by Stats. 1971, Ch. 1288.)

13301.1. The regional board shall render to persons against whom a cease and desist order is issued pursuant to Section 13301 all possible assistance in making available current information on successful and economical water quality control programs, as such information is developed by the state board pursuant to Section 13167, and information and assistance in applying for federal and state funds necessary to comply with the cease and desist order.

(Added by Stats. 1970, Ch. 1464.)

13302. (a) Hearings for consideration of issuance of a cease and desist order may be conducted by hearing panels designated by the regional board, each panel to consist of three or more members of the board as it may specify. A member of the board may serve on more than one panel.

(b) Due notice of the hearing shall be given to all affected persons. After the hearing, the panel shall report its proposed decision and order to the regional board and shall supply a copy to all parties who appeared at the hearing and requested a copy. Members of the panel are not disqualified from sitting as members of the board in deciding the matter. The board, after making such independent review of the record and taking such additional evidence as may be necessary, may adopt, with or without revision, the proposed decision and order of the panel.

13303. Cease and desist orders of the board shall become effective and final upon issuance thereof. Copies shall be served forthwith by personal service or by registered mail upon the person being charged with the violation of the requirements and upon other affected persons who appeared at the hearing and requested a copy.

(Amended by Stats. 1972, Ch. 813.)

13304. (a) Any person who discharges waste into the waters of this state in violation of any waste discharge requirement or other order issued by a regional board or the state board, or who intentionally or negligently causes or permits any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up such waste or abate the effects thereof or, in the case of threatened pollution or nuisance, take other necessary remedial action. Upon failure of any person to comply with such cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring such person

to comply therewith. In any such suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

(b) The regional board may expend available moneys to perform any cleanup, abatement, or remedial work required under the circumstances set forth in subdivision (a) which in its judgment is required by the magnitude of endeavor or urgency of prompt action needed to prevent substantial pollution, nuisance, or injury to any waters of the state. Such action may be taken in default of, or in addition to, remedial work by the waste discharger or other persons, and regardless of whether injunctive relief is being sought. The regional board may perform the work itself, or by or in cooperation with any other governmental agency, and may use rented tools or equipment, either with operators furnished or unoperated. Notwithstanding any other provisions of law, the regional board may enter into oral contracts for such work, and the contracts, whether written or oral, may include provisions for equipment rental and in addition the furnishing of labor and materials necessary to accomplish the work. Such contracts shall be exempt from approval by the Department of General Services pursuant to the provisions of Section 14780 of the Government Code.

(c) If such waste is cleaned up, the effects thereof abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, within the meaning of subdivision (a), shall be liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up such waste, abating the effects thereof, or taking other remedial action. The amount of such costs shall be recoverable in a civil action by, and paid to, such governmental agency and the state board to the extent of the latter's contribution to the cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds.

(Amended by Stats. 1971, Ch. 1288).

(Note the new authority of regional boards in subsection (b) to expend available moneys to perform cleanup work when a cleanup order has been issued under subsection (a), and prompt action is needed to prevent substantial pollution or nuisance. Full authority to take all necessary actions can be delegated to the executive officer (Section 13223). "Available moneys" ordinarily refers to moneys in the State Water Pollution and Abatement Account (Section 13441). Funds made available from an outside source, such as the Federal Government, could also constitute "available moneys". Note that authority to expend moneys for cleanup requires an exercise of judgment. For accounting purposes it is desirable that the exercise of judgment be in writing. A letter to the state board should request needed funds and give the reason in the context of the statute, such as the existence of an "urgency of prompt action is needed to prevent substantial pollution". A previous phone call could ascertain whether necessary funds are available.)

13305. (a) Upon determining that a condition of pollution or nuisance exists which has resulted from a nonoperating industrial or business location within its region, a regional board may cause notice of such condition to be posted upon the property in question. The

notice shall state that such condition constitutes either a condition of pollution or nuisance which must be abated by correction of such condition, otherwise it will be corrected by the city, county, other public agency, or regional board at the property owner's expense. Such notice shall further state that all property owners having any objections to the proposed correction of such condition may attend a hearing to be held by the board at a time not less than 10 days from the posting of the notice.

(b) Notice of the hearing prescribed in this section shall be given in the county where the property is located pursuant to Section 6061 of the Government Code.

(c) In addition to posting and publication, notice as required in this section shall be mailed to the property owners as their names and addresses appear from the last equalized assessment role.

(d) At the time stated in the notices, the board shall hear and consider all objections or protests, if any, to the proposed correction of the condition, and may continue the hearing from time to time.

(e) After final action is taken by the board on the disposition of any protests or objections, or in case no protests or objections are received, the board shall request the city, county, or other public agency in which the conditions of pollution or the nuisance exists to abate it. In the event that such city, county, or other public agency does not abate such condition within a reasonable time the board shall cause the condition to be abated. It may proceed by force account, contract or other agreement or any other method deemed most expedient by the board, and shall apply to the state board for the necessary funds.

(f) The owner of the property on which the condition exists, or is created, is liable for all reasonable costs incurred by the board or any city, county, or public agency in abating the condition. The amount of the cost for abating the condition upon the property in question shall constitute a lien upon the property so posted upon the recordation of a notice of lien, particularly describing the property on which the condition was abated and the amount of such lien, in the office of the county recorder of the county in which the property is located. Upon such recordation, the lien shall have the same force, effect, and priority as if it had been a judgment lien imposed upon real property which was not exempt from execution, except that it shall attach only to the property so posted and described in such notice of lien. Such lien may be foreclosed by an action brought by the city, county, other public agency, or state board, on behalf of the regional board, for a money judgment. Money recovered by a judgment in favor of the state board shall be returned to the State Water Pollution Cleanup and Abatement Account.

(g) The city, county, other public agency, or state board on behalf of a regional board, may at any time release all or any portion of the property subject to a lien imposed pursuant to subdivision (f) from the lien or subordinate such lien to other liens and encumbrances if it determines that the amount owed is sufficiently secured by a lien on other property or that the release or subordination of such lien will not jeopardize the collection of such amount owed. A certificate by such board, city, county, or other public agency to the effect that

any property has been released from such lien or that such lien has been subordinated to other liens and encumbrances shall be conclusive evidence that the property has been released or that the lien has been subordinated as provided in such certificate.

(h) As used in this section, the words "nonoperating" or "not in operation" means the business is not conducting routine operations usually associated with that kind of business.

(Amended by Stats. 1970, Ch. 1462.)

Article 2. Administrative Enforcement and Remedies by the State Board

13320. (a) Within 30 days of any action or failure to act by a regional board under subdivision (c) of Section 13225, Article 4 (commencing with Section 13260) of Chapter 4 of this division, Chapter 5 (commencing with Section 13300) of this division, Chapter 7 (commencing with Section 13500) of this division, or Division 7.5 (commencing with Section 14000), any aggrieved person may petition the state board to review such action or failure to act. In case of failure to act, the 30-day period shall commence upon refusal of the board to act, or 60 days after request has been made to the board to act. The state board may, on its own motion, at any time review such action or failure to act and also any failure to act under Article 3 (commencing with Section 13240) of Chapter 4 of this division.

(b) The evidence before the state board shall consist of (i) the record before the regional board, and (ii) any other relevant evidence which, in the judgment of the state board, should be considered to effectuate and implement the policies of this division.

(c) The state board may find the regional board action or inaction to be appropriate and proper. Upon finding that the action of the regional board, or the failure of the regional board to act, was inappropriate or improper, the state board may: (1) direct that the appropriate action be taken by the regional board, (2) refer the matter to any other state agency having jurisdiction, (3) take the appropriate action itself, or (4) any combination of the foregoing. In taking any such action, the state board is vested with all the powers of the regional boards under this division.

(d) In the event a waste discharge in one region affects the waters in another region and there is any disagreement between the regional boards involved as to the requirements which should be established, either regional board may submit the disagreement to the state board which shall determine the applicable requirements.

(Amended by Stats. 1971, Ch. 1288).

13321. (a) In the case of a review by the state board under Section 13320, the state board, upon notice and a hearing, may stay in whole or in part the effect of the decision and order of a regional board or of the state board.

(b) If a petition is filed with the superior court to review a decision of the state board, any stay in effect at the time of the filing the petition shall remain in effect by operation of law for a period of 20 days from the date of the filing of such petition.

Article 3. Judicial Review and Enforcement

13330. (a) Within 30 days after service of a copy of a decision and order issued by the state board under Section 13320, any aggrieved party may file with the superior court a petition for a writ of mandate for review thereof. Failure to file such an action shall not preclude a party from challenging the reasonableness and validity of a decision or order of a regional board or the state board in any judicial proceedings brought to enforce such decision or order or for other civil remedies.

(b) The evidence before the court shall consist of the record before the state board, including the regional board's record, and any other relevant evidence which, in the judgment of the court, should be considered to effectuate and implement the policies of this division. In every such case, the court shall exercise its independent judgment on the evidence.

(c) Except as otherwise provided herein, the provisions of subdivisions (e) and (f) of Section 1094.5 of the Code of Civil Procedure shall govern proceedings pursuant to this section.

13331. (a) Upon the failure of any person or persons to comply with any cease and desist order issued by a regional board or the state board, the Attorney General, upon request of the board, shall petition the superior court for the issuance of a preliminary or permanent injunction, or both, as may be appropriate, restraining such person or persons from continuing the discharge in violation of the cease and desist order.

(b) The evidence before the court shall consist of the record before the regional board or state board, or both, and any other relevant evidence which, in the judgment of the court, should be considered to effectuate and implement the policies of this division. In every such case, the court shall exercise its independent judgment on the evidence.

(c) The court shall issue an order directing defendants to appear before the court at a time and place certain and show cause why the injunction should not be issued. The court may grant such prohibitory or mandatory relief as may be warranted.

(d) The court may stay the operation of the cease and desist order after notice to the board which issued the order and hearing. Any such stay may be imposed or continued only if it is not against the public interest.

(Amended by Stats. 1970, Ch. 918.)

Article 4. Summary Judicial Abatement

13340. Whenever a regional board finds that a discharge of waste within its region is taking place or threatening to take place which does or will cause a condition of pollution or nuisance, constituting an emergency requiring immediate action to protect the public health, welfare, or safety, the Attorney General, upon request of the board, shall petition the superior court to enjoin such discharge. The court shall have jurisdiction to grant such prohibitory or mandatory injunctive relief as may be warranted by way of temporary restraining order, preliminary injunction, and permanent injunction.

Article 5. Civil Monetary Remedies

13350. (a) Any person who (1) intentionally or negligently violates any cease and desist order hereafter issued, reissued, or amended by a regional board or the state board, or (2) in violation of any waste discharge requirement or other order issued, reissued, or amended by a regional board or the state board, intentionally or negligently discharges waste or causes or permits waste to be deposited where it is discharged into the waters of the state and creates a condition of pollution or nuisance, or (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other provisions of this division, may be liable civilly in a sum of not to exceed six thousand dollars ($6,000) for each day in which such violation or deposit occurs.

(b) The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose, assess and recover such sums. Except in the case of a violation of a cease and desist order, a regional board or the state board shall make such request only after a hearing, with due notice of the hearing given to all affected persons. In determining such amount, the court shall take into consideration all relevant circumstances, including but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs and corrective action, if any, taken by the discharger.

(c) The provisions of Articles 3 (commencing with Section 13330) and 6 (commencing with Section 13360) of this chapter shall apply to proceedings to impose, assess and recover an amount pursuant to this article.

(d) Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal.

(Amended by Stats. 1971, Ch. 668.)

Article 6. General Provisions Relating to Enforcement and Review

13360. No waste discharge requirement or other order of a regional or state board or decree of court issued under the provisions of this division shall specify the design, location, type of construction or particular manner in which compliance may be had with such requirement, order or decree, and the person so ordered shall be permitted to comply therewith in any lawful manner; provided, as to disposal sites other than those found by the state board to be adequately regulated by another governmental agency under subdivision (b) of Section 14020 and evaporation ponds from which there is no drainage or seepage, the restrictions of this section shall not apply to waste discharge requirements or orders or decrees with respect to the discharge of solid waste requiring the installation of riprap, the construction of walls and dikes, the installation of surface and underground drainage facilities to prevent runoff from entering the disposal area or leakage to underground or surface waters or other reasonable requirements to achieve the above

or similar purposes, and provided further that if the court, in an action for an injunction brought under this division, finds that the enforcement of an injunction restraining the discharger from discharging waste would be impracticable, the court shall have the power to issue any order reasonable under the circumstances requiring specific measures to be undertaken by the discharger to comply with the discharge requirements, order or decree.

(Amended by Stats. 1971, Ch. 1288.)

13361. (a) Every civil action brought under the provisions of this division at the request of a regional board or the state board shall be brought by the Attorney General in the name of the people of the State of California and any such actions relating to the same discharge may be joined or consolidated.

(b) Any civil action brought pursuant to this division shall be brought in a county in which the discharge is made, or proposed to be made. However, any action by or against a city, city and county, county, or other public agency shall, upon motion of either party, be transferred to a county or city and county not a party to the action or to a county or city and county other than that in which the city or public agency is located.

(c) In any civil action brought pursuant to this division in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction, or permanent injunction not be issued, or that the remedy at law is inadequate, and the temporary restraining order, preliminary injunction, or permanent injunction shall issue without such allegations and without such proof.

(Amended by Stats. 1970, Ch. 918.)

CHAPTER 5.5. COMPLIANCE WITH THE PROVISIONS OF THE FEDERAL WATER POLLUTION CONTROL ACT AS AMENDED IN 1972

(Added by Stats. 1972, Ch. 1256)

13370. The Legislature finds and declares that since the Federal Water Pollution Control Act (33 U.S.C. 1151, et seq.), as amended, provides for a permit system to regulate the discharge of pollutants to the navigable waters of the United States and provides that permits may be issued by states which are authorized to implement the provisions of such act, it is in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to this division, to enact the provisions of this chapter in order to authorize the state to implement the provisions of the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto.

13371. The Legislature further finds and declares that it is necessary for the state board to amend its administrative regulations in order to comply with the Federal Water Pollution Control Act and regulations and guidelines adopted thereunder.

13372. To the extent other provisions of this division are consistent with the provisions of this chapter, such provisions shall be applicable to actions and procedures provided for in this chapter. The provisions of this chapter shall prevail over other provisions of this division to the extent of any inconsistency. The provisions of this chapter shall apply only to actions required under the Federal Water Pollution Control Act, as amended.

13373. The terms "navigable waters," "effluent limitations," "administrator," "pollutants," "biologic monitoring," "discharge" and "point sources" as used in this chapter shall have the same meaning as in the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto.

13374. The term "waste discharge requirements" as referred to in this division is the equivalent of the term "permits" as used in the Federal Water Pollution Control Act, as amended.

13375. The discharge of any radiological, chemical, or biological warfare agent into the waters of the state is hereby prohibited.

13376. Any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state shall file a report of such discharge in compliance with the procedures set forth in Section 13260. Any person proposing to discharge pollutants shall file a report at least 180 days in advance of the date on which it is desired to commence the discharge of pollutants. Any person presently discharging pollutants shall file a report within 45 days of a written request by a regional board or the state board. The discharge of pollutants by any person except as authorized pursuant to waste discharge requirements is prohibited.

13377. Notwithstanding any other provision of this division, the state board or the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge requirements which ensure compliance with any applicable effluent limitations, water quality related effluent limitations, national standards of performance, toxic and pretreatment effluent standards, and any ocean discharge criteria.

13378. Waste discharge requirements shall be adopted only after notice and any necessary hearing. Such requirements shall be adopted for a fixed term not to exceed five years for any proposed discharge, existing discharge, or any material change therein.

13379. Waste discharge requirements shall be adopted to meet the following:

(a) Not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, which (1) shall require the application of the best practicable control technology currently available as defined under the Federal Water Pollution Control Act, as amended, or (2) in the case of a discharge into a publicly owned treatment works as defined in subdivision (b), shall require compliance with any applicable pretreatment or toxicity requirements.

(b) For publicly owned treatment works in existence on July 1, 1977, or approved pursuant to the Federal Water Pollution Control Act, as amended, prior to June 30, 1974, for which construction shall be completed within four years of approval, effluent limitations based upon secondary treatment, as defined under the Federal Water Pollution Control Act.

(c) Not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance under this division or as required under the Federal Water Pollution Control Act, as amended.

(d) Not later than July 1, 1983, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which (1) shall require application of the best available technology economically achievable for such category or class, which will result in reasonable further progress toward the goal of eliminating the discharge of all pollutants as determined under the Federal Water Pollution Control Act, as amended, or (2) in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements referred to in subdivision (e), shall require compliance with any applicable pretreatment or toxicity requirements.

(e) Not later than July 1, 1983, compliance by all publicly owned treatment works, with requirements promulgated under the Federal Water Pollution Control Act, as amended.

(f) Any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses or to prevent nuisance.

(g) National standards of performance promulgated by the administrator.

(h) Pretreatment requirements as determined by the administrator.

(i) Ocean discharge criteria promulgated by the administrator.

13380. Any waste discharge requirement adopted under this chapter shall be reviewed at least every five years and, if appropriate, revised.

13381. Waste discharge requirements may be terminated or modified for cause, including, but not limited to, all of the following:

(a) Violation of any condition contained in the requirements.

(b) Obtaining the requirements by misrepresentation, or failure to disclose fully all relevant facts.

(c) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

13382. Waste discharge requirements shall be adopted to control the disposal of pollutants into wells.

13383. The state board or regional boards may require dischargers of pollutants to navigable waters or to public treatment systems to establish and maintain records, make reports, install, use and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required. The state board or regional boards may inspect the facilities of any discharger of pollutants pursuant to the procedure set forth in subdivision (c) of Section 13267.

13384. The state board or the regional boards shall ensure that the public, and that any other state, the waters of which may be affected by any discharge of pollutants to navigable waters within this state, shall receive notice of each application for requirements or report of

waste discharge and are provided an opportunity for public hearing before adoption of such requirements.

13385. Any person who discharges pollutants, except as permitted by waste discharge requirements, or who violates any cease and desist order, prohibition, waste discharge requirement, effluent limitation, water quality related effluent limitation, national standard of performance, pretreatment or toxicity standard or who refuses to comply with the requirements adopted pursuant to Section 13382 shall be subject to a civil penalty not to exceed ten thousand dollars ($10,000) for each day in which such discharge, violation, or refusal occurs. Funds collected shall be paid to the State Water Pollution Cleanup and Abatement Account.

13386. (a) The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose, assess and recover the sums provided in Section 13385.

(b) Upon the violation of the terms of any cease and desist order, prohibition, waste discharge requirement, effluent limitation, water quality related effluent limitation, national standard of performance, pretreatment or toxicity standard, the requirements of Section 13383, or upon the failure of any discharger into a public treatment system to comply with any cost or charge adopted by any public agency under Section 204(b) of the Federal Water Pollution Control Act, as amended, the Attorney General, upon the request of the state board or regional board shall petition the appropriate court for the issuance of a preliminary or permanent injunction, or both, as may be appropriate, restraining such person or persons from continuing the violation. The provisions of subdivisions (b) and (c) of Section 13331 shall be applicable to proceedings under this subdivision.

(c) With respect to violation of waste discharge requirements or cease and desist orders, remedies under Section 13385 are in lieu of civil monetary remedies provided for in Section 13350.

13387. (a) Any person who willfully or negligently discharges pollutants except as allowed by waste discharge requirements or who willfully or negligently violates any effluent standard, water quality related effluent standard, national standard of performance, toxicity or pretreatment standard, or who refuses to comply with the requirements adopted pursuant to Section 13382, or who violates any cease and desist order, prohibition, or waste discharge requirement shall be punished by a fine of not more than twenty-five thousand dollars ($25,000) nor less than two thousand five hundred dollars ($2,500) for each day in which such violation occurs, or by imprisonment for not more than one year in the county jail, or by both. If the conviction is for a violation committed after a first conviction of such person under this section, punishment shall be by a fine of not more than fifty thousand dollars ($50,000) for each day in which such violation occurs, or by imprisonment for not more than two years in the county jail, or both. Funds collected shall be paid to the State Water Pollution Cleanup and Abatement Account.

(b) Any person who knowingly makes any false statement, representation, record, report, plan or other document filed with a regional board or the state board, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under

this division shall be punished by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in a county jail for not more than six months, or by both.

13388. Notwithstanding any other provision of this division or Section 175, no person shall be a member of the state board or a regional board if he receives or has received during the previous two years a significant portion of his income directly or indirectly from any person subject to waste discharge requirements or applicants for waste discharge requirements pursuant to this chapter. This section shall become operative on March 1, 1973.

13389. Neither the state board nor the regional boards shall be required to comply with the provisions of Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code prior to the adoption of any waste discharge requirement, except requirements for new sources as defined in the Federal Water Pollution Control Act or acts amendatory thereof or supplementary thereto.

Chapter 6. State Financial Assistance

Article 1. State Water Quality Control Fund

13400. As used in this chapter, unless otherwise apparent from the context:

(a) "Fund" means the State Water Quality Control Fund.

(b) "Public agency" means any city, county, city and county, district, or other political subdivision of the state.

(c) "Facilities" means either or both: (1) facilities for the collection, treatment, or export of waste when necessary to prevent water pollution or (2) facilities to reclaim waste waters and to convey reclaimed water.

13401. The State Water Quality Control Fund is continued in existence. The following moneys in the fund are appropriated, without regard to fiscal years, for expenditure by the state board in making loans to public agencies in accordance with the provisions of this chapter:

(a) The balance of the original moneys deposited therein.

(b) Any money repaid thereto.

(c) Any remaining balance of the money in the fund deposited therein after the specific appropriations for loans to the South Tahoe Public Utility District, the North Tahoe Public Utility District, the Tahoe City Public Utility District, the Truckee Sanitary District, and to any other governmental entity in the areas served by such districts have been made.

Article 2. Loans to Local Agencies

13410. Applications for construction loans under this chapter shall include:

(a) A description of the proposed facilities.

(b) A statement of facts showing the necessity for the proposed facilities and showing that funds of the public agency are not available for financing such facilities and that the sale of revenue or general obligation bonds through private financial institutions is impossible or would impose an unreasonable burden on the public agency.

(c) A proposed plan for repaying the loan.

(d) Other information as required by the state board.

13411. Upon a determination by the state board, after consultation with the State Department of Health,* that (a) the facilities proposed by an applicant are necessary to the health or welfare of the inhabitants of the state, (b) that the proposed facilities meet the needs of the applicant, (c) that funds of the public agency are not available for financing such facilities and that the sale of revenue or general obligation bonds through private financial institutions is impossible or would impose an unreasonable burden on the public agency, (d) that the proposed plan for repayment is feasible, (e) in the case of facilities proposed under Section 13400(c)(1) that such facilities are necessary to prevent water pollution, and (f) in the case of facilities proposed under Section 13400(c)(2) that such facilities will produce reclaimed water and that the public agency has adopted a feasible program for use thereof, the state board, subject to approval by the Director of Finance, may loan to the applicant such sum as it determines is not otherwise available to the public agency to construct the proposed facilities.

(Amended by Stats. 1971, Ch. 1593.)

13412. No loan shall be made to a public agency unless it executes an agreement with the state board under which it agrees to repay the amount of the loan, with interest, within 25 years following, at the election of the state board and with the concurrence of the Director of Finance, a 10-year moratorium on principal and interest payments. Except as otherwise provided in this section, the interest shall be at a rate equal to the average, as determined by the state board, of the net interest costs to the state on the sales of general obligation bonds of the state that occurred during the period of five calendar years immediately preceding the year in which the loan agreement is executed. However, when the applicable average of the net interest costs to the state is not a multiple of one-tenth of 1 percent, the interest rate shall be at the multiple of one-tenth of 1 percent next above the applicable average of the net interest costs.

The interest rate applicable to any loan made pursuant to this chapter for which an application was filed prior to January 1, 1967, shall be at the rate of 2 percent.

(Amended by Stats. 1970, Ch. 1159.)

13413. It is the policy of this state that, in making construction loans under this article, the state board should give special consideration to facilities proposed to be constructed by public agencies in areas in which further construction of buildings has been halted by order of the State Department of Health * or a local health department, or both, or notice has been given that such an order is being considered; provided, however, that the public agencies designated in this section shall otherwise comply with and meet all requirements of other provisions of this chapter.

(Amended by Stats. 1969, Ch. 800.)

13414. All money received in repayment of loans under this chapter shall be paid to the State Treasurer and credited to the fund.

13415. (a) Loans may be made by the state board to public agencies to pay not more than one-half of the cost of studies and investigations

* Note: New name effective July 1, 1973. Formerly called Department of Public Health and State Board of Public Health.

made by such public agencies in connection with waste water reclamation.

(b) Not more than a total of two hundred thousand dollars ($200,000) shall be loaned pursuant to this section in any fiscal year, and not more than fifty thousand dollars ($50,000) shall be loaned to any public agency in any fiscal year pursuant to this section. In the event that less than two million dollars ($2,000,000) is available in any fiscal year for loans under this article, then not more than 10 percent of the available amount shall be available for loans for studies and investigations pursuant to this section.

(c) Applications for such loans shall be made in such form, and shall contain such information, as may be required by the state board.

(d) Such loans shall be repaid within a period not to exceed 10 years, with interest at a rate established in the manner provided in Section 13412.

13416. Before a public agency may enter into a contract with the state board for a construction loan under this chapter, the public agency shall hold an election on the proposition of whether or not the public agency shall enter into the proposed contract and more than 50 percent of the votes cast at such election must be in favor of such proposition.

NOTE. Modified by Stats. 1972, Ch. 813, which provides in part:

The provisions of Sections 13416 and 13417 of the Water Code shall not apply to any loan to the Isla Vista Sanitary District, the Squaw Valley County Water District, or the Alpine Springs County Water District pursuant to the provisions of Chapter 6 (commencing with Section 13400) of Division 7 of the Water Code.

13417. The election shall be held in accordance with the following provisions:

(a) The procedure for holding an election on the incurring of bonded indebtedness by such public agency shall be utilized for an election of the proposed contract as nearly as the same may be applicable. Where the law applicable to such agency does not contain such bond election procedure, the procedure set forth in the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) Part 1, Division 2, Title 5 of the Government Code), as it may now or hereafter be amended, shall be utilized as nearly as the same may be applicable.

(b) No particular form of ballot is required.

(c) The notice of the election shall include a statement of the time and place of the election, the purpose of the election, the general purpose of the contract, and the maximum amount of money to be borrowed from the state under the contract.

(d) The ballots for the election shall contain a brief statement of the general purpose of the contract substantially as stated in the notice of the election, shall state the maximum amount of money to be borrowed from the state under the contract, and shall contain the words "Execution of contract—Yes" and "Execution of contract—No."

(e) The election shall be held in the entire public agency except where the public agency proposes to contract with the state board on behalf of a specified portion, or of specified portions, of the public agency, in which case the election shall be held in such portion or portions of the public agency only.

Article 3. State Water Pollution Cleanup and Abatement Account

13440. There is in the State Water Quality Control Fund the State Water Pollution Cleanup and Abatement Account (hereinafter called the "account"), to be administered by the state board.

13441. There is to be paid into the account all moneys from the following sources:

(a) All moneys appropriated by the Legislature for the account.

(b) All moneys contributed to the account by any person and accepted by the state board.

(c) One-half of all moneys collected by way of criminal penalty and all moneys collected civilly under any proceeding brought pursuant to any provision of this division.

(d) All moneys collected by the state board for the account under Section 13304.

All moneys paid into the account are available without regard to fiscal years, for expenditure by the state board in accordance with the provisions of this article.

13441.5. The State Treasurer, when requested by the state board and approved by the Director of Finance, shall transfer moneys in the nature of a loan from the State Water Quality Control Fund to the account created pursuant to Section 13440, which shall be repayable from the account to such fund; provided, that the moneys transferred from the fund to the account shall not exceed the sum of twenty-five thousand dollars ($25,000) at any one time.

(Added by Stats. 1970, Ch. 918.)

13442. Upon application by a public agency with authority to clean up a waste or abate the effects thereof, the state board may order moneys to be paid from the account to the agency to assist it in cleaning up the waste or abating its effects on waters of the state. The agency shall not become liable to the state board for repayment of such moneys, but this shall not be any defense to an action brought pursuant to subdivision (b) of Section 13304 for the recovery of moneys paid hereunder.

NOTE. This article is subject to Government Code provisions on oil spills. (See page 60.)

CHAPTER 7. WATER RECLAMATION

Article 1. Short Title

13500. This chapter shall be known as and may be cited as the Water Reclamation Law.

Article 2. Declaration of Policy

13510. It is hereby declared that the people of the state have a primary interest in the development of facilities to reclaim water containing waste to supplement existing surface and underground water supplies and to assist in meeting the future water requirements of the state.

13511. The Legislature finds and declares that a substantial portion of the future water requirements of this state may be economically met by beneficial use of reclaimed water.

The Legislature further finds and declares that the utilization of reclaimed water by local communities for domestic, agricultural, industrial, recreational, and fish and wildlife purposes will contribute to the peace, health, safety and welfare of the people of the state. Use of reclaimed water constitutes the development of "new basic water supplies" as that term is used in Chapter 5 (commencing with Section 12880) of Part 6 of Division 6.

13512. It is the intention of the Legislature that the state undertake all possible steps to encourage development of water reclamation facilities so that reclaimed water may be made available to help meet the growing water requirements of the state.

Article 3. State Assistance

13515. In order to implement the policy declarations of this chapter, the state board is authorized to provide loans for the development of water reclamation facilities, or for studies and investigations in connection with water reclamation, pursuant to the provisions of Chapter 6 (commencing with Section 13400) of this division.

Article 4. Regulation of Reclamation

13520. As used in this article "reclamation criteria" are the levels of constituents of reclaimed water, and means for assurance of reliability under the design concept which will result in reclaimed water safe from the standpoint of public health, for the uses to be made.

13521. The State Department of Health shall establish statewide reclamation criteria for each varying type of use of reclaimed water where such use involves the protection of public health.

13522. Whenever the State Department of Health or any local health officer finds that a contamination exists as a result of use of reclaimed water, the department or local health officer shall order the contamination abated in accordance with the procedure provided for in Chapter 6 (commencing with Section 5400) of Part 3, Division 5 of the Health and Safety Code.

13522.5. (a) Any person reclaiming or proposing to reclaim water or using or proposing to use reclaimed water within any region for any purpose for which reclamation criteria have been established, shall file with the regional board of that region a report containing such information as may be required by the board.

(b) Every person reclaiming water or using reclaimed water shall file with the regional board of that region a report of any material change or proposed change in the character of the reclaimed water or its use.

(c) Each report under this section shall be sworn to or submitted under penalty of perjury.

(d) The provisions of this section shall not be construed so as to require any such report in the case of any producing, manufacturing, or processing operation involving the reclamation of water solely for use in such producing, manufacturing or processing operation.

(Added by Stats. 1970, Ch. 918.)

13522.6. Any person failing to furnish a report under Section 13522.5 when so requested by a regional board is guilty of a misdemeanor.

(Added by Stats. 1970, Ch. 918.)

13522.7. The Attorney General, at the request of the regional board, shall petition the superior court for the issuance of a temporary restraining order, temporary injunction or permanent injunction, or combination thereof, as may be appropriate, requiring any person not complying with Section 13522.5 to comply forthwith.

(Added by Stats. 1970, Ch. 918.)

13523. Each regional board, after consulting with and receiving the recommendations of the State Department of Health and after any necessary hearing, shall, if it determines such action to be necessary to protect the public health, safety, or welfare, prescribe water reclamation requirements for water which is used or proposed to be used as reclaimed water. Requirements may be placed upon the person reclaiming water, the user, or both. Such requirements shall include, or be in conformance with, the statewide reclamation criteria established pursuant to this article. The regional board may require the submission of a preconstruction report for the purpose of determining compliance with the reclamation criteria.

(Amended by Stats. 1970, Ch. 918.)

13524. No person shall reclaim water or use reclaimed water for any purpose for which reclamation criteria have been established until water reclamation requirements have been established pursuant to this article or a regional board determines that no requirements are necessary.

(Former 13525; amended and renumbered 13524 by Stats. 1970, Ch. 918.)

13525. Upon the refusal or failure of any person or persons reclaiming water or using reclaimed water to comply with the provisions of this article, the Attorney General, at the request of the regional board, shall petition the superior court for the issuance of a temporary restraining order, preliminary injunction, or permanent injunction, or combination thereof, as may be appropriate, prohibiting forthwith any person or persons from violating or threatening to violate the provisions of this article.

(Former 13524; amended and renumbered 13525 by Stats. 1970, Ch. 918.)

13525.5. Any person reclaiming water or using reclaimed water in violation of Section 13524, after such violation has been called to his attention in writing by the regional board, is guilty of a misdemeanor. Each day of such reclaiming or use shall constitute a separate offense.

(Added by Stats. 1970, Ch. 918.)

13526. Any person who, after such action has been called to his attention in writing by the regional board, uses reclaimed water for any purpose for which reclamation criteria have been established prior to the establishment of water reclamation requirements, is guilty of a misdemeanor.

13527. In administering any statewide program of financial assistance for water pollution or water quality control which may be delegated to it pursuant to Chapter 6 (commencing with Section

13400) of this division, the state board shall give added consideration to water quality control facilities providing optimum water reclamation and use of reclaimed water.

Nothing in this chapter prevents the appropriate regional board from establishing waste discharge requirements if a discharge is involved.

13528. No provision of this chapter shall be construed as affecting the existing powers of the State Department of Health.

Article 5. Surveys and Investigations

13530. The department, either independently or in cooperation with any person or any county, state, federal, or other agency, or on request of the state board, to the extent funds are allocated therefor, shall conduct surveys and investigations relating to the reclamation of water from waste pursuant to Section 230.

Article 6. Waste Well Regulation

13540. No person shall construct, maintain or use any waste well extending to or into a subterranean water-bearing stratum that is used or intended to be used as, or is suitable for, a source of water supply for domestic purposes. Notwithstanding the foregoing, when a regional board finds that water quality considerations do not preclude controlled recharge of such stratum by direct injection, and when the State Department of Health, following a public hearing, finds the proposed recharge will not impair the quality of water in the receiving aquifer as a source of water supply for domestic purposes, reclaimed water may be injected by a well into such stratum. The State Department of Health may make and enforce such regulations pertaining thereto as it deems proper. Nothing in this section shall be construed to affect the authority of the state board or regional boards to prescribe and enforce requirements for such discharge.

13541. As used in this article, "waste well" includes any hole dug or drilled into the ground, used or intended to be used for the disposal of waste.

Chapter 8. Federal Assistance for Treatment Facilities

13600. The state board shall administer any program of financial assistance for water quality control which may be delegated to it by law, and may accept funds from the United States or any person to that end.

13601. The state board, in cooperation with the regional boards, shall survey the statewide need for waste collection, treatment and disposal facilities which will be required during the five-year period, January 1, 1968, to December 31, 1972, inclusive, to adequately protect the waters of the state for beneficial use. The state board shall also, biennially, commencing in 1970, survey the need for facilities which will be required by public agencies for the ensuing five-year period. The state board may request a local public agency operating such facilities to transmit to its regional board a report on the following:

(a) A summary of the construction or improvement of its waste collection, treatment and disposal facilities and amounts expended therefor.

(b) An estimate of its needs for the five-year period, January 1, 1968, to December 31, 1972, inclusive, and for any ensuing five-year period.

The state board shall review the information contained in the reports made by the local public agencies. The state board shall submit to the Legislature findings and conclusions as to the anticipated local, state, and federal financing necessary to provide the needed facilities for such periods.

13602. The state board shall make no commitment or enter into any agreement pursuant to an exercise of authority under this chapter until it has determined that any money required to be furnished as the state's share of project cost is available for such purpose.

13603. The Governor may request the funds required to finance the state's share of project costs for each fiscal year through inclusion of the anticipated state's share in the annual Budget Bill.

13604. The state board shall review and approve each waste collection, treatment, and disposal project for which an application for a grant under the Federal Water Pollution Control Act has been made. The state board shall, in reviewing each project, determine whether such project is in conformity with state policy for water quality control and in conformity with water quality control plans adopted by regional boards, and shall certify that such project is entitled to priority over other eligible projects on the basis of financial as well as water pollution control needs.

(Amended by Stats. 1970, Ch. 254.)

13605. For the purpose of reviewing applications for grants made pursuant to authority granted in Section 13600, the state board shall give added consideration to applicants having facilities providing optimum water reclamation and use of reclaimed water.

13606. If an application states that the applicant is not able to finance the local agency share of the project, the state board shall consider whether the applicant should be required to levy a sewerage service charge. If the state board determines a sewerage service charge is necessary to pay such costs, the state board shall not approve the grant application unless, as a condition to such approval, the applicant agrees to levy a reasonable and equitable sewerage service charge in connection with the proposed project.

Any such applicant, not otherwise authorized, is authorized by this section to levy a sewerage service charge pursuant to such an agreement, and shall levy such charge in the manner provided in the agreement.

13607. All money appropriated by the Legislature for the state's share of the project costs shall be appropriated without regard to fiscal years, or shall augment an appropriation without regard to fiscal years.

13608. After the effective date of the amendment of this section by the 1972 Regular Session of the Legislature, no application for a grant under this division or under the Federal Water Pollution Control Act, or amendment thereof, or for a loan pursuant to Chapter 6 (commencing with Section 13400) of this division, shall be accepted by the

state board unless such application contains assurances that supervisors and operators of the plant meet or will meet certification requirements, adopted pursuant to Chapter 9 (commencing with Section 13625) of this division, for the proposed plant, as well as the plant in current operation.

(Amended by Stats. 1970, Ch. 918, and Stats. 1972, Ch. 1315.)

Chapter 9. Municipal Waste Water Treatment Plant Classification and Operator Certification

(Added by Stats. 1972, Ch. 1315.)

13625. As used in this chapter:

(a) "Municipal waste water treatment plant" means the various facilities used in the treatment or reclamation of sewage and industrial wastes.

(b) "Supervisor" means any person who has direct responsibility for the operation of a municipal waste water treatment plant or who supervises any operators of such a plant.

(c) "Operator" means any person who operates a municipal waste water treatment plant.

(d) "Certificate" means a certificate of competency issued by the state board stating that the supervisor or operator has met the requirements for a specific classification in the certification program.

13626. The state board shall classify types of municipal waste water treatment plants for the purpose of determining the levels of competence necessary to operate them. The state board shall adopt and promulgate regulations setting forth the types of plants and the factors on which the state board based its classification.

13627. (a) Supervisors and operators of municipal waste water treatment plants shall possess a certificate of appropriate grade in accordance with, and to the extent recommended by the advisory committee and required by, regulations adopted by the state board. The state board shall develop and specify in its regulations the training necessary to qualify a supervisor or operator for certification for each type and class of plant. The state board may accept experience in lieu of qualification training. In lieu of a properly certified waste water treatment plant operator, the board may approve use of a water treatment plant operator of appropriate grade certified by the State Board of Public Health, where water reclamation is involved.

(b) A person employed as a municipal waste water treatment plant supervisor or operator on the effective date of regulations adopted pursuant to this chapter shall be issued an appropriate certificate provided he meets the training, education, and experience requirements prescribed by regulations.

13628. Certificates issued pursuant to this chapter shall be renewed biennially, subject to compliance by applicants with renewal requirements prescribed by regulations. Fees shall be payable to the state board at the time of issuance of a certificate and at the time of renewal. The state board shall establish a fee schedule to provide revenues to cover the cost of this program.

13629. The state board may approve courses of instruction at higher educational institutions which will qualify operators for each grade of certification. The state board shall also approve courses of in-

struction given by professional associations, or other nonprofit private or public agencies which shall be deemed equivalent to courses of instruction given by higher educational institutions.

13630. The state board is the state agency which is authorized to represent the state and its local governmental agencies in administering any federal or state funds available for municipal waste water treatment plant operator training. The state board may provide technical and financial assistance to organizations providing operator training programs.

13631. Prior to adopting or revising any regulations or approving any courses for operator training, the state board shall appoint an advisory committee to assist it in carrying out its responsibilities under this chapter.

13632. The advisory committee appointed pursuant to Section 13631 shall consist of the following:

(a) Two persons from a statewide organization representing municipal waste water treatment plant operators and supervisors, who shall be employed in a waste water treatment plant as an operator or supervisor.

(b) Two persons from statewide organizations representing municipalities, including counties.

(c) Two persons from statewide organizations representing local sanitation agencies, other than municipalities.

(d) One person who is a professional engineer specializing in sanitary engineering.

(e) One person from a university or a state college school or division of engineering.

13633. The advisory committee shall review all proposed regulations and make recommendations to the state board prior to adoption of any regulations or changes therein.

13634. This chapter shall not apply to nongovernmentally owned or operated facilities.

Chapter 10. Water Wells and Cathodic Protection Wells

Article 1. Declaration of Policy

13700. The Legislature finds that the greater portion of the water used in this state is obtained from underground sources and that such waters are subject to impairment in quality and purity, causing detriment to the health, safety and welfare of the people of the state. The Legislature therefore declares that the people of the state have a primary interest in the location, construction, maintenance, abandonment and destruction of water wells and cathodic protection wells, which activities directly affect the quality and purity of underground waters.

Article 2. Definitions

13710. "Well" or "water well" as used in this chapter, means any artificial excavation constructed by any method for the purpose of extracting water from, or injecting water into, the underground. This definition shall not include: (a) oil and gas wells, or geothermal wells constructed under the jurisdiction of the Department of Conservation, except those wells converted to use as water wells; or (b) wells

used for the purpose of (1) dewatering excavation during construction, or (2) stabilizing hillsides or earth embankments.

13711. "Cathodic protection well," as used in this chapter, means any artificial excavation in excess of 50 feet constructed by any method for the purpose of installing equipment or facilities for the protection electrically of metallic equipment in contact with the ground, commonly referred to as cathodic protection.

Article 3. Reports

13750. Every person who hereafter intends to dig, bore, or drill a water well or cathodic protection well, or who intends to deepen or reperforate any such well, or to abandon or destroy any such well, shall file with the department a notice of intent to engage in such construction, alteration, destruction, or abandonment prior to commencing such construction, alteration, destruction, or abandonment; provided, that when such construction, alteration, destruction, or abandonment must be accomplished immediately in order to prevent damage to persons or property due to the loss of an existing water supply, such notice shall be filed with the department as soon as possible thereafter, but in any event not more than five days after commencement of such construction, alteration, destruction, or abandonment or repair.

The report shall be made on forms furnished by the department and shall contain such information as the department may require, including, but not limited to: (a) description of the well site sufficiently exact to permit location and identification of the well; (b) proposed date of construction of the well; (c) the use for which the well is intended; (d) the work to be done and a description of type of construction; and (e) in event of late filing, the reasons therefor.

13751. Every person who hereafter digs, bores or drills a water well or cathodic protection well, or abandons or destroys any such well, or who deepens or reperforates any such well, shall file with the department a report of completion of such well within 30 days after its construction or alteration has been completed.

The report shall be made on forms furnished by the department and shall contain such information as the department may require, including, but not limited to: (a) description of the well site sufficiently exact to permit location and identification of the well; (b) detailed log of the well; (c) description of type of construction; (d) details of perforation; and (e) methods used for sealing off surface or contaminated waters.

13752. Reports made pursuant to Section 13751 shall not be made available for inspection by the public but shall be made available to governmental agencies for use in making studies; provided, that any report shall be made available to any person who obtains a written authorization from the owner of the well.

13753. Every person who hereafter converts, for use as a water well or cathodic protection well, any oil or gas well originally constructed under the jurisdiction of the Department of Conservation pursuant to the provisions of Article 4 (commencing with Section 3200), Chapter 1, Division 3 of the Public Resources Code, shall comply with all provisions of this chapter.

13754. Failure to comply with any provision of this article, or willful and deliberate falsification of any report required by this article, is a misdemeanor.

Before commencing prosecution against any person, other than for willful and deliberate falsification of any report required by this article, the person shall be given reasonable opportunity to comply with the provisions of this article.

13755. Nothing in this chapter shall affect the powers and duties of the State Department of Health with respect to water and water systems pursuant to Chapter 7 (commencing with Section 4010) of Division 5 of the Health and Safety Code. Every person shall comply with this chapter and any regulation adopted pursuant thereto, in addition to standards adopted by any city or county.

Article 4. Quality Control

13800. The department, after such studies and investigation pursuant to Section 231 as it finds necessary, on determining that water well and cathodic protection well construction, maintenance, abandonment, and destruction standards are needed in an area to protect the quality of water used or which may be used for any beneficial use, shall so report to the appropriate regional water quality control board and to the State Department of Health. The report shall contain such recommended standards for water well and cathodic protection well construction, maintenance, abandonment, and destruction as, in the department's opinion, are necessary to protect the quality of any affected water.

13801. The regional board upon receipt of a report from the department shall hold a public hearing on the need to establish such well standards for the area involved. The regional board may hold such a public hearing with respect to any area regardless of whether a report has been received from the department if it has information that such standards may be needed.

13802. If the regional board finds that standards of water well and cathodic protection well construction, maintenance, abandonment, and destruction are needed in any area to protect the quality of water used, or which may be used, for any beneficial use, it shall determine the area to be involved and so report to each affected county and city in the area. The report shall also contain any well standards which have been recommended by the department.

13803. Each such affected county and city shall, within 120 days of receipt of the report, adopt an ordinance establishing standards of water well and cathodic protection well construction, maintenance, abandonment, and destruction for the area designated by the regional board. Prior to adoption of such ordinance each affected county and city shall consult with all interested parties, including licensed well drillers. A copy of such ordinance shall be sent to the regional board on its adoption and the regional board shall transmit such ordinance to the department for its review and comments.

13804. Such county and city well standards shall take effect 60 days from the date of their adoption by the county or city unless the regional board, on its own motion, or on the request of any affected person, holds a public hearing on the matter and determines that the

county or city well standards are not sufficiently restrictive to protect the quality of the affected waters. If the board makes such a determination it shall so report to the affected county or city and also recommend the well standards, or the modification of the county or city well standards, which it determines are necessary.

13805. If a county or city fails to adopt an ordinance establishing water well and cathodic protection well construction, maintenance, abandonment, and destruction standards within 120 days of receipt of the regional board's report of its determination that such standards are necessary pursuant to Section 13802, or fails to adopt or modify such well standards in the manner determined as necessary by the regional board pursuant to Section 13804 within 90 days of receipt of the regional board's report, the regional board may adopt standards for water well and cathodic protection well construction, maintenance, abandonment, and destruction for the area. Such regional board well standards shall take effect 30 days from the date of their adoption by the regional board and shall be enforced by the city or county and have the same force and effect as if adopted as a county or city ordinance.

(Amended by Stats. 1970, Ch. 918.)

13806. Any action, report, or determination taken or adopted by a regional board or any failure of a regional board to act pursuant to this article, or any county or city ordinance in the event of the failure of a regional board to review such ordinance pursuant to Section 13804, may be reviewed by the state board on its own motion, and shall be reviewed by the state board on the request of any affected county or city, in the same manner as other action or inaction of the regional board is reviewed pursuant to Section 13320. The state board has the same powers as to the review of action or inaction of a regional board or of a county or city ordinance under this article as it has as to other action or inaction of a regional board under Section 13320, including being vested with all the powers granted a regional board under this article, with like force and effect if it finds that appropriate action has not been taken by a regional board. Any action of a regional board under this article or any county or city ordinance affected by the review of the state board shall have no force or effect during the period of the review by the state board.

(Amended Stats. 1969, Ch. 800.)

Chapter 11. Discharges From Houseboats on or in the Waters of the State

13900. The Legislature finds and hereby declares that discharges from houseboats in or on the waters of the state constitute a significant source of waste as defined in Section 13050; that discharges of waste from houseboats in or on the waters of the state may impair the beneficial uses of the waters of the state to the detriment of the health, safety, and welfare of the people of the state; and that the discharges of waste from houseboats are not adequately regulated. The Legislature therefore declares that the people of the state have a primary interest in the coordination and implementation of the regulation of discharges of waste from houseboats on or in the waters of the state.

13901. As used in this article, "houseboat" means a watercraft or industrial or commercial structure on or in the waters of the state,

floating or nonfloating, which is designed or fitted out as a place of habitation and is not principally used for transportation. "Houseboat" includes platforms, and waterborne hotels and restaurants. "City or county" means any city, county, city and county, or port authority.

13902. Each regional board shall investigate its region to determine areas in which discharges of waste from houseboats are inadequately regulated by local ordinance.

13903. Each regional board shall notify each affected city or county, the State Department of Health and the Department of Navigation and Ocean Development * of areas of inadequate regulation by ordinance of discharges of waste from houseboats and shall recommend provisions necessary to control the discharges of waste from houseboats into the waters.

13904. Each such affected city or county shall within 120 days of receipt of the notice from the regional board, adopt an ordinance for control of discharges of waste from houseboats within the area for which notice was given by the board. A copy of such ordinance shall be sent to the regional board on its adoption and the regional board shall transmit such ordinance to the state board, the State Department of Health and the Department of Navigation and Ocean Development.

13905. Such city or county ordinance shall take effect 60 days from the date of adoption by the city or county, unless the regional board holds a public hearing on the matter and determines that the city or county ordinance is not sufficiently restrictive to protect the quality of the waters affected. If the board makes such a determination, it shall so report to the affected city or county and also recommend the ordinance, or modification of the city or county ordinance, which it determines is necessary.

13906. If a city or county fails to adopt an ordinance controlling discharges of waste from houseboats within 120 days of receipt of the regional board's notice pursuant to Section 13903, or fails to adopt or modify such ordinance in the manner determined as necessary by the regional board pursuant to Section 13905, within 90 days of receipt of the regional board's notice, the regional board may adopt regulations necessary for the control of discharges of waste from houseboats for the area designated. Such regional board regulations shall take effect 30 days from the date of their adoption and shall be enforced by the city or county and have the same force and effect as if adopted as a city or county ordinance.

13907. Any action, report, determination, or regulation taken or adopted by a regional board, or any failure of a regional board to act may be reviewed by the state board, and shall be reviewed by the state board on the request of any affected city or county. The state board has all powers as to the review of action or inaction of a regional board under this article as it has to other action or inaction of a regional board, including all powers granted to a regional board to initially determine areas in which discharges of waste from houseboats are inadequately regulated by local ordinance and to adopt regulations when a city or county fails to do so, if the state board finds that appropriate action has not been taken by a regional board. Any

* Note: Formerly called State Department of Harbors and Watercraft.

action of a regional board under this chapter or any city or county ordinance affected by the review of the state board shall have no force or effect during the period of the review by the state board.

(Amended by Stats. 1969, Ch. 800.)

13908. No provision in this chapter and no action thereunder by a regional board or the state board is a limitation on the power of a city or county to adopt and enforce additional ordinances or regulations not in conflict therewith imposing further conditions, restrictions, or limitations with respect to the discharges of waste from houseboats.

Chapter 12. Special Water Quality Provisions

13950. Notwithstanding any other provision of law, upon any district in the Lake Tahoe Basin providing in any area of the district a sewer system and treatment facilities sufficient to handle and treat any resultant waste and transportation facilities sufficient to transport any resultant effluent outside the Lake Tahoe Basin, the further maintenance or use of cesspools or other means of waste disposal in such area is a public nuisance and the district shall require all buildings from which waste is discharged to be connected with the sewer system within a period of not less than 90 days from the completion of such system and facilities.

(Added by Stats. 1969 Ch. 800.)

13951. Notwithstanding any other provision of law, on or after January 1, 1972, waste from within the Lake Tahoe watershed shall be placed only into a sewer system and treatment facilities sufficient to handle and treat any such waste and transportation facilities sufficient to transport any resultant effluent outside the Lake Tahoe watershed, except that such waste may be placed in a holding tank which is pumped and transported to such treatment and transportation facilities.

As used in this section "waste" shall not include solid waste refuse.

The further maintenance or use of cesspools, septic tanks, or other means of waste disposal in the Lake Tahoe watershed on or after January 1, 1972, by any person, except as permitted pursuant to this section, is a public nuisance. The occupancy of any building from which waste is discharged in violation of this section is a public nuisance, and an action may be brought to enjoin any person from occupying any such building.

This section shall not be applicable to a particular area of the Lake Tahoe watershed whenever the regional board for the Lahontan region finds that the continued operation of septic tanks, cesspools, or other means of waste disposal in such area will not, individually or collectively, directly or indirectly, affect the quality of the waters of Lake Tahoe and that the sewering of such area would have a damaging effect upon the environment.

This section shall not affect the applicability of Section 13950.

(Added by Stats. 1969, Ch. 1356.)

* * * * * * *

This act [the Porter-Cologne Water Quality Control Act] is intended to implement the legislative recommendations of the final report of the

State Water Resources Control Board submitted to the 1969 Regular Session of the Legislature entitled "Recommended Changes in Water Quality Control," prepared by the Study Project-Water Quality Control Program.

(Stats. 1969, Ch. 482, Sec. 36.)

CHAPTER 13. CLEAN WATER BOND LAW OF 1970

(Added by Stats. 1970, Ch. 508, subject to referendum. Approved by vote at election held on November 3, 1970)

13970. This chapter may be cited as the Clean Water Bond Law of 1970.

13971. The Legislature hereby finds and declares that clean water, which fosters the health of the people, the beauty of their environment, the expansion of industry and agriculture, the enhancement of fish and wildlife, the improvement of recreational facilities and the provision of pure drinking water at a reasonable cost, is an essential public need. Although the State of California is endowed with abundant lakes and ponds, streams and rivers, and hundreds of miles of shoreline, as well as large quantities of underground water, these vast water resources are threatened by pollution, which, if not checked, will impede the state's economic, community and social growth. The chief cause of pollution is the discharge of inadequately treated waste into the waters of the state. Many public agencies have not met the demands for adequate waste treatment or the control of water pollution because of inadequate financial resources and other responsibilities. Increasing population accompanied by accelerating urbanization, growing demands for water of high quality, rising costs of construction and technological changes mean that unless the state acts now the needs may soar beyond the means available for public finance. Meeting these needs is a proper purpose of the federal, state and local governments. Local agencies, by reason of their closeness to the problem, should continue to have primary responsibility for construction, operation and maintenance of the facilities necessary to cleanse our waters. Since water pollution knows no political boundaries and since the cost of eliminating the existing backlog of needed facilities and of providing additional facilities for future needs will be beyond the ability of local agencies to pay, the state, to meet its responsibility to protect and promote the health, safety and welfare of the inhabitants of the state, should assist in the financing. The federal government is contributing to the cost of control of water pollution, and just provision should be made to cooperate with the United States of America. It is the intent of this chapter to provide necessary funds to insure the full participation by the state under the provisions of Section 8 of the Federal Water Pollution Control Act (33 U.S.C. 466 et seq.) and acts amendatory thereof or supplementary thereto.

13972. The State General Obligation Bond Law is adopted for the purpose of the issuance, sale, and repayment of, and otherwise providing with respect to, the bonds authorized to be issued by this chapter, and the provisions of that law are included in this chapter as though set out in full in this chapter except that notwithstanding anything in the State General Obligation Bond Law, the bonds authorized hereunder

shall bear such rates of interest, or maximum rates, as may from time to time be fixed by the State Treasurer, with the approval of the committee, and the maximum maturity of the bonds shall not exceed 50 years from the date of the bonds, or from the date of each respective series. The maturity of each respective series shall be calculated from the date of such series.

13973. As used in this chapter, and for the purposes of this chapter as used in the State General Obligation Bond Law, the following words shall have the following meanings:

(a) "Committee" means the Clean Water Finance Committee, created by Section 13974.

(b) "Board" means the State Water Resources Control Board.

(c) "Fund" means the State Clean Water Fund.

(d) "Municipality" shall have the same meaning as in the Federal Water Pollution Control Act (33 U.S.C. 1151 et seq.) and acts amendatory thereof or supplementary thereto and shall also include the state or any agency or department thereof.

(e) "Treatment works" shall have the same meaning as in the Federal Water Pollution Control Act (33 U.S.C. 1151 et seq.) and acts amendatory thereof or supplementary thereto.

(f) "Construction" shall have the same meaning as in the Federal Water Pollution Control Act (33 U.S.C. 1151 et seq.) and acts amendatory thereof or supplementary thereto.

(g) "Eligible project" means a project for the construction of treatment works which is all of the following:

(1) Eligible for federal assistance, whether or not federal funds are then available therefor;

(2) Necessary to prevent water pollution;

(3) Certified by the board as entitled to priority over other treatment works, and which complies with applicable water quality standards, policies and plans.

(h) "Federal assistance" means funds available to a municipality either directly or through allocation by the state, from the federal government as grants for construction of treatment works, pursuant to Section 8 of the Federal Water Pollution Control Act, and acts amendatory thereof.

13974. The Clean Water Finance Committee is hereby created. The committee shall consist of the Governor or his designated representative, the State Controller, the State Treasurer, the Director of Finance, and the chairman of the board. The executive officer of the board shall serve as a member of the committee in the absence of the chairman. Said committee shall be the "committee" as that term is used in the State General Obligation Bond Law.

13975. The committee is hereby authorized and empowered to create a debt or debts, liability or liabilities, of the State of California, in the aggregate amount of two hundred fifty million dollars ($250,000,000), in the manner provided in this chapter. Such debt or debts, liability or liabilities, shall be created for the purpose of providing the fund to be used for the object and work specified in Section 13976.

13976. (a) The moneys in the fund shall be used for the purposes set forth in this section.

(b) The board is authorized to enter into contracts with municipalities having authority to construct, operate and maintain treatment works, for grants to such municipalities to aid in the construction of eligible projects, and for reclamation of water.

Grants may be made pursuant to this section to reimburse municipalities for construction for which contracts were let subsequent to July 1, 1970, and before the first sale of bonds authorized to be issued by this chapter.

Any contract pursuant to this section may include such provisions as may be agreed upon by the parties thereto, and any such contract concerning an eligible project shall include, in substance, the following provisions:

(1) An estimate of the reasonable cost of the eligible project;

(2) An agreement by the board to pay to the municipality, during the progress of construction or following completion of construction as may be agreed upon by the parties, an amount which equals at least 12½ percent of the eligible project cost determined pursuant to federal and state laws, and regulations. Notwithstanding the provisions of any existing agreements entered into pursuant to this subdivision, the board shall pay to the municipality under any contract entered into pursuant to this subdivision for a project for which the federal grant offer was made on or after October 18, 1972, an amount which equals 12½ percent of the eligible project cost determined pursuant to federal and state law and regulations;

(3) An agreement by the municipality, (i) to proceed expeditiously with, and complete, the eligible project, (ii) to commence operation of the treatment works on completion thereof, and to properly operate and maintain such works in accordance with applicable provisions of law, (iii) to apply for and make reasonable efforts to secure federal assistance for the eligible project, (iv) to secure the approval of the board before applying for federal assistance in order to maximize the amounts of such assistance received or to be received for all eligible projects in the state, and (v) to provide for payment of the municipality's share of the cost of the eligible project.

(c) The board may make direct grants to any municipality or by contract or otherwise undertake plans, surveys, research, development and studies necessary, convenient or desirable to the effectuation of the purposes and powers of the board pursuant to this division and to prepare recommendations with regard thereto, including the preparation of comprehensive statewide or areawide studies and reports on the collection, treatment and disposal of waste under a comprehensive cooperative plan.

The aggregate amount of moneys which may be advanced or granted to or committed to municipalities for the purpose of planning, research and development, whether by the board or under the direction of the board or in the form of direct grants to municipalities for such purpose, shall not exceed in the aggregate such amount as may be fixed from time to time by the committee.

(d) The board may from time to time with the approval of the committee transfer moneys in the fund to the State Water Quality Control Fund to be available for loans to public agencies pursuant to Chapter 6 (commencing with Section 13400) of this division.

(e) Not more than one-half of 1 percent of the moneys deposited in the fund may be expended by the board for costs incurred in administering the provisions of this chapter.

(f) As much of the moneys in the fund as is necessary shall be used to reimbure the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code

(g) The board may with the approval of the committee transfer not more than ten million dollars ($10,000,000) from the fund to a special reserve fund as additional security for the payment of the principal of and the interest on revenue bonds sold by the state as provided by law to provide funds to municipalities for needed sewage facilities. Such money shall be used for such purpose only after all other securities provided by law have been exhausted. Any money not used for such purpose shall, after retirement of the revenue bonds, be returned to the fund and be available for other purposes provided for in this section.

(h) The board may adopt rules and regulations governing the making and enforcing of contracts pursuant to this section

13977. All bonds herein authorized, which shall have been duly sold and delivered as herein provided, shall constitute valid and legally binding general obligations of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal and interest thereon.

There shall be collected annually in the same manner and at the same time as other state revenue is collected such a sum, in addition to the ordinary revenues of the state, as shall be required to pay the principal and interest on said bonds as herein provided, and it is hereby made the duty of all officers charged by law with any duty in regard to the collection of said revenue, to do and perform each and every act which shall be necessary to collect said additional sum.

All money deposited in the fund which has been derived from premium and accrued interest on bonds sold shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

13978. All money deposited in the fund pursuant to any provision of law requiring repayments to the state for assistance financed by the proceeds of the bonds authorized by this chapter shall be available for transfer to the General Fund. When transferred to the General Fund such money shall be applied as a reimbursement to the General Fund on account of principal and interest on the bonds which has been paid from the General Fund.

13979. There is hereby appropriated from the General Fund in the State Treasury for the purpose of this chapter such an amount as will equal the following:

(a) Such sum annually as will be necessary to pay the principal of and the interest on the bonds issued and sold pursuant to the provisions of this chapter, as said principal and interest become due and payable.

(b) Such sum as is necessary to carry out the provisions of Section 13980, which sum is appropriated without regard to fiscal years.

13980. For the purpose of carrying out the provisions of this chapter, the Director of Finance may by executive order authorize the withdrawal from the General Fund of an amount or amounts not to

exceed the amount of the unsold bonds which the committee has by resolution authorized to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund and shall be disbursed by the board in accordance with this chapter. Any moneys made available under this section to the board shall be returned by the board to the General Fund from moneys received from the sale of bonds sold for the purpose of carrying out this chapter.

13981. Upon request of the board, supported by a statement of the proposed arrangements to be made pursuant to Section 13976 for the purposes therein stated, the committee shall determine whether or not it is necessary or desirable to issue any bonds authorized under this chapter in order to make such arrangements, and, if so, the amount of bonds then to be issued and sold. Successive issues of bonds may be authorized and sold to make such arrangements progressively, and it shall not be necessary that all of the bonds herein authorized to be issued shall be sold at any one time.

13982. The committee may authorize the State Treasurer to sell all or any part of the bonds herein authorized at such time or times as may be fixed by the State Treasurer.

13983. All proceeds from the sale of bonds, except those derived from premiums and accrued interest, shall be available for the purpose provided in Section 13976, but shall not be available for transfer to the General Fund to pay principal and interest on bonds. The money in the fund may be expended only as herein provided.

Chapter 14. Clean Water Bond Law of 1974 *

Article 1. Short Title, Legislative Declarations, and General Definitions

13985. This chapter may be cited as the Clean Water Bond Law of 1974.

13986. The Legislature hereby finds and declares that clean water, which fosters the health of the people, the beauty of their environment, the expansion of industry and agriculture, the enhancement of fish and wildlife, the improvement of recreational facilities and the provision of pure drinking water at a reasonable cost, is an essential public need. Although the State of California is endowed with abundant lakes and ponds, streams and rivers, and hundreds of miles of shoreline, as well as large quantities of underground water, these vast water resources are threatened by pollution, which, if not checked, will impede the state's economic, community and social growth. The chief cause of pollution is the discharge of inadequately treated waste into the waters of the state. Many public agencies have not met the demands for adequate waste treatment or the control of water pollution because of inadequate financial resources and other responsibilities. Increasing population accompanied by accelerating urbanization, growing demands for water of high quality, rising costs of construction and technological changes mean that unless the state acts now the needs may soar beyond the means available for public finance. Meeting these needs is a proper purpose of the federal, state and local governments. Local agencies, by

* Approved by voters, June 4, 1974 Primary Election

reason of their closeness to the problem, should continue to have primary responsibility for construction, operation and maintenance of the facilities necessary to cleanse our waters. Since water pollution knows no political boundaries and since the cost of eliminating the existing backlog of needed facilities and of providing additional facilities for future needs will be beyond the ability of local agencies to pay, the state, to meet its responsibility to protect and promote the health, safety and welfare of the inhabitants of the state, should assist in the financing. The federal government is contributing to the cost of control of water pollution, and just provision should be made to cooperate with the United States of America. It is the intent of this chapter to provide necessary funds to insure the full participation by the state under the provisions of Title 11 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and acts amendatory thereof or supplementary thereto.

13987. The State General Obligation Bond Law is adopted for the purpose of the issuance, sale, and repayment of, and otherwise providing with respect to, the bonds authorized to be issued by this chapter, and the provisions of that law are included in this chapter as though set out in full in this chapter except that notwithstanding anything in the State General Obligation Bond Law, the bonds authorized hereunder shall bear such rates of interest, or maximum rates, as may from time to time be fixed by the State Treasurer, with the approval of the committee, and the maximum maturity of the bonds shall not exceed 50 years from the date of the bonds, or from the date of each respective series. The maturity of each respective series shall be calculated from the date of such series.

13988. As used in this chapter, and for the purposes of this chapter as used in the State General Obligation Bond Law, the following words shall have the following meanings:

(a) "Committee" means the Clean Water Finance Committee, created by Section 13989.

(b) "Board" means the State Water Resources Control Board.

(c) "Fund" means the State Clean Water Fund.

(d) "Municipality" shall have the same meaning as in the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and acts amendatory thereof or supplementary thereto and shall also include the state or any agency or department thereof.

(e) "Treatment works" shall have the same meaning as in the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and acts amendatory thereof or supplementary thereto.

(f) "Construction" shall have the same meaning as in the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and acts amendatory thereof or supplementary thereto.

(g) "Eligible project" means a project for the construction of treatment works which is all of the following:

(1) Eligible for federal assistance, whether or not federal funds are then available therefor;

(2) Necessary to prevent water pollution;

(3) Certified by the board as entitled to priority over other treatment works, and which complies with applicable water quality standards, policies and plans.

(h) "Federal assistance" means funds available to a municipality either directly or through allocation by the state, from the federal government as grants for construction of treatment works, pursuant to Title II of the Federal Water Pollution Control Act, and acts amendatory thereof.

13989. The Clean Water Finance Committee is hereby created. The committee shall consist of the Governor or his designated representative, the State Controller, the State Treasurer, the Director of Finance, and the chairman of the board. The executive officer of the board shall serve as a member of the committee in the absence of the chairman. Said committee shall be the "committee" as that term is used in the State General Obligation Bond Law.

13990. The committee is hereby authorized and empowered to create a debt or debts, liability or liabilities, of the State of California, in the aggregate amount of two hundred fifty million dollars ($250,000,000), in the manner provided in this chapter. Such debt or debts, liability or liabilities, shall be created for the purpose of providing the fund to be used for the object and work specified in Section 13991.

13991. (a) The moneys in the fund shall be used for the purposes set forth in this section.

(b) The board is authorized to enter into contracts with muincipalities having authority to construct, operate and maintain treatment works, for grants to such municipalities to aid in the construction of eligible projects, and for reclamation of water.

Grants may be made pursuant to this section to reimburse municipalities for construction for which contracts were let subsequent to July 1, 1970, and before the first sale of bonds authorized to be issued by this chapter.

Any contract pursuant to this section may include such provisions as may be agreed upon by the parties thereto, and any such contract concerning an eligible project shall include, in substance, the following provisions:

(1) An estimate of the reasonable cost of the eligible project;

(2) An agreement by the board to pay to the municipality, during the progress of construction or following completion of construction as may be agreed upon by the parties, an amount which equals at least 12½ percent of the eligible project cost determined pursuant to federal and state laws, and regulations;

(3) An agreement by the municipality, (i) to proceed expeditiously with, and complete, the eligible project, (ii) to commence operation of the treatment works on completion thereof, and to properly operate and maintain such works in accordance with applicable provisions of law, (iii) to apply for and make reasonable efforts to secure federal assistance for the eligible project, (iv) to secure the approval of the board before applying for federal assistance in order to maximize the amounts of such assistance received or to be received for all eligible projects in the state, and (v) to provide for payment of the municipality's share of the cost of the eligible project.

(c) The board may make direct grants to any municipality or by contract or otherwise undertake plans, surveys, research, development and studies necessary, convenient or desirable to the effectuation of the purposes and powers of the board pursuant to this division and to prepare recommendations with regard thereto, including the preparation of comprehensive statewide or areawide studies and reports on the collection, treatment and disposal of waste under a comprehensive cooperative plan.

The aggregate amount of moneys which may be advanced or granted to or committed to municipalities for the purpose of planning, research and development, whether by the board or under the direction of the board or in the form of direct grants to municipalities for such purpose, shall not exceed in the aggregate such amount as may be fixed from time to time by the committee.

(d) The board may from time to time with the approval of the committee transfer moneys in the fund to the State Water Quality Control Fund to be available for loans to public agencies pursuant to Chapter 6 (commencing with Section 13400) of this division.

(e) Not more than one-half of one percent of the moneys deposited in the fund may be expended by the board for costs incurred in administering the provisions of this chapter.

(f) As much of the moneys in the fund as is necessary shall be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code.

(g) The board may adopt rules and regulations governing the making and enforcing of contracts pursuant to this section.

13992. All bonds herein authorized, which shall have been duly sold and delivered as herein provided, shall constitute valid and legally binding general obligations of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal and interest thereon.

There shall be collected annually in the same manner and at the same time as other state revenue is collected such a sum, in addition to the ordinary revenues of the state, as shall be required to pay the principal and interest on said bonds as herein provided, and it is hereby made the duty of all officers charged by law with any duty in regard to the collection of said revenue, to do and perform each and every act which shall be necessary to collect said additional sum.

All money deposited in the fund which has been derived from premium and accrued interest on bonds sold shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

13993. All money deposited in the fund pursuant to any provision of law requiring repayments to the state for assistance financed by the proceeds of the bonds authorized by this chapter shall be available for transfer to the General Fund. When transferred to the General Fund such money shall be applied as a reimbursement to the General Fund on account of principal and interest on the bonds which has been paid from the General Fund.

13994. There is hereby appropriated from the General Fund in the State Treasury for the purpose of this chapter such an amount as will equal the following:

(a) Such sum annually as will be necessary to pay the principal of and the interest on the bonds issued and sold pursuant to the provisions of this chapter, as said principal and interest become due and payable.

(b) Such sum as is necessary to carry out the provisions of Section 13995, which sum is appropriated without regard to fiscal years.

13995. For the purpose of carrying out the provisions of this chapter, the Director of Finance may by executive order authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds which the committee has by resolution authorized to be sold for the purpose of carrying out this chapter. Any amounts withdrawn shall be deposited in the fund and shall be disbursed by the board in accordance with this chapter. Any moneys made available under this section to the board shall be returned by the board to the General Fund from moneys received from the sale of bonds sold for the purpose of carrying out this chapter.

13996. Upon request of the board, supported by a statement of the proposed arrangements to be made pursuant to Section 13991 for the purposes therein stated, the committee shall determine whether or not it is necessary or desirable to issue any bonds authorized under this chapter in order to make such arrangements, and, if so, the amount of bonds then to be issued and sold. Successive issues of bonds may be authorized and sold to make such arrangements progressively, and it shall not be necessary that all of the bonds herein authorized to be issued shall be sold at any one time.

13997. The committee may authorize the State Treasurer to sell all or any part of the bonds herein authorized at such time or times as may be fixed by the State Treasurer.

13998. All proceeds from the sale of bonds, except those derived from premiums and accrued interest, shall be available for the purpose provided in Section 13991 but shall not be available for transfer to the General Fund to pay principal and interest on bonds. The money in the fund may be expended only as herein provided.

DIVISION 7.5. TRANSPORTATION AND DISPOSAL OF WASTE

(Added by Stats. 1970, Ch. 902)

Chapter 1. Liquid Waste Haulers

Article 1. Declaration of Policy and Definitions

14000. The state board and regional boards in carrying out the provisions of this chapter shall be guided by the policy of Chapter 1 (commencing with Section 13000) of Division 7.

14001. Unless context otherwise requires the definitions set forth in Chapter 2 (commencing with Section 13050) of Division 7 and this article govern the construction of this chapter.

14002. "Liquid waste" includes any solid or gaseous substances contained in such waste from any producing, manufacturing, or processing operation of whatever nature.

"Liquid waste" does not include sewage, fertilizer, or any radioactive material that is subject to the provisions of Chapter 7.3 (commencing with Section 25650) of Division 20 of the Health and Safety Code.

Article 2. Registration

14020. (a) It is unlawful for any person to carry on, or engage in, the business of hauling liquid waste, or the hauling of liquid waste as a part of, or incidental to, any business, unless he holds an unrevoked registration issued by the state board.

The hauling of liquid waste, as used in this chapter, does not include hauling or carriage on water by any watercraft.

(b) The provisions of this chapter may be waived by the state board as to any business, or any type of business, the liquid waste of which the state board finds to be insignificant or unimportant as a contributor to water pollution or contamination or when the state board finds that the business is adequately regulated by another governmental agency. Any waiver under this subdivision shall be conditional and may be terminated at any time.

14021. An application for registration under this chapter shall be filed with the state board. The application shall state the name in full, if a partnership then names of each of the partners, the relation of the applicant to the firm or partnership, the place of business and place of residence of the applicant for registration and of each of the partners in the business, if a partnership, and shall designate, as specifically as practical, the areas and locations where it is proposed to dispose of any liquid waste and the regional water quality control board or boards in whose region or regions such areas are located. The application shall be signed by the authorized officer of a corporation, if a corporation, or by the managing partner, if a partnership.

14022. Registration shall be subject to such terms, conditions, orders, and directions as the state board or its duly authorized representative may at any time deem necessary for the protection of the quality of the waters of the state.

14023. The state board is required to act upon each application within 30 days of the date of filing of such application.

14[illegible]. Registration shall be only for the unexpired portion of the calendar year in which registration is issued, and at the end of the calendar year all registrations shall expire, subject to automatic renewal upon payment of the required fees pursuant to Section 14026. The payment of such fees for renewal of registration shall be made between the first day of January and the first day of February of each year.

14025. A change of address of any registrant including a member of a partnership which is registered and of the place of business thereof shall be reported in writing by registered mail by the registrant within 10 days after such change of address.

14026. (a) A registration fee of ten dollars ($10) shall be paid to the state board by each person who carries on, or engages in, the business of hauling liquid waste or who handles liquid waste as a part of, or incidental to, any business, for a calendar year or any portion thereof.

(b) Such person shall also pay to the state board fifteen dollars ($15) for the first vehicle used for the transportation of liquid waste, ten dollars ($10) per vehicle for the second through sixth vehicle, and five dollars ($5) per vehicle for the seventh and any other vehicle, for a calendar year, or a prorated amount thereof for the unexpired portion of a calendar year.

(c) The fees prescribed in subdivisions (a) and (b) shall be payable each year not later than the first day of February or within 30 days after commencing the use of any vehicle to haul liquid waste, whichever occurs later, for administering the provisions of this chapter.

Article 3. Disposing of Liquid Waste

14040. Each regional board shall approve sites suitable for the disposal of different kinds of liquid wastes, consistent with the classifications that shall be adopted by the state board, and may adopt regulations for disposal of liquid waste at such approved sites that it deems are necessary for the protection of the quality of the waters of the state.

14041. The hauler of liquid waste shall dispose of liquid waste in accordance with the regulations adopted by the regional board and on a site approved by the regional board and shall dispose of only such type of liquid waste as was designated for the particular site.

14042. No liquid waste shall be discharged into a community sewer system by a liquid waste hauler without a prior written approval of the operator of such system or his agent. Such approval shall state the authorized hours and place of discharge and type of liquid waste which may be discharged into the community sewer system.

14043. Each person who produces liquid waste which is to be hauled in a vehicle prior to being discharged shall consign or deliver such waste only to a registered liquid waste hauler.

Article 4. Enforcement

14060. The Attorney General, at the request of a regional board or the state board, shall petition the superior court for the issuance of a temporary restraining order, preliminary injunction, or permanent

injunction, or combination thereof, as may be appropriate, prohibiting forthwith any person who is violating or threatening to violate any provision of this chapter from continuing such violation or threatened violation, or from in any way hauling or disposing of liquid waste at any location or in any manner which is not in accordance with the provisions of this chapter.

Article 5. Penalties

14080. Any person who violates any provision of Section 14041, 14042, or 14043 is guilty of a misdemeanor.

Article 6. Exemptions

14100. Nothing in this chapter shall be construed to limit the power of any city, county, or city and county to adopt and enforce equal or higher standards in connection with hauling and disposal of liquid waste wholly within the boundaries of any city, county, or city and county.

OTHER LEGISLATION RELATED TO WATER QUALITY CONTROL

Government Code:

OIL SPILLS

8574.1. In addition to any other authority conferred upon the Governor by this chapter, the Governor may establish a state oil spill contingency plan pursuant to the provisions of this article.

8574.2. Any plan established pursuant to this article shall provide for an integrated and effective state procedure to combat the results of major oil spills within the state. Such plan shall provide for specified state agencies to implement the plan.

8574.3. State agencies granted authority to implement a plan adopted under this article shall have the authority to use volunteer workers. Such volunteers shall be deemed employees of the state for the purpose of workmen's compensation under Article 2 (commencing with Section 3350) of Chapter 2 of Part 1 of Division 4 of the Labor Code. Any payments for workmen's compensation under this section shall be made from the account specified in Section 8574.4.

8574.4. State agencies designated to implement the contingency plan shall account for all state expenditures made under the plan with respect to each oil spill. Expenditures accounted for under this section shall be paid for from the State Water Pollution Cleanup and Abatement Account of the State Water Quality Control Fund provided for in Article 3 (commencing with Section 13440) of Chapter 6 of Division 7 of the Water Code. If the party responsible for the spill is identified, that party shall be liable for the expenditures accounted for under this section, in addition to any other liability which may be provided for by law, in an action brought by the Attorney General. The proceeds from any such action shall be paid into the State Water Pollution Cleanup and Abatement Account of the State Water Quality Control Fund.

(Added by Stats. 1972, Ch. 1325.)

SOLID WASTE BOARD

Sections 66700–66750—The Nejedly-Z'berg-Dills Solid Waste Management and Resource Recovery Act of 1972 sets up a new State Solid Waste Management Board in the Resources Agency to begin not later than May 1973.

Harbors and Navigation Code:

OIL DEPOSITS

§ 151.

Except where permitted pursuant to the provisions of Chapter 4 (commencing with Section 13200) of Division 7 of the Water Code, any person that intentially or negligently causes or permits any oil to be deposited in the water of this state, including but not limited to navigable waters, shall be liable civilly in an amount not exceeding six thousand dollars ($6,000) and, in addition, shall be liable to any governmental agency charged with the responsibility for cleaning up or abating any such oil for all actual damages, in addition to the reasonable costs actually incurred in abating or cleaning up the oil deposit in such waters. The amount of the civil penalty which is assessed pursuant to this section shall be based upon the amount of discharge and the likelihood of permanent injury and shall be recoverable in a civil action by, and paid to, such governmental agency. If more than one such agency has responsibility for the waters in question, the agency which conducts the cleaning or abating activities shall be the agency authorized to proceed under this section.

(Added by Stats. 1968, c. 1250. Amended by Stats. 1971, c. 438.)

§ 152.

The agency cleaning up the oil deposit shall notify, in writing, the appropriate regional water quality control board of the nature of the deposit and of the corrective action taken or contemplated.

(Added by Stats. 1968, c. 1259.)

Health and Safety Code:

POLLUTION CONTROL FINANCING

Sections 39600–39643—The California Pollution Control Financing Authority Act creates a new authority to assist industry in financing pollution control devices, equipment and facilities.

HAZARDOUS WASTE

Sections 25100–25185—Directs the State Department of Public Health to adopt new regulations for the handling, processing and disposal of hazardous wastes.

Public Resources Code:

ENVIRONMENTAL QUALITY

Sections 21060–21174—Defines terms as used in the Environmental Quality Act of 1970 to clarify existing law, particularly the requirement for state agencies to prepare environmental impact statements.

PROPOSITION 20, THE COASTAL ZONE INITIATIVE

(Approved by the Voters of California Nov. 7, 1972)

PERMITS AND PLANNING

Sections 27000–27650—Creates a State Coastal Zone Conservation Commission and six regional commissions, each to hold first meetings by early February, 1973. Any development (very broadly defined) within 1000 yards of mean high tide line requires an interim commission permit consistent with reservation of recreation and wildlife preserves, structures that will minimize adverse effect to scenic resources or from floods or siltation. As a rule, residential repairs of less than $7,500 exempt. Pipelines to discharge Porter-Cologne regulated wastes will be subject to interim permit requirements. The California Coastal Zone Conservation Plan, applicable to nearly all of the coastal watershed, shall be adopted by December 1, 1975. The act terminates after 1976.

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CALIFORNIA

The Resources Agency
STATE WATER RESOURCES CONTROL BOARD
1416 Ninth Street, Sacramento, California 95814

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARDS

NORTH COAST REGION (1)
Suite F, 2200 County Center Drive
Santa Rosa, California 95401

SAN FRANCISCO BAY REGION (2)
1111 Jackson Street, Room 6040
Oakland, California 94607

CENTRAL COAST REGION (3)
2238 Broad Street
San Luis Obispo, California 93401

LOS ANGELES REGION (4)
Room 4027, 107 South Broadway
Los Angeles, California 90012

CENTRAL VALLEY REGION (5)
3201 S Street
Sacramento, California 95816

FRESNO BRANCH OFFICE
(Central Valley Region)
3374 Shields Avenue, (P.O. Box 2188)
Fresno, California 93719

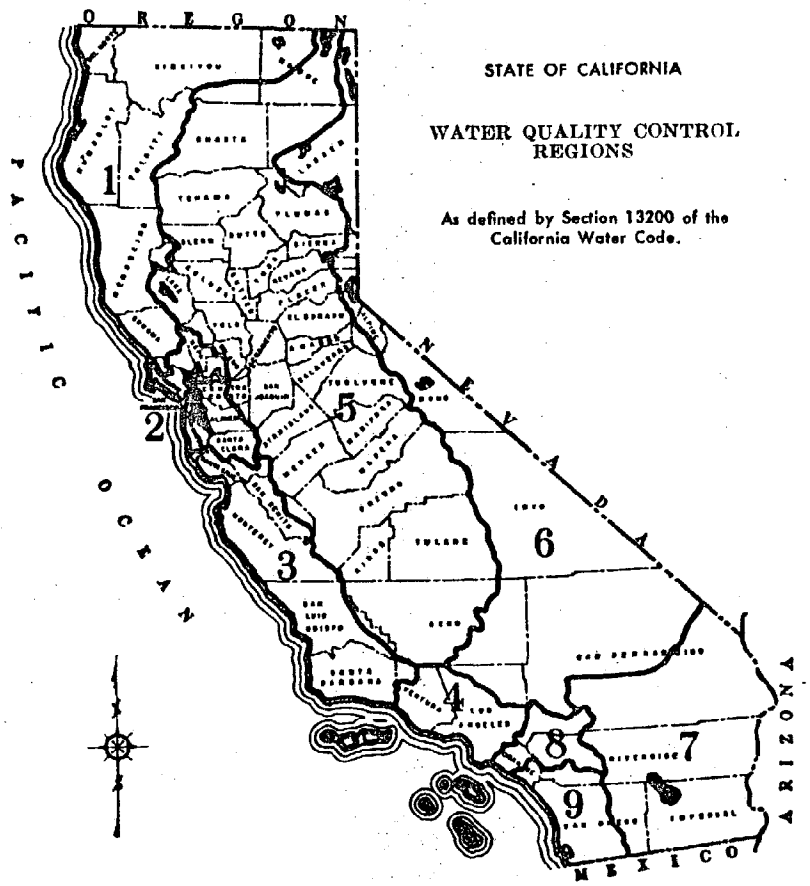
LAHONTAN REGION (6)
P. O. Box 14367
1014 Blue Lake Avenue, Suite 3
South Lake Tahoe, California 95702

BISHOP BRANCH OFFICE
(Lahontan Region)
633 N. Main Street
Bishop, California 93514

COLORADO RIVER BASIN REGION (7)
81–715 Highway 111 (P.O. Drawer 1)
Indio, California 92201

SANTA ANA REGION (8)
6833 Indiana Avenue, Suite 1
Riverside, California 92506

SAN DIEGO REGION (9)
6154 Mission Gorge Road, Suite 205
San Diego, California 92120



STATE OF CALIFORNIA

WATER QUALITY CONTROL REGIONS

As defined by Section 13200 of the California Water Code.

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WARREN-ALQUIST STATE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT ACT

Assembly Bill No. 1575

CHAPTER 276

An act to amend Section 21100 of, and to add Division 15 (commencing with Section 25000) to, the Public Resources Code, and to repeal Chapter 11 (commencing with Section 19870) of Part 3 of Division 13 of the Health and Safety Code, relating to energy resources.

[Approved by Governor May 21, 1974. Filed with Secretary of State May 21, 1974]

LEGISLATIVE COUNSEL'S DIGEST

AB 1575, Warren. Energy resources.

Requires specifically that an environmental impact report prepared pursuant to the Environmental Quality Act of 1970 include a statement of measures to reduce wasteful, inefficient, and unnecessary consumption of energy.

Enacts the Warren-Alquist State Energy Resources Conservation and Development Act.

Declares legislative findings relating to energy resources.

Establishes the State Energy Resources Conservation and Development Commission and prescribes its membership, powers, and duties.

Provides for forecasting and assessment of energy demands and supplies, and for conservation of energy resources by designated methods.

Requires, with exceptions, that power sites and facilities, as defined, be certified by the commission, as prescribed.

Requires the commission to develop and coordinate a program of research and development in energy supply, consumption and conservation and the technology of siting facilities.

Provides for development of contingency plans to deal with possible shortages of electrical energy or fuel supplies.

Imposes various fees and requires the money to be deposited in the State Energy Resources Conservation and Development Special Account, which is established in the General Fund. Requires that money from such account be expended for purposes of carrying out the provisions of this act, when appropriated by the Legislature in the Budget Act.

Deletes designated provisions providing for the establishment of energy insulation regulations for residential buildings, with deletion to be operative on the date one year after the date the commission adopts regulations pertaining to such subject matter.

Provides that there shall be no reimbursement pursuant to Section 2231 of the Revenue and Taxation Code nor shall there be any appropriation made by this act, for specified reasons.

To be operative January 7, 1975.

The people of the State of California do enact as follows:

SECTION 1. Section 21100 of the Public Resources Code is amended to read:

21100. All state agencies, boards, and commissions shall prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any project they propose to carry out or approve which may have a significant effect on the environment. Such a report shall include a detailed statement setting forth the following:

(a) The environmental impact of the proposed action.

(b) Any adverse environmental effects which cannot be avoided if the proposal is implemented.

(c) Mitigation measures proposed to minimize the impact including, but not limited to, measures to reduce wasteful, inefficient, and unnecessary consumption of energy.

(d) Alternatives to the proposed action.

(e) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

(f) Any irreversible environmental changes which would be involved in the proposed action should it be implemented.

(g) The growth-inducing impact of the proposed action.

SEC. 2. Division 15 (commencing with Section 25000) is added to the Public Resources Code, to read:

DIVISION 15. ENERGY CONSERVATION AND DEVELOPMENT

CHAPTER 1. TITLE AND GENERAL PROVISIONS

25000. This division shall be known and may be cited as the Warren-Alquist State Energy Resources Conservation and Development Act.

25001. The Legislature hereby finds and declares that electrical energy is essential to the health, safety and welfare of the people of this state and to the state economy, and that it is the responsibility of state government to ensure that a reliable supply of electrical energy is maintained at a level consistent with the need for such energy for protection of public health and safety, for promotion of the general welfare, and for environmental quality protection.

25002. The Legislature further finds and declares that the present rapid rate of growth in demand for electric energy is in part due to wasteful, uneconomic, inefficient, and unnecessary uses of power and a continuation of this trend will result in serious depletion or irreversible commitment of energy, land and water resources, and

potential threats to the state's environmental quality.

25003. The Legislature further finds and declares that in planning for future electrical generating and related transmission facilities state, regional, and local plans for land use, urban expansion, transportation systems, environmental protection, and economic development should be considered.

25004. The Legislature further finds and declares that there is a pressing need to accelerate research and development into alternative sources of energy and into improved technology of design and siting of power facilities.

25005. The Legislature further finds and declares that prevention of delays and interruptions in the orderly provision of electrical energy, protection of environmental values, and conservation of energy resources require expanded authority and technical capability within state government.

25006. It is the policy of the state and the intent of the Legislature to establish and consolidate the state's responsibility for energy resources, for encouraging, developing, and coordinating research and development into energy supply and demand problems, and for regulating electrical generating and related transmission facilities.

25007. It is further the policy of the state and the intent of the Legislature to employ a range of measures to reduce wasteful, uneconomical, and unnecessary uses of energy; thereby reducing the rate of growth of energy consumption, prudently conserve energy resources, and assure statewide environmental, public safety, and land use goals.

CHAPTER 2. DEFINITIONS

25100. Unless the context otherwise requires, the definitions in this chapter govern the construction of this division.

25101. "Applicant" means any person who submits an application for certification pursuant to the provisions of this division.

25102. "Application" means any request for certification of any site and related facility filed in accordance with the procedures established pursuant to this division.

25103. "Coastal zone" means the "coastal zone" as defined in Section 27100.

25104. "Commission" means the State Energy Resources Conservation and Development Commission.

25105. "Construction" means onsite work to install permanent equipment or structure for any facility. "Construction" does not include any of the following:

(a) The installation of environmental monitoring equipment.

(b) A soil or geological investigation.

(c) A topographical survey.

(d) Any other study or investigation to determine the environmental acceptability or feasibility of the use of the site for any

particular facility.

(e) Any work to provide access to a site for any of the purposes specified in subdivision (a), (b), (c), or (d).

25106. "Adviser" means the administrative adviser employed by the commission pursuant to Section 25217.

25107. "Electric transmission line" means any electric powerline carrying electric power from a thermal powerplant located within the state to a point of junction with any interconnected transmission system. "Electric transmission line" does not include any replacement on the existing site of existing electric powerlines with electric powerlines equivalent to such existing electric powerlines or the placement of new or additional conductors, insulators, or accessories related to such electric powerlines on supporting structures in existence on the effective date of this division or certified pursuant to this division.

25108. "Electric utility" means any person engaged in, or authorized to engage in, generating, transmitting, or distributing electric power by any facilities, including, but not limited to, any such person who is subject to the regulation of the Public Utilities Commission.

25109. "Energy" means work or heat that is, or may be, produced from any fuel or source whatsoever.

25110. "Facility" means any electric transmission line or thermal powerplant, or both electric transmission line and thermal powerplant, regulated according to the provisions of this division.

25111. "Account" means the State Energy Resources Conservation and Development Special Account.

25112. "Member" or "member of the commission" means a member of the State Energy Resources Conservation and Development Commission appointed pursuant to Section 25200.

25113. "Notice" means the notice of intent, as further defined in Chapter 6 (commencing with Section 25500), which shall state the intention of an applicant to file an application for certification of any site and related facility.

25114. "Interested party" means any person whom the commission finds and acknowledges as having a real and direct interest in any proceeding or action carried on, under, or as a result of the operation of, this division.

25115. "Permit area" means the "permit area" as defined in Section 27104.

25116. "Person" means any person, firm, association, organization, partnership, business trust, corporation, or company. "Person" also includes any city, county, public district or agency, the state or any department or agency thereof, and the United States to the extent authorized by federal law.

25117. "Plan" means the Emergency Load Curtailment and Energy Distribution Plan.

25118. "Service area" means any contiguous geographic area

serviced by the same electric utility.

25119. "Site" means any location on which a facility is constructed or is proposed to be constructed.

25120. "Thermal powerplant" means any stationary or floating electrical generating facility using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any facilities appurtenant thereto.

25121. "Fuel" means petroleum, crude oil, petroleum product, coal, natural gas, or any other substance used primarily for its energy content.

25122. "Gas utility" means any person engaged in, or authorized to engage in, distributing or transporting natural gas, including, but not limited to, any such person who is subject to the regulation of the Public Utilities Commission.

25123. "Modification of an existing facility" means any alteration, replacement, or improvement of equipment that results in a 50-megawatt or more increase in the electric generating capacity of an existing thermal powerplant or an increase of 25 percent in the peak operating voltage or peak kilowatt capacity of an existing electric transmission line.

CHAPTER 3. STATE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

25200. There is in the Resources Agency the State Energy Resources Conservation and Development Commission, consisting of five members appointed by the Governor subject to Section 25204.

25201. One member of the commission shall have a background in the field of engineering or physical science and have knowledge of energy supply or conversion systems; one member shall be an attorney and a member of the State Bar of California with administrative law experience; one member shall have background and experience in the field of environmental protection or the study of ecosystems; one member shall be an economist with background and experience in the field of natural resource management; and one member shall be from the public at large.

25202. The Secretary of the Resources Agency and the President of the Public Utilities Commission shall be ex officio, nonvoting members of the commission, whose presence shall not be counted for a quorum or for vote requirements.

25203. Each member of the commission shall represent the state at large and not any particular area thereof, and shall serve on a full-time basis.

25204. The Governor shall appoint the members of the commission within 30 days after the effective date of this division. Every appointment made by the Governor to the commission shall be subject to the advice and consent of a majority of the members elected to the Senate.

25205. (a) No person shall be a member of the commission who, during the two years prior to appointment on the commission, received any substantial portion of his income directly or indirectly from any electric utility, or who engages in sale or manufacture of any major component of any facility. No member of the commission shall be employed by any electric utility, applicant, or, within two years after he ceases to be a member of the commission, by any person who engages in the sale or manufacture of any major component of any facility.

(b) Except as provided in Section 25202, the members of the commission shall not hold any other elected or appointed public office or position.

(c) The members of the commission and all employees of the commission shall comply with all applicable provisions of Sectior 19251 of the Government Code.

(d) No person who is a member or employee of the commission shall participate personally and substantially as a member or employee of the commission, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, hearing, application, request for a ruling, or other determination, contract, claim, controversy, study, plan, or other particular matter in which, to his knowledge, he, his spouse, minor child, or partner, or any organization in which he is serving, or has served as officer, director, trustee, partner, or employee while serving as a member or employee of the commission or within two years prior to his appointment as a member of the commission, has a direct or indirect financial interest.

(e) No person who is a partner, employer, or employee of a member or employee of the commission shall act as an attorney, agent, or employee for any person other than the state in connection with any judicial or other proceeding, hearing, application, request for a ruling, or other determination, contract, claim, controversy, study, plan, or other particular matter in which the commission is a party or has a direct and substantial interest.

(f) The provisions of this section shall not apply if the Attorney General finds that the interest of the member or employee of the commission is not so substantial as to be deemed likely to affect the integrity of the services which the state may expect from such member or employee.

(g) Any person who violates any provision of this section is guilty of a felony and shall be subject to a fine of not more than ten thousand dollars ($10,000) or imprisonment in the state prison for not more than two years, or both.

25206. The terms of office of the members of the commission shall be for five years, except that the members first appointed to the commission shall classify themselves by lot so that the term of office of one member shall expire at the end of each one of the five years

following the effective date of this division. Any vacancy shall be filled by the Governor within 30 days of the date on which a vacancy occurs for the unexpired portion of the term in which it occurs or for any new term of office.

If the Governor fails to make an appointment for any vacancy within such 30-day period, the Senate Rules Committee may make the appointment to fill the vacancy for the unexpired portion of the term in which the vacancy occurred or for any new term of office, subject to the provisions of Section 25204.

25207. The members of the commission shall receive an annual salary as prescribed by Section 11552 of the Government Code.

Each member of the commission shall receive the necessary traveling and other expenses incurred in the performance of his official duties. When necessary, the members of the commission and its employees may travel within or without the state.

25208. Before entering upon the duties of his office each member of the commission shall execute an official bond to the state in the penal sum of twenty-five thousand dollars ($25,000), conditioned upon the faithful performance of his duties.

25209. Each member of the commission shall have one vote. Except as provided in Section 25211, the affirmative votes of at least three members shall be required for the transaction of any business of the commission.

25210. The commission may hold any hearings and conduct any investigations in any part of the state necessary to carry out its powers and duties prescribed by this division and for such purposes has the same powers as is conferred upon heads of departments of the state by Article 2 (commencing with Section 11180) of Chapter 2, Part 1, Division 3, Title 2 of the Government Code.

25211. The commission may appoint a committee of not less than two members of the commission to carry on investigations, inquiries, or hearings which the commission has power to undertake or to hold. Every order made by such committee pursuant to such inquiry, investigation, or hearing, when approved or confirmed by the commission and ordered filed in its office, shall be the order of the commission.

25212. Every two years the Governor shall designate a chairman and vice chairman of the commission from among its members.

25213. The commission shall adopt rules and regulations, as necessary, to carry out the provisions of this division in conformity with the provisions of Chapter 4.5 (commencing with Section 11371) of Part 1, Division 3, Title 2 of the Government Code. The commission shall make available to any person upon request copies of proposed regulations, together with summaries of reasons supporting their adoption.

25214. The commission shall maintain its headquarters in the City of Sacramento and may establish branch offices in such parts of the state as the commission deems necessary. The commission shall hold

meetings at such times and at such places as shall be determined by it. All meetings and hearings of the commission shall be open to the public, and opportunity to be heard with respect to the subject of the hearings shall be afforded to any person. Upon request, an interested party may be granted reasonable opportunity to examine any witness testifying at the hearing. The first meeting of the commission shall be held within 30 days after the confirmation of the last member of the commission pursuant to Section 25204. The Governor shall designate the time and place for the first meeting of the commission.

25215. Any member of the commission may be removed from office by the Legislature, by concurrent resolution adopted by a majority vote of all members elected to each house, for dereliction of duty or corruption or incompetency.

25216. In addition to other duties specified in this division, the commission shall do all of the following:

(a) Undertake a continuing assessment of trends in the consumption of electrical energy and other forms of energy and analyze the social, economic, and environmental consequences of these trends; carry out directly, or cause to be carried out, energy conservation measures specified in Chapter 5 (commencing with Section 25400) of this division; and recommend to the Governor and the Legislature new and expanded energy conservation measures as required to meet the objectives of this division.

(b) Collect from electric utilities, gas utilities, and fuel producers and wholesalers and other sources forecasts of future supplies and consumption of all forms of energy, including electricity, and of future energy or fuel production and transporting facilities to be constructed; independently analyze such forecasts in relation to statewide estimates of population, economic, and other growth factors and in terms of the availability of energy resources, costs to consumers, and other factors; and formally specify statewide and service area electrical energy demands to be utilized as a basis for planning the siting and design of electric power generating and related facilities.

(c) Carry out, or cause to be carried out, under contract or other arrangements, research and development into alternative sources of energy, improvements in energy generation, transmission, and siting, fuel substitution, and other topics related to energy supply, demand, public safety, ecology, and conservation which are of particular statewide importance.

25216.3. (a) The commission shall compile relevant local, regional, state, and federal land use, public safety, environmental, and other standards to be met in designing, siting, and operating facilities in the state; except as provided in subdivision (d) of Section 25402, adopt standards, except for air and water quality, to be met in designing or operating facilities to safeguard public health and safety, which may be different from or more stringent than those adopted by local, regional, or other state agencies, or by any federal agency

if permitted by federal law; and monitor compliance and ensure that all facilities are operated in accordance with this division.

(b) The local, regional, and other state agencies shall advise the commission as to any change in its standards, ordinances, or laws which are pertinent and relevant to the objective of carrying out the provisions of this division.

25216.5. The commission shall do all of the following:

(a) Prescribe the form and content of applications for facilities; conduct public hearings and take other actions to secure adequate evaluation of applications; and formally act to approve or disapprove applications, including specifying conditions under which approval and continuing operation of any facility shall be permitted.

(b) Prepare an integrated plan specifying actions to be taken in the event of an impending serious shortage of energy, or a clear threat to public health, safety, or welfare.

(c) Evaluate policies governing the establishment of rates for electric power and other sources of energy as related to energy conservation, environmental protection, and other goals and policies established in this division, and transmit recommendations for changes in power-pricing policies and rate schedules to the Governor, the Legislature, to the Public Utilities Commission, and to publicly owned electric utilities.

(d) Serve as a central repository within the state government for the collection and storage of data and information on all forms of energy supply, demand, conservation, public safety, and related subjects.

25217. The commission shall do all of the following:

(a) Appoint an executive director with administration and fiscal experience, who shall serve at its pleasure and whose duties and salary shall be prescribed by the commission.

(b) Appoint an administrative adviser, to serve at the pleasure of the commission, who shall be an attorney admitted to practice law in this state, and who shall carry out the provisions of Section 25222, as well as other duties prescribed by the commission.

(c) Employ and prescribe the duties of other staff members as necessary to carry out the provisions of this division.

25217.5. The chairman of the commission shall direct the adviser, the executive director, and other staff in the performance of their duties in conformance with the policies and guidelines established by the commission.

25218. In addition to other powers specified in this division, the commission may do any of the following:

(a) Apply for and accept grants, contributions, and appropriations.

(b) Contract for professional services if such work or services cannot be satisfactorily performed by its employees or by any other state agency.

(c) Be sued and sue.

(d) Request and utilize the advice and services of all federal, state, local, and regional agencies.

(e) Adopt any rule or regulation, or take any action, it deems reasonable and necessary to carry out the provisions of this division.

(f) Adopt rules and regulations, or take any action, it deems reasonable and necessary to ensure the free and open participation of any member of the staff in proceedings before the commission.

25218.5. The provisions specifying any power or duty of the commission shall be liberally construed, in order to carry out the objectives of this division.

25219. As to any matter involving the federal government, its departments or agencies, which is within the scope of the power and duties of the commission, the commission may represent its interest or the interest of any county, city, state agency, or public district upon its request, and to that end may correspond, confer, and cooperate with the federal government, its departments or agencies.

25220. The commission may participate as a party, to the extent that it shall determine, in any proceeding before any federal or state agency having authority whatsoever to approve or disapprove any aspect of a proposed facility, receive notice from any applicant of all applications and pleadings filed subsequently by such applicants in any of such proceedings, and, by its request, receive copies of any of such subsequently filed applications and pleadings that it shall deem necessary.

25221. Upon request of the commission, the Attorney General shall represent the commission and the state in litigation concerning affairs of the commission, unless the Attorney General represents another state agency, in which case the commission shall be authorized to employ other counsel.

25222. The adviser shall insure that full and adequate participation by all interested groups and the public at large is secured in the planning, site and facility certification, energy conservation, and emergency allocation procedures provided in this division. The adviser shall insure that timely and complete notice of commission meetings and public hearings is disseminated to all interested groups and to the public at large. The adviser shall also advise such groups and the public as to effective ways of participating in the commission's proceedings. The adviser shall recommend to the commission additional measures to assure open consideration and public participation in energy planning, site and facility certification, energy conservation, and emergency allocation proceedings.

25223. The commission shall make available any information filed or submitted pursuant to this division under the provisions of the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7, Title 1 of the Government Code.

25224. The commission and other state agencies shall, to the fullest extent possible, exchange records, reports, material, and other

information relating to energy resources and conservation and power facilities siting, or any areas of mutual concern, to the end that unnecessary duplication of effort may be avoided.

CHAPTER 4. PLANNING AND FORECASTING

25300. Every electric utility in the state shall prepare and transmit to the commission within one year after the effective date of this division, and every two years thereafter, a report specifying 5-, 10-, and 20-year forecasts or assessments of loads and resources for its service area. The report shall set forth the facilities which, as determined by the electric utility, will be required to supply electric power during the forecast or assessment periods. The report shall be in a form specified by the commission and shall include all of the following:

(a) A tabulation of estimated peak loads, resources, and reserve margins for each year during the 5- and 10-year forecast or assessment periods, and an estimate of peak load, resources, and reserve margins for the last year in the 20-year forecast or assessment period.

(b) A list of existing electric generating plants in service, with a description of planned and potential generating capacity at existing sites.

(c) A list of facilities which will be needed to serve additional electrical requirements identified in the forecasts or assessments, the general location of such facilities, and the anticipated types of fuel to be utilized in the proposed facilities.

(d) A description of additional system capacity which might be achieved through among other things, improvements in (1) generating or transmission efficiency, (2) importation of power, (3) interstate or interregional pooling, and (4) other improvements in efficiencies of operation.

(e) An estimation of the availability and cost of fuel resources for the 5-, 10-, and 20-year forecast or assessment periods with a statement by the electric utility describing firm commitments for supplies of fuel required during the forecast or assessment periods.

(f) An annual load duration curve and a forecast of anticipated peak loads for each forecast or assessment period for the residential, commercial, industrial, and such other major demand sectors in the service area of the electric utility as the commission shall determine.

(g) A description of projected population growth, urban development, industrial expansion, and other growth factors influencing increased demand for electric energy and the bases for such projections.

25301. The commission shall establish and every electric utility shall utilize, for purposes of the report, a common methodology for preparing forecasts of future loads and resources. After applying the commission's established methodology to the mandatory elements of

the report specified in Section 25300, any electric utility may transmit to the commission supplementary information and forecasts based upon an alternative methodology. If such alternate methodology is employed, the electric utility shall fully describe the data and other components of the methodology, and shall specify the reasons why the approach is considered more accurate than that established by the commission. The commission may waive the requirements of subdivision (d) or (g) of Section 25300 for any electric utility which the commission determines is not primarily engaged in the business of generating or selling electricity, when the commission determines that the collection and accumulation of any such information from such electric utilities is unnecessary for purposes of carrying out the provisions of this chapter.

25302. Upon receipt of a report required under Section 25300 from an electric utility, the commission shall forward copies thereof to the Legislature, the Public Utilities Commission, the Secretary of the Resources Agency, the Director of the Office of Planning and Research, and other concerned state and federal agencies. The report shall also be made available, at cost, to any person upon request. The commission shall also forward copies of the report to each city and county within the service area covered by the report, and shall request that the city and county review and comment on the report in relation to estimates of population growth and economic development, patterns of land use, and open space, and and conservation and other appropriate elements of the adopted city or county general plan. A copy of the report shall be maintained on file for public inspection in each county.

25303. For a period of four months after the receipt of the reports required under Section 25300 the commission shall receive the comments of any person on the reports. Within such period, the Public Utilities Commission shall submit its independent evaluation and analysis of the reports to the commission.

25304. The commission shall review and evaluate the electric utilities' forecasts of loads and resources, and the comments of the Public Utilities Commission on such forecasts, in relation to the population growth estimates prepared by the Department of Finance, Population Research Unit, and in relation to statewide and regional land use, transportation, and economic development programs and forecasts. The commission shall also examine the implications of the forecast level of loads and resources on, among other things, all of the following:

(a) Critical environmental and other resources of the state, including air and water quality, coastal, natural, and other unique areas, and energy resources.

(b) Public health and safety, general welfare, and the state's economy.

(c) Capital requirements for new facilities and costs to consumers of electricity and other forms of energy.

(d) Other significant factors which relate to the provision of electrical energy in the amounts and in the manner proposed by the electric utilities.

The commission shall also consider reasonable alternative methods to those proposed by the electric utilities to meet forecasted electrical energy requirements.

25305. Within six months after receipt of the reports specified in Section 25300, the commission shall prepare and distribute a preliminary report, setting forth its findings and conclusions regarding the accuracy and acceptability of the electric utilities' forecasts. The report shall be based upon information and views presented in the comments received under Section 25303 and the commission's independent analysis, and shall contain all of the following:

(a) The commission's evaluation of the probable service area and statewide, environmental, and economic impact and the health and safety aspect of constructing and operating the facilities proposed by the electric utilities and a description of the measures considered necessary by the commission to avoid or ameliorate any adverse impacts.

(b) Any proposed alternative methods for meeting the electrical energy requirements identified by the electric utilities.

(c) The anticipated 5- and 10-year level of demand for energy to be utilized as a basis for certification of facilities, and an anticipated 20-year level of demand for energy to be utilized as a basis for recommending energy conservation policies and actions.

(d) Identification, on a statewide and service area basis, of required electric facilities consistent with the anticipated level of demand, both before and after consideration of the possible impacts of recommended conservation measures.

(e) An analysis and evaluation of the means by which the projected annual rate of demand growth of electrical energy may be reduced, together with an estimate of the amount of such reduction to be obtained by each of the means analyzed and evaluated, including a statement of the impact of such reduction on the factors reviewed by the commission set forth in Section 25304 and subdivision (a) of this section.

25306. The commission shall distribute the report required under Section 25305 to the same persons, and under the same conditions, as prescribed in Section 25302.

25307. Within three months after distribution of the commission's preliminary report pursuant to Section 25305, the commission shall hold public hearings of which at least one shall be in the City of Sacramento to obtain the views and comments of the electric utilities, governmental agencies, private groups, and any other person on the commission's proposals and recommendations in the preliminary report.

25308. Within 12 months after receipt of the reports required in

Section 25300, the commission shall include within its biennial report to the Governor and the Legislature, as specified in Section 25309, its final report on the accuracy and acceptability of the electric utilities' forecasts and on the commission's independent analyses and evaluations, as specified in Section 25305.

25309. Beginning January 1, 1977, and every two years thereafter, the commission shall transmit to the Governor and the Legislature a comprehensive report designed to identify emerging trends related to energy supply, demand, and conservation and public health and safety factors, to specify the level of statewide and service area electrical energy demand for each year in the forthcoming 5-, 10-, and 20-year periods, and to provide the basis for state policy and actions in relation thereto, including, but not limited to, approval of new sites for additional facilities. The report shall include, but not be limited to, all of the following:

(a) An overview, looking 20 years ahead, of statewide growth and development as they relate to future requirements for energy, including patterns of urban metropolitan expansion, statewide and service area economic growth, shifts in transportation modes, modifications in building types and design, and other trends and factors which, as determined by the commission, will significantly affect energy consumption and need to be considered in formulating state energy policy and programs.

(b) The level of statewide and service area electrical energy demand for the forthcoming 5- and 10-year forecast or assessment period which, in the judgment of the commission, will reasonably balance requirements of state and service area growth and development, protection of public health and safety, preservation of environmental quality, maintenance of a sound economy, and, as may be provided by law, conservation of energy and resources. Such 5- and 10-year forecasts or assessments established by the commission shall serve as the basis for planning and certification of facilities proposed by electric utilities.

(c) The anticipated level of statewide and service area electrical energy demand for 20 years, which shall serve as the basis for recommendations by the commission to the Governor, the Legislature, and other appropriate public and private agencies in the following:

(1) Demand-reducing policies.

(2) Conservation of energy.

(3) Development of potential sources of energy.

(4) Other policies and actions designed to affect the rate of growth in demand for electrical energy.

(d) A list, including maps, of existing electrical power generating sites, indicating those where the commission has determined that expansion is feasible within the forthcoming 10-year period.

(e) A list, including maps, of possible areas appropriate for additional electrical generating sites, including the generating

capacity to be installed at the sites and the type of fuel and other general characteristics of the facilities which, as determined by the commission, will be required to meet the 10-year level of electrical energy demand established by the commission as specified in subdivision (b) of this section.

(f) Based upon the commission's 20-year forecasts or assessment of growth trends in energy consumption and production, identification of potential adverse social, economic, or environmental impacts which might be imposed by continuation of the present trends, including, but not limited to, the costs of electricity and other forms of energy to consumers, significant increases in air, water, and other forms of pollution, threats to public health and safety, and loss of scenic and natural areas.

(g) Assessment of the energy resources available to the state, including among others, fossil fuels and nuclear, solar, and geothermal energy resources; assessment of the potential of, and examination of the availability of, commercially developable fuels, including imported fuels, during the forthcoming 10- and 20-year periods; and recommendations regarding measures to be applied to conserve energy and fuels.

(h) An analysis and evaluation of the means by which the projected annual rate of demand growth of energy may be reduced, together with an estimate of the amount of such reduction to be obtained by each of the means analyzed and evaluated, including, but not limited to, a statement of the impact of such reduction on the factors reviewed by the commission set forth in Section 25304 and subdivision (a) of this section.

(i) The status of the commission's ongoing research and development program directed to energy supply, demand, and conservation and description of new projects which have been proposed for funding as specified in Chapter 7 (commencing with Section 25600) of this division.

(j) Description of the commission's adopted plan for emergency measures to be applied in the event of impending serious shortage of electrical and other forms of energy as provided in Chapter 8 (commencing with Section 25700) of this division.

(k) Recommendations to the Governor and the Legislature for administrative and legislative actions based on the results of commission studies and evaluations as specified in this section and in Chapter 5 (commencing with Section 25400).

(*l*) A list, including maps, of sites and potential multiple-facility sites which have been found to be acceptable by the commission pursuant to Sections 25516 and 25516.5, including the generating capacity to be installed at the site and the type of fuel and other general characteristics of the facilities at such sites.

CHAPTER 5. ENERGY RESOURCES CONSERVATION

25400. The commission shall conduct an ongoing assessment of the opportunities and constraints presented by all forms of energy. The commission shall encourage the balanced use of all sources of energy to meet the state's needs and shall seek to avoid possible undesirable consequences of reliance on a single source of energy.

25401. The commission shall continuously carry out studies, research projects, data collection, and other activities required to assess the nature, extent, and distribution of energy resources to meet the needs of the state, including but not limited to, fossil fuels and solar, nuclear, and geothermal energy resources. It shall also carry out studies, technical assessments, research projects, and data collection directed to reducing wasteful, inefficient, unnecessary, or uneconomic uses of energy, including, but not limited to, all of the following:

(a) Pricing of electricity and other forms of energy.

(b) Improved building design and insulation.

(c) Restriction of promotional activities designed to increase the use of electrical energy by consumers.

(d) Improved appliance efficiency.

(e) Advances in power generation and transmission technology.

(f) Comparisons in the efficiencies of alternative methods of energy utilization.

The commission shall survey pursuant to this section all forms of energy on which to base its recommendations to the Governor and Legislature for elimination of waste or increases in efficiency for sources or uses of energy. The commission shall transmit to the Governor and the Legislature, as part of the biennial report specified in Section 25309, recommendations for state policy and actions for the orderly development of all potential sources of energy to meet the state's needs, including, but not limited to, fossil fuels and solar, nuclear, and geothermal energy resources, and to reduce wasteful and inefficient uses of energy.

25402. Within 18 months after the effective date of this division, the commission shall, after one or more public hearings, do all of the following, in order to reduce the wasteful, uneconomic, inefficient, or unnecessary consumption of energy:

(a) Prescribe, by regulation, lighting, insulation, climate control systems, and other building design and construction standards which increase the efficient use of energy. Such standards shall be economically feasible in that the resultant savings in energy procurement costs shall be greater than the cost of the energy conserving requirements amortized over the economic life of the building. In prescribing standards for insulation, the commission shall take into consideration the standards developed pursuant to Chapter 11 (commencing with Section 19870) of Part 3, Division 13 of the Health and Safety Code, which standards shall only be

operative until the date one year after the date that the commission adopts regulations for energy insulation for residential buildings pursuant to this subdivision. One year after the commission adopts the regulations pursuant to this subdivision, no city, county, city and county, or state agency shall issue any building permit unless the standards prescribed by the commission pursuant to this section are satisfied. Whenever the provisions of this subdivision and the provisions of Chapter 11.5 (commencing with Section 19878) of Part 3 of Division 13 of the Health and Safety Code, as to adoption and enforcement of standards for "nonresidential buildings" as defined by Section 19878.1 of the Health and Safety Code, are in conflict, the commission shall be governed by the provisions of such chapter of the Health and Safety Code to the extent of such conflict.

(b) Recommend per unit energy requirement allotments based on square footage for various classes of buildings which would reduce the growth rate of electrical energy consumption and which are technically feasible and will provide adequate safeguards for public health, safety, and welfare. No city, county, city and county, or state agency shall issue any permit for the construction of any building unless the applicant certifies that consideration has been given to such energy requirement allotments, which certification shall include a statement specifying the extent to which conformance with the relevant recommended allotment will be achieved.

(c) By regulation, prescribe standards for minimum levels of operating efficiency, based on a reasonable use pattern, for all appliances whose use, as determined by the commission, requires a significant amount of energy on a statewide basis. Such minimum levels of operating efficiency shall be based on feasible and attainable efficiencies or feasible improved efficiencies which will reduce the electrical energy consumption growth rate. One year after the date of the adoption of such standards, no new appliance may be sold or offered for sale in the state which is not certified by the manufacturer thereof to be in compliance with such standards. Such standards shall be drawn so that they do not result in any added total costs to the consumer over the designed life of the appliances concerned.

(d) Recommend minimum standards of efficiency for the operation of any new facility at a particular site which are technically and economically feasible. No site and related facility shall be certified pursuant to Chapter 6 (commencing with Section 25500) of this division, unless the applicant certifies that standards recommended by the commission have been considered, which certification shall include a statement specifying the extent to which conformance with the recommended standards will be achieved.

Whenever the provisions of this section and the provisions of Chapter 11.5 (commencing with Section 19878) of Part 3 of Division 13 of the Health and Safety Code are in conflict, the commission shall be governed by the provisions of such chapter of the Health and Safety Code to the extent of such conflict.

25403. The commission shall submit to the Public Utilities Commission and to any publicly owned electric utility, recommendations designed to reduce wasteful, unnecessary, or uneconomic energy consumption resulting from practices including, but not limited to, differential rate structures, cost-of-service allocations, the disallowance of a business expense of advertising or promotional activities which encourage the use of electrical power, peakload pricing, and other pricing measures. The Public Utilities Commission or publicly owned electric utility shall review and consider such recommendations and shall, within six months after the date it receives them, as prescribed by this section, report to the Governor and the Legislature its actions and reasons therefor with respect to such recommendations.

25404. The commission shall cooperate with the Office of Planning and Research, the Resources Agency and other interested parties in developing procedures to ensure that mitigation measures to minimize wasteful, inefficient, and unnecessary consumption of energy are included in all environmental impact reports required on local projects as specified in Section 21151.

25405. A city, county, or city and county may by ordinance or resolution prescribe a schedule of fees sufficient to pay the costs incurred in the enforcement of standards adopted pursuant to this chapter.

CHAPTER 6. POWER FACILITY AND SITE CERTIFICATION

25500. In accordance with the provisions of this division, the commission shall have the exclusive power to certify all sites and related facilities in the state, except for any site and related facility proposed to be located in the permit area, whether a new site and related facility or a change or addition to an existing facility. The issuance of a certificate by the commission shall be in lieu of any permit, certificate, or similar document required by any state, local or regional agency, or federal agency to the extent permitted by federal law, for such use of the site and related facilities, and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law.

After the effective date of this division, no construction of any facility or modification of any existing facility shall be commenced without first obtaining certification for any such site and related facility by the commission, as prescribed in this division.

25500.5. The commission shall certify sufficient sites and related facilities which are required to provide a supply of electric power sufficient to accommodate the demand projected in the most recent forecast of statewide and service area electric power demands adopted pursuant to subdivision (b) of Section 25309.

25501. The provisions of this chapter do not apply to any site and

related facility which meets either of the following requirements:

(a) For which the Public Utilities Commission has issued a certificate of public convenience and necessity before the effective date of this division.

(b) For which construction is planned to commence within three years from the effective date of this division.

25501.3. A proposed site and related facility shall be deemed to be one for which construction is planned to commence within three years from the effective date of this division within the meaning of subdivision (b) of Section 25501, if all of the following are satisfied:

(a) The planned operating date and the planned capacity are consistent with the forecast of electric loads either set forth in a report submitted under Sections 2 and 3 of General Order 131 of the Public Utilities Commission as of March 31, 1974, or otherwise disclosed in a report of a public agency as of March 31, 1974.

(b) The need to commence construction within three years from the effective date of this division is reasonably related to the planned operating date of such site and related facility.

(c) Substantial funds have been expended or committed for planning, site investigations, site acquisition, or equipment procurement for such site and related facility prior to the effective date of this division.

25501.5. The Legislature finds and declares that the following proposed sites and facilities with the associated estimated generating capacities meet the requirements of subdivision (b) of Section 25501:

(a) As designated in the report of the Pacific Gas and Electric Company submitted to the Public Utilities Commission on March 1, 1974, in response to Sections 2 and 3 of General Order 131 of the Public Utilities Commission, three gas turbine powerplants, each having a generating capacity of 52 megawatts, commonly known as Potrero Unit 4, Potrero Unit 5 and Potrero Unit 6, to be located in the City and County of San Francisco; a gas turbine powerplant having a generating capacity of 52 megawatts, commonly known as Hunters Point Unit 1, to be located in the City and County of San Francisco; a gas turbine powerplant having a generating capacity of 200 megawatts, commonly known as Station C; a geothermal powerplant having a generating capacity of 106 megawatts, commonly known as Geysers Unit 12, to be located in Sonoma County; a geothermal powerplant having a generating capacity of 110 megawatts, commonly known as Geysers Unit 14, to be located in Sonoma County; a geothermal powerplant having a generating capacity of 55 megawatts, commonly known as Geysers Unit 15, to be located in Sonoma County; a geothermal powerplant having a generating capacity of 135 megawatts, commonly known as Geysers Unit 13, to be located in Lake County; a geothermal powerplant having a generating capacity of 110 megawatts, planned for operation in 1978, to be located in Sonoma County or Lake County; a geothermal powerplant having a generating capacity of 110

megawatts, planned for operation in 1979, to be located in Sonoma County or Lake County; a combined-cycle powerplant having a generating capacity of 800 megawatts, commonly known as Thermal 78, to be located in Contra Costa County near the City of Pittsburg; two combined-cycle powerplants, each having a generating capacity of 800 megawatts, commonly known as Thermal 79 and Thermal 81. to be located in Contra Costa County or Solano County; and a nuclear powerplant having a generating capacity of 1,100 megawatts, commonly known as Nuclear A to be located in Region 1, as shown on page 27 of the report of the Pacific Gas and Electric Company submitted March 1, 1974, in response to Sections 2 and 3 of General Order 131 of the Public Utilities Commission, or at the location commonly known as Diablo Canyon in San Luis Obispo County.

(b) As described in the report of the Southern California Edison Company submitted to the Public Utilities Commission on March 8, 1974, in response to Sections 2 and 3 of General Order 131 of the Public Utilities Commission, two combined-cycle powerplants, each with a generating capacity of 236 megawatts, commonly known as Cool Water Unit 3 and Cool Water Unit 4, to be located in San Bernardino County; six combined-cycle powerplants, each having a generating capacity of 236 megawatts, commonly known as Huntington Beach Unit 6, Huntington Beach Unit 7, Huntington Beach Unit 8, Huntington Beach Unit 9, Huntington Beach Unit 10 and Huntington Beach Unit 11, to be located in the City of Huntington Beach; three combined-cycle powerplants, each with a generating capacity of 414 megawatts, commonly known as Lucerne Valley Unit 1, Lucerne Valley Unit 2 and Lucerne Valley Unit 3, to be located in San Bernardino County; and two nuclear powerplants, each having a generating capacity of 760 megawatts, commonly known as the Desert Nuclear Project.

(c) As described in the report of the San Diego Gas and Electric Company submitted to the Public Utilities Commission on March 22, 1974, in response to Sections 2 and 3 of General Order 131 of the Public Utilities Commission, two gas turbine powerplants, each having a generating capacity of 64 megawatts, commonly known as South Bay Gas Turbine Unit 3 and South Bay Gas Turbine Unit 4, to be located in San Diego County; a fossil-fueled powerplant having a generating capacity of 292 megawatts, commonly known as Encina Unit 5, to be located in San Diego County; a combined-cycle powerplant having a generating capacity of 404 megawatts, planned for operation in 1979, to be located in San Diego County; and a nuclear powerplant having a generating capacity of 1,200 megawatts, commonly known as the Desert Nuclear Project, to be located in Riverside County.

(d) As described in the report of the Pacific Gas and Electric Company to the Public Utilities Commission submitted March 1, 1974, in response to Sections 2 and 3 of the General Order 131 of the Public Utilities Commission, a gas turbine powerplant having a

generating capacity of 150 megawatts, commonly known as SMUD Gas Turbines, to be located in Sacramento County; and a nuclear powerplant having a generating capacity of 1,100 megawatts, commonly known as Rancho Seco Unit 2, to be located in Sacramento County.

(e) As described in the report of the Department of Water and Power of the City of Los Angeles submitted to the Public Utilities Commission on March 18, 1974, in response to Sections 2 and 3 of General Order 131 of the Public Utilities Commission, a nuclear powerplant having a generating capacity of 1,300 megawatts, commonly known as the San Joaquin Nuclear Project, to be located in Kern County near the City of Wasco.

(f) Four geothermal powerplants, each having a generating capacity of 55 megawatts, presently planned to be constructed by the City of Burbank and to be located in Imperial County.

(g) Four geothermal powerplants, each having a generating capacity of 55 megawatts, presently planned to be constructed by the City of Burbank and located in Inyo County.

(h) Two geothermal powerplants, each having a generating capacity of 110 megawatts, presently planned to be constructed by the Northern California Power Agency and located in Sonoma County.

Nothing in this section shall be construed to indicate that the sites and facilities specified in this section are approved by the Legislature. The inclusion of any site and related facility in this section means that the provisions of this chapter do not apply to any such site or facility, to the extent that Section 25501.7 or 25502.3 is made applicable, and that such site and related facility is subject to any and all other provisions of law.

25501.7. Any person proposing to construct a facility or a site to which Section 25501 applies may waive the exclusion of such site and related facility from the provisions of this chapter by submitting to the commission a notice to that effect on or after July 1, 1976, and any and all of the provisions of this chapter shall apply to the construction of such facility.

25502. Each person proposing to construct a thermal powerplant or electric transmission line on a site shall submit to the commission notice of intention to file an application for the certification of such site and related facility or facilities. The notice shall be an attempt primarily to determine the suitability of the proposed sites to accommodate the facilities and to determine the general conformity of the proposed sites and related facilities with standard of the commission and forecasts adopted pursuant to Sections 25216.3 and 25309. The notice shall be in the form prescribed by the commission and shall be supported by such information as the commission may require.

Any site and related facility once found to be acceptable pursuant to Section 25516 is, and shall continue to be, eligible for consideration

in an application for certification without further proceedings required for a notice under this chapter.

25502.3. Except as provided in Section 25501.7, any person proposing to construct a facility excluded from the provisions of this chapter may waive such exclusion by submitting to the commission a notice of intention to file an application for certification, and any and all of the provisions of this chapter shall apply to the construction of such facility.

25502.5. The notice is not required to contain three alternative sites and related facilities for additional generating facilities on land owned by an electric utility before the effective date of this division at existing sites east of the town of Clay Station in Sacramento County, in the location commonly known as Diablo Canyon in San Luis Obispo County, and near the City of Pittsburg in Contra Costa County.

25503. Each notice of intention to file an application shall contain at least three alternative sites and related facilities, at least one of which shall not be located in whole or in part in the coastal zone. In addition, the alternative sites and related electrical facilities may be proposed from an inventory of sites which have previously been approved by the commission in a notice of intent or may be proposed from sites previously examined. If modification of an existing facility is proposed, the commission may require that alternative methods of providing the additional service or making the proposed modification be specified in the notice.

25504. The notice of intention shall include a statement by the applicant describing the location of the proposed sites by section or sections, range and township, and county; a summary of the proposed design criteria of the facilities; the type or types of fuels to be used; the methods of construction and operation; the proposed location of facilities and structures on each site; a preliminary statement of the relative economic, technological, and environmental advantages and disadvantages of the alternative site and related facility proposals; a statement of need for the facility and information showing the compatibility of the proposals with the most recent biennial report issued pursuant to Section 25309; and any other information that an electric utility deems desirable to submit to the commission.

25504.5. An applicant may, in the notice, propose a site to be approved which will accommodate a potential maximum electric generating capacity in excess of the capacity being proposed for the initial approval of the commission. If such a proposal is made, the notice shall include, but not be limited to, in addition to the information specified in Section 25504, all of the following:

(a) The number, type, and energy source of electric generating units which the site is proposed ultimately to accommodate and the maximum generating capacity for each unit.

(b) The projected installation schedule for each unit.

(c) The impact at the site when fully developed, on the

environment and public health and safety.

(d) The amount and sources of cooling water needed at the fully developed site.

(e) The location and specifications of auxiliary facilities planned for each state of development including, but not limited to, pipelines, waste storage facilities, fuel storage facilities, switchyards, coolant lines, coolant outfalls, and cooling ponds, lakes, or towers.

25505. Upon receipt of a notice, the commission shall cause a summary of the notice to be published in a newspaper of general circulation in each county in which the sites and related facilities, or any part thereof, designated in the notice are proposed to be located. The commission shall also transmit a copy of the notice to the Public Utilities Commission, for sites and related facilities requiring a certificate of public convenience and necessity, and to other federal, state, regional, and local agencies having an interest in matters pertinent to the proposed facilities at any of the alternative sites. A copy of the notice shall also be transmitted to the Attorney General.

25506. The commission shall request the appropriate local, regional, state, and federal agencies to make comments and recommendations regarding the design, operation, and location of the facilities designated in the notice, in relation to environmental quality, public health and safety, and other factors on which they may have expertise.

25506.5. The commission shall request the Public Utilities Commission, for sites and related facilities requiring a certificate of public convenience and necessity, to make comments and recommendations regarding the design, operation, and location of the facilities designated in the notice in relation to the economic, financial, rate, system reliability, and service implications of the proposed facilities.

25507. If any alternative site and related facility proposed in the notice is proposed to be located, in whole or in part, within the coastal zone and if a permit for such a site and related facility is required to be obtained from the California Coastal Zone Conservation Commission, the commission shall transmit a copy of the notice to the California Coastal Zone Conservation Commission. The commission shall request that the California Coastal Zone Conservation Commission complete an analysis of any coastal zone site and related facility and forward preliminary findings of the acceptability of any such site and related facility prior to completion of the preliminary report required by Section 25510.

25508. The commission shall cooperate with, and render advice to, the California Coastal Zone Conservation Commission and any appropriate regional coastal zone conservation commission in studying applications for any site and related facility proposed to be located, in whole or in part, within the permit area, if requested by the California Coastal Zone Conservation Commission or a regional coastal zone conservation commission, and may invite the members

of the California Coastal Zone Conservation Commission and regional coastal zone conservation commissions to participate in public hearings on the notice and on the application for site and related facility certification, in connection with matters of mutual concern, as interested parties in such proceedings.

25509. The commission shall conduct a public informational hearing or hearings in the county of the proposed sites and related facilities no earlier than 60 nor later than 90 days from receipt of a notice of intention to file an application. The place of such public informational hearing or hearings shall be as close as practicable to the proposed sites. Any person may participate to the extent deemed reasonable and relevant by the presiding member of the commission, in any such hearing. Such hearings on the original three sites and related facilities shall be concluded within 90 days of their commencement. Such hearings shall be conducted in order to accomplish all of the following purposes:

(a) To set forth the electrical demand basis for the proposed site and related facility.

(b) To provide knowledge and understanding of proposed facilities and sites.

(c) To obtain the views and comments of the public and concerned governmental agencies on the environmental, public health and safety, economic, social, and land use impacts of the facility at the proposed sites.

(d) To solicit information regarding reasonable alternative sources of the electric generating capacity or energy to be provided by alternative sites and related facilities, or combinations thereof, which will better carry out the policies and objectives of this division.

25510. Within 90 days after the conclusion of such hearing or hearings, the commission shall prepare and make public a preliminary report on the notice of intention to file an application. Such report shall contain the comments and recommendations of local authorities as to the construction of any thermal powerplant or electric transmission line on a particular site. The commission may include within the preliminary report any other alternatives proposed by the commission or presented to the commission at a public hearing prior to preparation of the preliminary report. The preliminary report shall be published and made available to the public and to interested local, regional, state, and federal agencies.

25511. The commission shall review the factors related to safety and reliability of the facilities at each of the alternative sites designated in the notice. In addition to other information requested of the applicant, the commission shall, in determining the appropriateness of sites and related facilities, require detailed information on proposed emergency systems and safety precautions, plans for transport, handling and storage of wastes and fuels, proposed methods to prevent illegal diversion of nuclear fuels, special design features to account for seismic and other potential

hazards, proposed methods to control density of population in areas surrounding nuclear powerplants, and such other information as the commission may determine to be relevant to the reliability and safety of the facility at the proposed sites. The commission shall analyze the information provided by the applicant, supplementing it, where necessary, by onsite investigations and other studies. The commission shall determine the adequacy of measures proposed by the applicant to protect public health and safety, and shall include its findings in the preliminary report required by Section 25510.

25512. The preliminary report shall be based upon testimony presented during any hearing on the notice, the comments transmitted by the Public Utilities Commission and local, regional, state, and federal agencies and the public to the commission, and the independent studies conducted by the commission's staff. The preliminary report shall include findings and conclusions, within the limitation of the information required in Sections 25502, 25503, 25504, and 25511, with respect to all of the following:

(a) The degree to which each alternative site and related facility proposal designated in the notice or presented at a hearing and considered by the commission is in conformity with both of the following:

(1) The forecast of statewide and service area electric power demands adopted pursuant to Section 25309, except as provided in Section 25514.5.

(2) Applicable local, regional, state, and federal standards, ordinances, and laws.

(b) The relative merit of each alternative site and related facility proposal designated in the notice or presented at a public hearing and considered by the commission.

(c) The safety and reliability of the facility or facilities at each of the sites designated in the notice as determined by the commission pursuant to Section 25511.

25513. Within 30 days of the publication of the preliminary report, a copy of the report will be distributed to any person requesting the report prior to distribution. Any such person may respond in writing to the preliminary report. Such response shall be submitted to the commission no later than 60 days after distribution of the report.

25514. No later than 120 days after distribution of the preliminary report, a final report shall be prepared and distributed. The final report shall include, but not be limited to, all of the following:

(a) The findings and conclusions of the commission regarding the conformity of alternative sites and related facilities designated in the notice or presented at the informational hearing or hearings and reviewed by the commission with both of the following:

(1) The 10-year forecast of statewide and service area electric power demands adopted pursuant to subdivision (b) of Section 25309, except as provided in Section 25514.5.

(2) The provisions of any state law or local or regional ordinance or regulation, including any long-range land use plans or guidelines adopted by the state or by any local or regional planning agency, which would be applicable but for the exclusive authority of the commission to certify sites and related facilities; and the standards adopted by the commission pursuant to Section 25216.3.

(b) Any findings and comments submitted by the California Coastal Zone Conservation Commission or any regional coastal zone conservation commission regarding conformity of any siting alternative proposed in the coastal zone with policies, regulations, or guidelines established by the commission. Such findings and comments, however, shall not constitute approval of any permit required from any regional coastal zone conservation commission or California Coastal Zone Conservation Commission on appeal.

(c) The commission's findings on the acceptability of each alternative siting proposal designated in the notice or presented at the hearings and reviewed by the commission. In its findings on any alternative siting proposal, the commission may specify modification in the design, construction, location, or other conditions which will meet the standards, policies, and guidelines established by the commission.

(d) Any conditions, modifications, or criteria proposed for any site and related facility proposal resulting from the commission's evaluation pursuant to subdivision (c) of Section 25512.

25514.3. In specifying any modifications, conditions, or criteria pursuant to Section 25514, for sites and related facilities requiring a certificate of public convenience and necessity, the commission shall request the comments and recommendations of the Public Utilities Commission on the economic, financial, rate, system reliability, and service implications of such modifications, conditions, or criteria.

25514.5. In considering the acceptability of a site proposed to accommodate ultimately additional power-generating capacity, the commission, in determining, pursuant to Sections 25514 and 25512, the conformity of the facilities proposed in the notice with the 10-year forecast of statewide and service area electric power demands adopted pursuant to subdivision (b) of Section 25309, shall base its determination only on such initial facilities as are proposed for operation within the forthcoming 10-year period. Additional facilities projected to be operating at the site at a time beyond the forthcoming 10-year period shall not be considered in the determination of conformity with the electric power demand forecast.

25515. No later than 30 days after the final report is distributed, a hearing or hearings on the final report shall be commenced. Such hearings shall be concluded within 30 days of their commencement.

25516. The approval of the notice by the commission shall be based upon findings pursuant to Section 25514. The commission's decision shall be issued within 60 days after the conclusion of the

hearings on the final report. The notice shall not be approved unless the commission finds at least two alternative site and related facility proposals considered in the commission's final report as acceptable. If the commission does not find at least two sites and related facilities acceptable, additional sites and related facilities may be proposed by the applicant which shall be considered in the same manner as those proposed in the original notice.

If the commission finds that a good faith effort has been made by the person submitting the notice to find an acceptable alternative site and related facility and that there is only one acceptable site and related facility among those submitted, the commission may approve the notice based on the one site and related facility. If a notice is approved based on one site and related facility, the commission may require a new notice to be filed to identify acceptable alternative sites and related facilities for the one site and related facility approved.

If the commission finds that additional electric generating capacity is needed to accommodate the electric power demand forecast pursuant to subdivision (b) of Section 25309 and, after the commission finds that a good faith effort was made by the person submitting the notice to propose an acceptable site and related facility, it fails to find any proposed site and related facility to be acceptable, the commission shall designate, at the request of and at the expense of the person submitting the notice, a feasible site and related facility for providing the needed electric generating capacity.

25516.5. On a notice which proposes an expanded ultimate electric generating capacity for a site, the commission may, based upon findings pursuant to Section 25514, either approve the notice only for the initial facility or facilities proposed for operation within the forthcoming 10-year period or may approve the notice for the initial facility or facilities and find the site acceptable for additional generating capacity of the type tentatively proposed. The maximum allowable amount and type of such additional capacity shall be determined by the commission.

If a notice is approved which includes a finding that a particular site is suitable to accommodate a particular additional generating capacity, the site shall be designated a potential multiple-facility site. The commission may, in determining the acceptability of a potential multiple-facility site, specify conditions or criteria necessary to insure that future additional facilities will not exceed the limitations of the site.

25517. Except as provided in Sections 25501 and 25501.3, after the effective date of this division, no construction of any thermal powerplant or electric transmission line shall be commenced by any electric utility without first obtaining certification as prescribed in this division. Any onsite improvements not qualifying as construction may be required to be restored as determined by the commission as

necessary to protect the environment, if certification is denied.

25518. Except as provided in subdivision (b) of Section 25501, the Public Utilities Commission shall issue no certificate of public convenience and necessity for a site or related electrical facilities unless the utility has obtained a certificate from the commission.

25518.5. Nothing in this division shall preclude the concurrent initiation of an application for a certificate of public convenience and necessity from the Public Utilities Commission subject to the condition specified in Section 25518.

25519. (a) In order to obtain certification for a site and related facility, an application for certification of such site and related facility shall be filed with the commission. Such application shall be in a form prescribed by the commission and shall be filed with the commission no later than 18 months before any construction is to commence. Such application shall be for a site and related facility which has been found to be acceptable by the commission pursuant to Section 25516, or for an additional facility at a site which has been designated a potential multiple-facility site pursuant to Section 25514.5 and found to be acceptable pursuant to Sections 25516 and 25516.5. An application for an additional facility at a potential multiple-facility site shall be subject to the conditions and review specified in Section 25520.5. An application may not be filed for a site and related facility, if there is no suitable alternative for the site and related facility which was previously found to be acceptable by the commission, unless the commission has approved the notice based on the one site as specified in Section 25516.

(b) The commission, upon its own motion or in response to the request of any party, may require the applicant to submit any information, document, or data, in addition to the attachments required by subdivision (i), which it determines is reasonably necessary to make any decision on the application.

(c) Upon receipt of the application, the commission shall undertake studies and investigations necessary to comply with the environmental impact reporting procedures established pursuant to Section 21100. For purposes of preparation and approval of the environmental impact report on a proposed site and related facility, the commission shall be the lead agency as provided in Section 21165, except as to any site and related facility proposed to be located within the permit area if a permit from the California Coastal Zone Conservation Commission is required. Except as otherwise provided in Division 13 (commencing with Section 21000), the environmental impact report shall be completed within one year after receipt of the application.

(d) If the site and related facility specified in the application is proposed to be located in the coastal zone and a permit is required from the California Coastal Zone Conservation Commission, the commission shall transmit a copy of the application to the California Coastal Zone Conservation Commission for its review and

comments.

(e) Upon receipt of an application, the commission shall forward the application to local governmental agencies having land use and related jurisdiction in the area of the proposed site and related facility. Such local agencies shall review the application and submit comments on, among other things, the design of facility, architectural and aesthetic features of the facility, access to highways, landscaping and grading, public use of lands in the area of the facility, and other appropriate aspects of the design, construction, or operation of the proposed site and related facility.

(f) Upon receipt of an application, the commission shall cause a summary of the application to be published in a newspaper of general circulation in the county in which the site and related facilities, or any part thereof, designated in the application, is proposed to be located. The commission shall transmit a copy of the application to each federal and state agency having jurisdiction or special interest in matters pertinent to the proposed site and related facilities, and to the Attorney General.

(g) The adviser shall require that adequate notice is given to the public and that the procedures specified by this division are complied with.

(h) For any proposed site and related facility requiring a certificate of public convenience and necessity, the commission shall transmit a copy of the application to the Public Utilities Commission and request the comments and recommendations of the Public Utilities Commission on the economic, financial, rate, system reliability, and service implications of the proposed site and related facility. In the event the commission requires modification of the proposed facility, the commission shall consult with the Public Utilities Commission regarding the economic, financial, rate, system reliability, and service implications of such modifications.

(i) The commission shall transmit a copy of the application to any governmental agency not specifically mentioned in this act, but which it finds has any information or interest in the proposed site and related facilities, and shall invite the comments and recommendations of each such agency. The commission shall request any relevant laws, ordinances, or regulations which any such agency has promulgated or administered.

(j) An application for certification of any site and related facilities shall contain a listing of every federal agency from which any approval or authorization concerning the proposed site is required, specifying the approvals or authorizations obtained at the time of the application and the schedule for obtaining any approvals or authorizations pending.

25520. The application shall contain the following and such other information as the commission by regulation may require:

(a) A detailed description of the design, construction, and operation of the proposed facility.

(b) Safety and reliability information, including, in addition to documentation previously provided pursuant to Section 25511, planned provisions for emergency operations and shutdowns.

(c) Available site information, including maps and descriptions of present and proposed development and, as appropriate, geological, aesthetic, ecological, seismic, water supply, population and load center data, and justification for the particular site proposed.

(d) Such other information relating to the design, operation, and siting of the facility as the commission may specify.

(e) A statement of need providing information showing compatibility of the proposed facility with the most recent biennial report issued by the commission pursuant to Section 25309.

(f) A description of the facility, the cost of the facility, the fuel to be used, the source of fuel, fuel cost, plant service life and capacity factor, and generating cost per kilowatt hour.

(g) A description of any electric transmission lines including the estimated cost of the proposed electric transmission line; a map in suitable scale of the proposed routing showing details of the rights-of-way in the vicinity of settled areas, parks, recreational areas, and scenic areas, and existing transmission lines within one mile of the proposed route; and justification for the route and a preliminary description of the effect of the proposed electric transmission line on the environment, ecology, and scenic, historic and recreational values.

25520.5. (a) In reviewing an application for an additional facility at a potential multiple-facility site, the commission shall undertake a reconsideration of its prior determinations in the final report on the notice for the site issued pursuant to Section 25514, based on current conditions and other reasonable and feasible alternatives to the proposed facility.

(b) Within 180 days of the filing of the application for an additional facility at a potential multiple-facility site and after adequate public hearings, the commission shall issue its decision on the acceptability of the proposed facility based on the reconsideration specified in subdivision (a) of this section. A negative determination shall be the final decision of the commission on the application and subject to judicial review pursuant to Section 25531. An affirmative determination shall not be a final decision of the commission on the application.

(c) The decision of the commission on an application for an additional facility at a potential multiple-facility site receiving a favorable determination pursuant to subdivision (b) of this section shall be issued within 24 months after the filing of the application or at such later time as is mutually agreed upon by the commission and the applicant.

25521. No earlier than 90 nor later than 240 days after the date of the filing of an application, the commission shall commence a public hearing or hearings thereon in Sacramento, San Francisco, Los

Angeles, or San Diego, whichever city is nearest the proposed site. Additionally, the commission may hold a hearing or hearings in the county in which the proposed site and related facilities are to be located.

25522. Except as provided in subdivision (c) of Section 25520.5, within 18 months of the filing of an application for certification or at such later time as is mutually agreed by the commission and the applicant, the commission shall issue a written decision as to such application.

25523. The commission shall prepare a written decision after a public hearing or hearings on an application, which shall include all of the following:

(a) Specific provisions relating to the manner in which the proposed facility is to be designed, sited, and operated in order to protect environmental quality and assure public health and safety.

(b) Findings regarding the conformity of the proposed site and related facilities with standards adopted by the commission pursuant to Section 25216.3 and subdivision (d) of Section 25402, with public safety standards and the applicable air and water quality standards, and with other relevant local, regional, state, and federal standards, ordinances, or laws. If the commission finds that there is noncompliance with any state, local, or regional ordinance or regulation in the application, it shall consult and meet with the state, local, or regional governmental agency concerned to attempt to correct or eliminate the noncompliance. If the noncompliance cannot be corrected or eliminated, the commission shall inform the state, local, or regional governmental agency if it makes the findings required by Section 25525.

(c) Provision for restoring the site as necessary to protect the environment, if the commission denies approval of the application.

(d) Findings regarding the conformity of the proposed facility with the 10-year forecast of statewide and service area electric power demands adopted pursuant to subdivision (b) of Section 25309.

25524. The commission shall not certify any facility contained in the application, unless its findings with respect to subdivision (d) of Section 25523 are in the affirmative.

25524.5. The commission shall not certify any facility which adds generating capacity to a potential multiple-facility site in excess of the maximum allowable capacity established by the commission pursuant to Section 25516.5, unless the commission finds that exceeding the maximum allowable capacity will not increase adverse environmental impacts or create technological, seismic, or other difficulties beyond those already found acceptable in the commission's findings on the notice for that site pursuant to Sections 25516 and 25516.5.

25525. The commission shall not certify any facility contained in the application when it finds, pursuant to subdivision (b) of Section 25523, that the facility does not conform with any applicable state.

local, or regional standards, ordinances, or laws, unless the commission determines that such facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving such public convenience and necessity. In no event shall the commission make any finding in conflict with applicable federal law or regulation. The basis for such findings shall be reduced to writing and submitted as part of the record pursuant to Section 25523.

25526. The commission may certify any facility contained in the application which is proposed to be located, in whole or in part, within the permit area unless a permit from the California Coastal Zone Conservation Commission is required, in which case such permit shall be obtained before the certificate may be granted. Approval of a permit by any regional coastal zone conservation commission, or the California Coastal Zone Conservation Commission on appeal, shall not affect the authority of the commission to deny certification for any facility contained in the application, as provided in this division.

25527. The following areas of the state shall not be approved as a site for a facility, unless the commission finds that such use is not inconsistent with the primary uses of such lands and that there will be no substantial adverse environmental effects and the approval of any public agency having ownership or control of such lands is obtained:

(a) State, regional, county and city parks; wilderness, scenic or natural reserves; areas for wildlife protection, recreation, historic preservation; or natural preservation areas in existence on the effective date of this division.

(b) Estuaries in an essentially natural and undeveloped state.

In considering applications for certification, the commission shall give the greatest consideration to the need for protecting areas of critical environmental concern, including, but not limited to, unique and irreplaceable scientific, scenic, and educational wildlife habitats; unique historical, archaeological, and cultural sites; lands of hazardous concern; and areas under consideration by the state or the United States for wilderness, or wildlife and game reserves.

25528. (a) The commission shall require, as a condition of certification of any site and related facility, that the applicant acquire, by grant or contract, the right to prohibit development of privately owned lands in the area of the proposed site which will result in population densities in excess of the maximum population densities which the commission determines, as to the factors considered by the commission pursuant to Section 25511, are necessary to protect public health and safety. The power of condemnation is hereby granted to the applicant to acquire such development rights and the requirement of the commission that any such rights be acquired is a conclusive finding of the public necessity of such condemnation; provided, however, that nothing in this

division grants or extends a right of condemnation to any person or applicant who has not otherwise been granted such right under any other provision of law prior to the effective date of this division.

(b) In the case of an application for a nuclear facility, the area and population density necessary to insure the public's health and safety designated by the commission shall be that as determined from time to time by the United States Atomic Energy Commission, if the commission finds that such determination is sufficiently definitive for valid land use planning requirements.

(c) The commission shall waive the requirements of the acquisition of development rights by an applicant to the extent that the commission finds that existing governmental land use restrictions are of a type necessary and sufficient to guarantee the maintenance of population levels and land use development over the lifetime of the facility which will insure the public health and safety requirements set pursuant to this section.

(d) No change in governmental land use restrictions in such areas designated in subdivision (c) of this section by any government agency shall be effective until approved by the commission. Such approval shall certify that the change in land use restrictions is not in conflict with requirements provided for by this section.

(e) It is not the intent of the Legislature by the enactment of this section to take private property for public use without payment of just compensation in violation of the United States Constitution or the Constitution of California.

25529. When a facility is proposed to be located in the coastal zone or any other area with recreational, scenic, or historic value, the commission shall require, as a condition of certification of any facility contained in the application, that an area be established for public use, as determined by the commission. Lands within such area shall be acquired and maintained by the applicant and shall be available for public access and use, subject to restrictions required for security and public safety. The applicant may dedicate such public use zone to any local agency agreeing to operate or maintain it for the benefit of the public. If no local agency agrees to operate or maintain the public use zone for the benefit of the public, the applicant may dedicate such zone to the state. The commission shall also require that any facility to be located along the coast or shoreline of any major body of water be set back from the shoreline to permit reasonable public use and to protect scenic and aesthetic values.

25530. The commission may order a reconsideration of all or part of a decision or order on its own motion or on petition of any party.

Any such petition shall be filed within 30 days after adoption by the commission of a decision or order. The commission shall not order a reconsideration on its own motion more than 30 days after it has adopted a decision or order. The commission shall order or deny reconsideration on a petition therefor within 30 days after the petition is filed.

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A decision or order may be reconsidered by the commission on the basis of all pertinent portions of the record together with such argument as the commission may permit, or the commission may hold a further hearing, after notice to all interested persons. A decision or order of the commission on reconsideration shall have the same force and effect as an original order or decision.

25531. (a) The decisions of the commission on any application of any electric utility for certification of a site and related facility shall be subject to judicial review in the same manner as the decisions of the Public Utilities Commission on the application for a Certificate of Public Convenience and Necessity for the same site and related facility.

(b) No new or additional evidence may be introduced upon review and the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the United States Constitution or the California Constitution. The findings and conclusions of the commission on questions of fact shall be final and shall not be subject to review, except as provided in this article. Such questions of fact shall include ultimate facts and the findings and conclusions of the commission. A report prepared by, or an approval of, the commission pursuant to Section 25510, 25514, 25516, or 25516.5, or subdivision (b) of Section 25520.5, shall not constitute a decision of the commission subject to judicial review.

(c) Subject to the right of judicial review of decisions of the commission, no court in this state shall have jurisdiction to hear or determine any case or controversy concerning any matter which was, or could have been, determined in a proceeding before the commission, or to stop or delay the construction or operation of any thermal powerplant except to enforce compliance with the provisions of a decision of the commission.

25532. The commission shall establish a monitoring system to assure that any facility certified under this division is constructed and is operating in compliance with air and water quality, public health and safety, and other applicable regulations, guidelines, and conditions adopted or established by the commission or specified in the written decision on the application. In designing and operating the monitoring system, the commission shall seek the cooperation and assistance of the State Air Resources Board, the State Water Resources Control Board, the Department of Health, and other state, regional, and local agencies which have an interest in environmental control.

25534. The commission may after hearings amend the conditions of, or revoke the certification for, any facility for any of the following reasons:

(a) For any material false statement set forth in the application,

presented in proceedings of the commission, or included in supplemental documentation provided by the applicant.

(b) For other than insignificant failure to comply with the terms or conditions of approval of the application as specified by the commission in its written decision.

(c) For violation of any provision of this division or any regulation or order issued by the commission under this division.

25535. Such cost as the applicant incurs to comply with the decision of the commission shall be allowed for ratemaking purposes.

25536. Pending completion of the statewide and service area forecasts of electric power demand specified in Section 25309, the commission shall utilize as an interim forecast for purposes of determining the acceptability of alternative site and related facility proposals as provided in subdivision (a) of Section 25514 and subdivision (d) of Section 25523, the 10-year forecast of loads and resources prepared by the Public Utilities Commission from reports required or submitted as of March 31, 1974, under Sections 2 and 3 of General Order 131 of the Public Utilities Commission. On the first June 1st and the second June 1st following the effective date of this division, the commission shall commence public hearings, at least one of which shall be in the City of Sacramento. Any person may participate in any such hearings. The hearing shall be conducted to secure the views and comments of the public, the electric utilities, other state and federal agencies, and city and county governments regarding revision of the interim forecasts based on the considerations specified in Section 25304 and on updated information regarding forecast loads and resources submitted by any electric utility. Such hearings shall be concluded within 30 days from the date of their commencement. Within 60 days of the conclusion of the hearings specified in this section, the commission shall issue a final report specifying the revisions, if any, to the interim forecast. The report shall be based upon the information and views presented at the public hearings and the commission's independent analysis.

25537. Upon approval of an application, the commission shall forward to the Atomic Energy Commission, the Environmental Protection Agency, and to other appropriate federal agencies, the results of its studies including the environmental impact report on the facility, the written decision on the facility contained in the application, and the commission's determination of facility safety and reliability as provided in Section 25511.

25538. Upon receiving the commission's request for review under subdivision (e) of Section 25519 and Section 25506, the local agency may request a fee from the commission to reimburse the local agency for the actual and added costs of such review by the local agency. The commission shall reimburse the local agency for such added costs that shall be actually incurred by the local agency in complying with the commission's request. The commission may request a fee from the person proposing the project or may devote

a special fund in its budget for the reimbursement of costs incurred by local agencies.

25539. In reviewing notices and applications for certification of modifications of existing facilities, the commission shall adopt rules and regulations as necessary to insure that relevant duties pursuant to this division are carried out.

25540. If a person proposes to construct a geothermal powerplant and related facility or facilities on a site, the commission shall not require three alternative sites and related facilities to be proposed in the notice. In considering the proposed construction of a geothermal powerplant and related facilities on a site, the commission shall issue its findings on the notice as specified in Section 25516 within nine months from the date of filing of such notice, and shall issue its final and decision on the application as specified in Section 25523 within nine months from the date of filing of the application for certification, or at such later time as is mutually agreed by the commission and the applicant or person submitting the notice.

25541. The commission may exempt from the provisions of this chapter thermal powerplants with a generating capacity of up to 100 megawatts and modifications to existing generating facilities which do not add capacity in excess of 100 megawatts, if the commission finds both of the following:

(a) No substantial adverse impact on the environment or energy resources will result from the construction or operation of the proposed facility or from the modifications.

(b) Generating capacity will not be added which is substantially in excess of the forecast of electrical energy demands adopted pursuant to subdivision (b) of Section 25309.

25542. In the case of any site and related facility or facilities for which the provisions of this division do not apply, the exclusive power given to the commission pursuant to Section 25500 to certify sites and related facilities shall not be in effect.

CHAPTER 7. RESEARCH AND DEVELOPMENT

25600. The commission shall develop and coordinate a program of research and development in energy supply, consumption, and conservation and the technology of siting facilities and shall give priority to those forms of research and development which are of particular importance to the state, including, but not limited to, all of the following:

(a) Methods of energy conservation specified in Chapter 5 (commencing with Section 25400).

(b) Increased energy use efficiencies of existing thermal electric and hydroelectric powerplants and increased energy efficiencies in designs of thermal electric and hydroelectric powerplants.

(c) Exploration and accelerated development of alternative sources of energy, including geothermal and solar energy resources.

(d) Improved methods of construction, design, and operation of facilities to protect against seismic hazards.

(e) Improved methods of energy demand forecasting.

25601. The commission shall carry out technical assessment studies on all forms of energy and energy related problems, in order to influence federal research and development priorities and to be informed on future energy options and their impacts, including, in addition to those problems specified in Section 25600, but not limited to, the following:

(a) Advanced nuclear powerplant concepts, fusion, and fuel cells.

(b) Total energy concepts.

(c) New technology related to coastal and offshore siting of facilities.

(d) Expanded use of wastewater as cooling water and other advances in powerplant cooling.

(e) Improved methods of power transmission to permit interstate and interregional transfer and exchange of bulk electric power.

(f) Measures to reduce wasteful and inefficient uses of energy.

(g) Shifts in transportation modes and changes in transportation technology in relation to implications for energy consumption.

(h) Methods of recycling, extraction, processing, fabricating, handling, or disposing of materials, especially materials which require large commitments of energy.

(i) Expanded recycling of materials and its effect on energy consumption.

(j) Implications of government subsidies and taxation and ratesetting policies.

(k) Utilization of waste heat.

(*l*) Use of hydrogen as an energy form.

(m) Use of agricultural products, municipal wastes, and organic refuse as an energy source.

Such assessments may also be conducted in order to determine which energy systems among competing technologies are most compatible with standards established pursuant to this division.

25602. For research purposes, the commission shall, in cooperation with other state agencies, participate in the design, construction, and operation of energy conserving buildings using data developed pursuant to Section 25401, in order to demonstrate the economic and technical feasibility of such designs.

25603. Beginning with, and for, the 1976–77 fiscal year, the commission shall submit to the Governor for inclusion in the state budget an integrated program of proposed research and development and technical assessment projects set forth on an item-by-item basis including the priority items established in Sections 25600, 25601, and 25602. The commission shall describe for each item the objectives and anticipated end product of each project, funding and staff requirements, timing and other information which is necessary to describe the projects adequately. As part of each

submission, the commission shall describe the progress of its programs.

25604. For purposes of carrying out the provisions of this chapter, the commission may contract with any person for materials and services that cannot be performed by its staff or other state agencies, and may apply for federal grants or any other funding.

CHAPTER 8. ENERGY SHORTAGE CONTINGENCY PLANNING

25700. The commission shall, in accordance with the provisions of this chapter, develop contingency plans to deal with possible shortages of electrical energy or fuel supplies to protect public health, safety, and welfare.

25701. (a) Within six months after the effective date of this division, each electric utility, gas utility, and fuel wholesaler or manufacturer in the state shall prepare and submit to the commission a proposed emergency load curtailment plan or emergency energy supply distribution plan setting forth proposals for identifying priority loads or users in the event of a sudden and serious shortage of fuels or interruption in the generation of electricity.

(b) The commission shall encourage electric utilities to cooperate in joint preparation of an emergency load curtailment plan or emergency energy distribution plan. If such a cooperative plan is developed between two or more electric utilities, such utilities may submit such joint plans to the commission in place of individual plans required by subdivision (a) of this section.

(c) The commission shall collect from all relevant governmental agencies, including, but not limited to, the Public Utilities Commission and the Office of Emergency Services, any existing contingency plans for dealing with sudden energy shortages or information related thereto.

25702. The commission shall, after one or more public hearings, review the emergency load curtailment program plans or emergency energy supply distribution plans submitted pursuant to Section 25701, and, within one year after the effective date of this division, the commission shall approve and recommend to the Governor and the Legislature plans for emergency load curtailment and energy supply distribution in the event of a sudden energy shortage. Such plans shall be based upon the plans presented by the electric utilities, gas utilities, and fuel wholesalers or manufacturers, information provided by other governmental agencies, independent analysis and study by the commission and information provided at the hearing or hearings. Such plans shall provide for the provision of essential services, the protection of public health, safety, and welfare, and the maintenance of a sound basic state economy. Provision shall be made in such plans to eliminate wasteful, uneconomic, and

unnecessary uses of energy in times of shortages and to differentiate curtailment of energy consumption by users on the basis of ability to accommodate such curtailments. Such plans shall also specify the authority of and recommend the appropriate actions of state and local governmental agencies in dealing with energy shortages.

25703. Within four months after the date of certification of any new facility, the commission shall review and revise the recommended plans based on additional new capacity attributed to any such facility. The commission shall, after one or more public hearings, review the plans at least every five years from the approval of the initial plan as specified in Section 25702.

25704. The commission shall carry out studies to determine if potential serious shortages of electrical, natural gas, or other sources of energy are likely to occur and shall make recommendations to the Governor and the Legislature concerning administrative and legislative actions required to avert possible energy supply emergencies or serious fuel shortages, including, but not limited to, energy conservation and energy development measures, to grant authority to specific governmental agencies or officers to take actions in the event of a sudden energy shortage, and to clarify and coordinate existing responsibilities for energy emergency actions.

25705. If the commission determines that all reasonable conservation, allocation, and service restriction measures will not alleviate an energy supply emergency, and upon a declaration by the Governor or by an act of the Legislature that a threat to public health, safety, and welfare exists and requires immediate action, the commission may authorize the construction and use of generating facilities not to exceed 250 megawatts net electrical generating capacity per unit under such terms and conditions as specified by the commission to protect the public interest.

Within 60 days after the authorization of construction and use of such generating facilities, the commission shall issue a report detailing the full nature, extent, and estimated duration of the emergency situation and making recommendations to the Governor and the Legislature for further energy conservation and energy supply measures to alleviate the emergency situation as alternatives to use of such generating facilities.

The commission shall include, among the recommendations specified in Section 25704, suggestions for modifying the maximum size limit for generating facilities specified in this section.

CHAPTER 9. STATE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT SPECIAL-ACCOUNT

25800. There is in the General Fund in the State Treasury the State Energy Resources Conservation and Development Special Account. On and after the effective date of this division, each electric utility shall add a surcharge of one-tenth of a mill ($0.0001) per

kilowatt-hour to the cost of electric power sold to consumers in the state; provided, however, that after January 1, 1976, the State Board of Equalization shall establish a surcharge rate in accordance with the following schedule which shall be sufficient to provide the revenue necessary to fund expenditures from the account appropriated by the Legislature in the Budget Act for the 1975–76 fiscal year and each fiscal year thereafter; and provided, further, that such increases shall become effective on September 1 of the year in which the State Board of Equalization establishes that an increase or decrease in accordance with the following schedule is necessary to produce sufficient revenues to fund the appropriations contained in the Budget Act:

Schedule.

One-tenth of a mill ($0.0001).
Eleven hundredths of a mill ($0.00011).
Twelve hundredths of a mill ($0.00012).
Thirteen hundredths of a mill ($0.00013).
Fourteen hundredths of a mill ($0.00014).
Fifteen hundredths of a mill ($0.00015).
Sixteen hundredths of a mill ($0.00016).
Seventeen hundredths of a mill ($0.00017).
Eighteen hundredths of a mill ($0.00018).
Nineteen hundredths of a mill ($0.00019).
Two-tenths of a mill ($0.0002).

The State Board of Equalization shall notify every electric utility of the rate established pursuant to this section, and every electric utility shall report all surcharges in the manner and on the forms as prescribed by the State Board of Equalization.

25801. Every electric utility shall make quarterly payments, commencing on April 1, 1975, to the State Board of Equalization of all surcharges applicable under the provisions of Section 25800.

25802. Each person who submits to the commission a notice of intent for any proposed generating facility shall accompany the notice with a fee of one cent ($0.01) per kilowatt of net electric capacity of the proposed generation facility. Such fee shall only be paid on one of the alternate proposed facility sites which has the highest electrical designed capacity. In no event shall such fee be less than one thousand dollars ($1,000) nor more than twenty-five thousand dollars ($25,000).

For any other facility, the notice shall be accompanied by a fee of five thousand dollars ($5,000). Such fee shall only be paid on one of the alternate proposed facility sites.

25803. All funds received by the State Board of Equalization pursuant to Sections 25800 and 25801, and the funds received by the commission pursuant to Section 25802, shall be remitted to the State

Treasurer for deposit in the account. All funds in the account shall be expended for purposes of carrying out the provisions of this division, when appropriated by the Legislature in the Budget Act.

CHAPTER 10. ENFORCEMENT AND JUDICIAL REVIEW

25900. Except as provided in Section 25531, whenever the commission finds that any provision of this division is violated or a violation is threatening to take place which constitutes an emergency requiring immediate action to protect the public health, welfare, or safety, the Attorney General, upon request of the commission, shall petition a court to enjoin such violation. The court shall have jurisdiction to grant such prohibitory or mandatory injunctive relief as may be warranted by way of temporary restraining order, preliminary injunction, and permanent injunction.

25901. (a) Within 30 days after the commission issues its determination on any matter specified in this division, except as provided in Section 25531, any aggrieved person may file with the superior court a petition for a writ of mandate for review thereof. Failure to file such an action shall not preclude a person from challenging the reasonableness and validity of a decision in any judicial proceedings brought to enforce such decision for other civil remedies.

(b) The evidence before the court shall consist of the record before the commission, and any other relevant facts which, in the judgment of the court, should be considered in determining the validity of any decision of the commission.

(c) Except as otherwise provided herein, the provisions of subdivisions (e) and (f) of Section 1094.5 of the Code of Civil Procedure shall govern proceedings pursuant to this section.

25902. Any evaluations in the reports required by Sections 25309 and 25536 and any findings and determinations on the notice of intent pursuant to Chapter 6 (commencing with Section 25500) of this division shall not be construed as a final evaluation, finding, or determination by the commission and a court action may not be brought to review any such evaluation, finding, or determination.

25903. If any provision of subdivision (a) of Section 25531, with respect to judicial review of the decision on certification of a site and related facility, is held invalid, judicial review of such decisions shall be conducted in the superior court subject to the conditions of subdivision (b) of Section 25531. The superior court shall grant priority in setting such matters for review, and the appeals from any such review shall be given preference in hearings in the Supreme Court and courts of appeal.

SEC. 3. Chapter 11 (commencing with Section 19870) of Part 3 of Division 13 of the Health and Safety Code is repealed.

SEC. 4. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to that

section nor shall there be any appropriation made by this act for the following reasons:

(a) The duties, obligations or responsibilities imposed on local governmental entities as consumers of electric power in the form of the special surcharge are minor in nature and will not cause any financial burden on local government.

(b) Self-financing authority is provided in the form of rate increases by Section 12809 of the Public Utilities Code.

(c) The Legislature recognizes that during any legislative session a variety of changes to laws relating to crimes and infractions may cause both increased and decreased costs to local governmental entities which in the aggregate, do not result in significant identifiable cost changes.

SEC. 5. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 6. The Legislature hereby declares that the enactment of Chapter 9 (commencing with Section 25800) of Division 15 of the Public Resources Code by this act does not preempt the field of taxation upon the use of electrical energy and shall not affect the validity of any such tax imposed by a chartered city.

SEC. 7. This act shall become operative on January 7, 1975; except that Section 3 of this act shall not become operative until the date one year after the date the State Energy Resources Conservation and Development Commission adopts regulations for energy insulation for residential buildings pursuant to subdivision (a) of Section 25402 of the Public Resources Code.

APPENDIX IV

San Francisco Bay Plan
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Resolution No. 16: Priority Use Areas
Special Area Plan No. 1: San Francisco Waterfront
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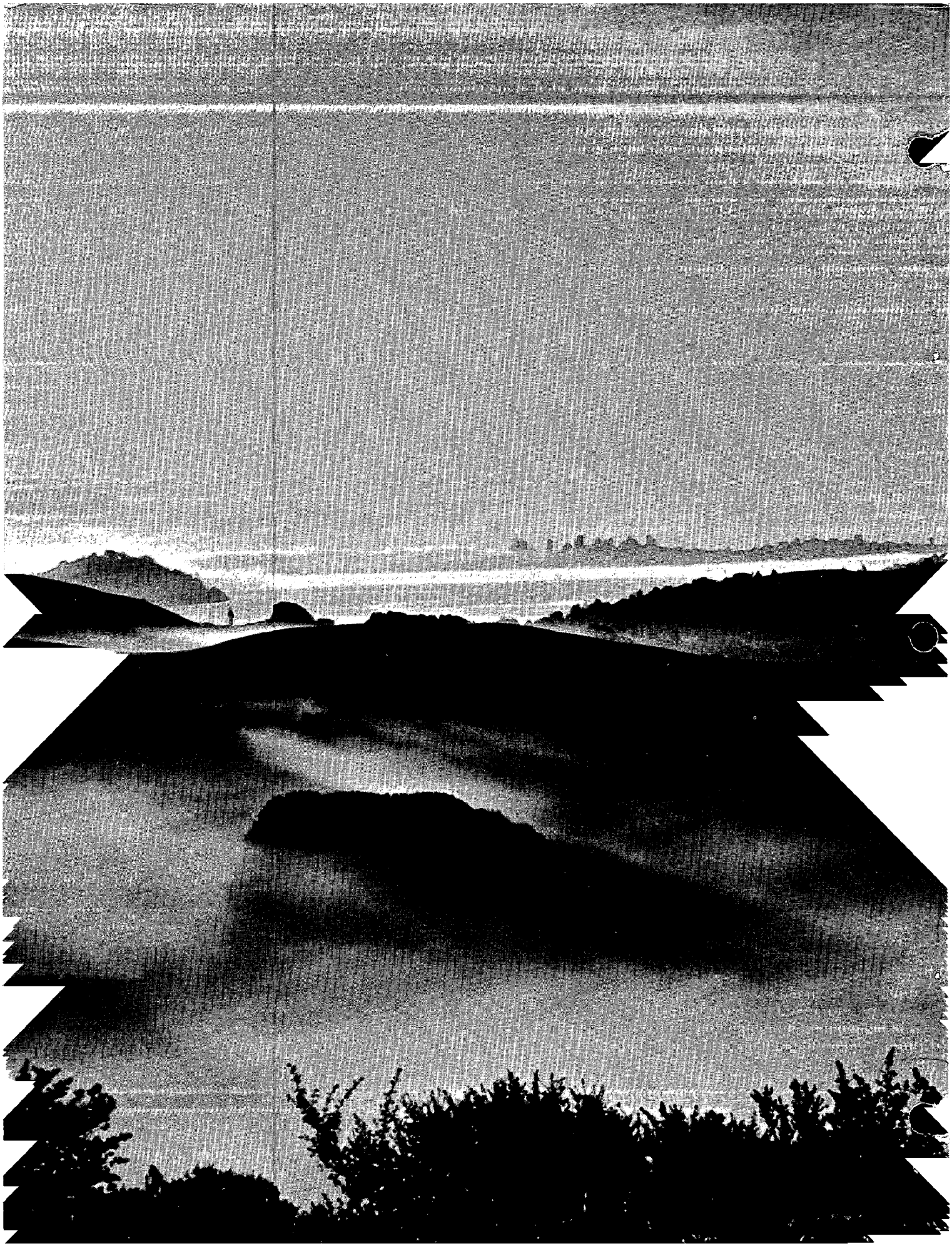
BCDC Tentative Proposals for use of Section 306 Funds

SAN FRANCISCO BAY PLAN

San Francisco Bay Plan

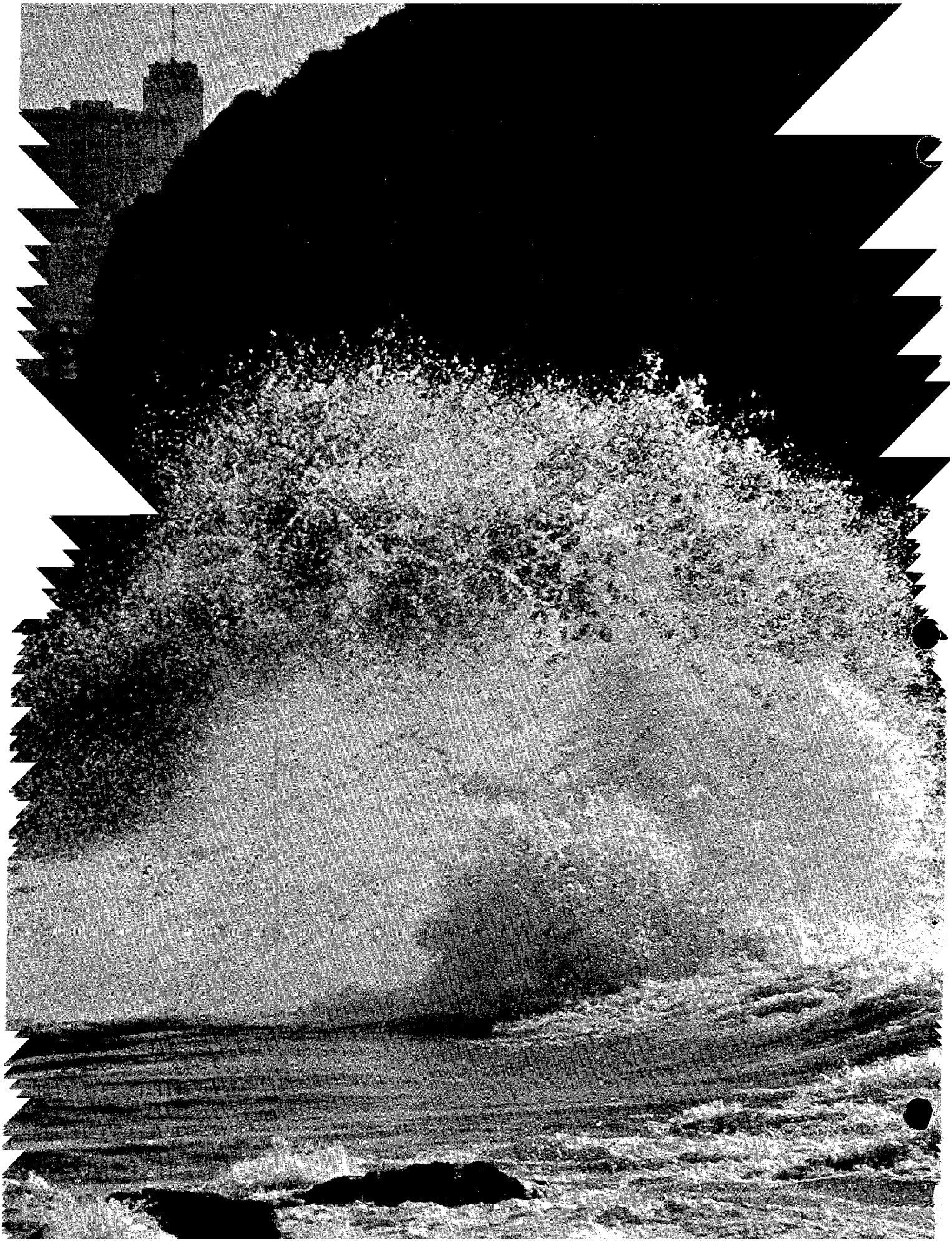
San Francisco Bay Conservation
and
Development Commission



San Francisco Bay Plan

San Francisco Bay Conservation and Development Commission

January, 1969



Letter of Transmittal

STATE OF CALIFORNIA

RONALD REAGAN, Governor

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

507 POLK STREET, ROOM 320
SAN FRANCISCO, CALIFORNIA 94102
PHONE: 557-3686

MELVIN B. LANE
Chairman
WILLIAM D. EVERS
Vice-Chairman

JOSEPH E. BODOVITZ
Executive Director

January 6, 1969

TO GOVERNOR RONALD REAGAN
AND MEMBERS OF THE CALIFORNIA LEGISLATURE:

We submit herewith our final report -- and our Plan for San Francisco Bay -- as required by the McAteer-Petris Act (Chapter 1162, Statutes of 1965).

As directed by the Act, we have made a detailed study of the Bay and we have used this study to prepare "a comprehensive and enforceable plan for the conservation of the water of San Francisco Bay and the development of its shoreline."

Since September, 1965, we have been meeting twice a month to complete our studies and our plan. We have published reports on 23 different aspects of the Bay, on such varied subjects as the importance of marshlands and the needs of waterfront industry. In our work, we have had the assistance of our own staff, the staffs of many other governmental agencies, and specialists in such fields as engineering, biology, governmental finance, meteorology, landscape architecture, urban design, industrial development, recreational planning, real estate appraisal, geology, and soils engineering.

As provided by the McAteer-Petris Act, the existence of our Commission will terminate on the 90th day after final adjournment of the 1969 Legislative Session. We therefore respectfully recommend that legislation be passed during the 1969 Session, as proposed in this report, so that there will be no lapse in the efforts begun by the State in 1965 to protect and enhance San Francisco Bay.

Sincerely,

Melvin B. Lane

MELVIN B. LANE
Chairman

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Photo Credits

Michael Bry: Inside front cover, facing Letter of Transmittal, pages 6, 34.
Sunderland Aerial Photographs, Oakland, California (1966): Facing page 1.
Rondal Partridge: Pages 4, 5, 42.
Richard Persoff: Page 8.
Moss Photography: Page 14.

In memory of the late Senator J Eugene McAteer, a leader in efforts to plan for the conservation of San Francisco Bay and the development of its shoreline.

Commissioners, 1965–1969[1]

PUBLIC REPRESENTATIVES

* **Melvin B. Lane,** Executive Vice President of Sunset Magazine, Menlo Park (appointed by the Governor), CHAIRMAN
* **William D. Evers,** attorney, San Francisco (appointed by the Governor), VICE CHAIRMAN

Mrs. Morse Erskine, civic leader, San Francisco (appointed by the Governor), VICE CHAIRMAN

* **Harry A. Bruno,** architect, Oakland (appointed by the Governor)

Joseph L. Eichler, home builder, San Francisco (appointed by the Governor)

* **Louis Ets-Hokin,** Chairman of the Board of Ets-Hokin Corporation, San Francisco (Appointed by the Speaker of the Assembly)

Eugene L. Friend, businessman, San Francisco (appointed by the Senate Rules Committee)

Mrs. Bernice Hubbard May, member of the Berkeley City Council, Berkeley (appointed by the Governor)

Martin Meyerson, Acting Chancellor of the University of California, Berkeley (appointed by the Governor)

* **Melville Owen,** attorney, Kentfield (appointed by the Governor)
* **Edward J. Slevin,** public relations consultant, San Rafael (appointed by the Senate Rules Committee)

John H. Sutter, attorney, Oakland (appointed by the Governor)

* **Mrs. Dean A. Watkins,** civic leader, Portola Valley (appointed by the Governor)

FEDERAL REPRESENTATIVES

Col. Robert H. Allan, San Francisco District Engineer, U. S. Army Corps of Engineers (appointed by the Division Engineer, Army Corps of Engineers, South Pacific Division)

* **Col. Frank C. Boerger,** San Francisco District Engineer, U. S. Army Corps of Engineers (appointed by the Division Engineer, Army Corps of Engineers, South Pacific Division)

Paul W. Eastman, Regional Program Director, Federal Water Pollution Control Administration (appointed by the Secretary of Health, Education, and Welfare)

* **Russell W. Hart,** Associate Regional Health Director of the U. S. Public Health Service (appointed by the Secretary of Health, Education, and Welfare)

STATE REPRESENTATIVES

* **Supervisor Peter Behr** of Marin County, representing the Bay Area Transportation Study Commission

Robert B. Bradford, Administrator of the State Transportation Agency

* **Grant A. Burton,** representing the San Francisco Bay Regional Water Quality Control Board

Leslie A. Carbert, State Planning Officer

Controller Alan Cranston, representing the State Lands Commission

Hugo Fisher, Administrator of the State Resources Agency

* **Controller Houston I. Flournoy,** representing the State Lands Commission
* **Robert L. Harkness,** State Planning Officer
* **Norman B. Livermore, Jr.,** Administrator of the State Resources Agency
* **Gordon C. Luce,** Administrator of the State Transportation Agency

Mayor J. D. Maltester of San Leandro, representing the Bay Area Transportation Study Commission

COUNTY REPRESENTATIVES (appointed by County Boards of Supervisors)

Supervisor Dewey K. Andersen of Napa County

* **Hans A. Feibusch,** consulting engineer, San Francisco

Supervisor James V. Fitzgerald of San Mateo County

Supervisor A. C. Harrison of San Mateo County

Supervisor James P. Kenny of Contra Costa County

* **Supervisor James E. Moriarty** of Contra Costa County
* **Supervisor Charles A. Quinn** of Santa Clara County
* **Supervisor Emanuel P. Razeto** of Alameda County
* **Supervisor Robert B. St. Clair** of San Mateo County
* **Supervisor Leigh S. Shoemaker** of Sonoma County
* **Dr. William F. Upton,** member of the Marin County Planning Commission
* **Alfred L. Wanger,** industrial property manager, Solano County
* **Supervisor Henry M. Wigger** of Napa County

CITY REPRESENTATIVES (appointed by the Association of Bay Area Governments)

Mayor Wallace Benson of Belmont

* **Mayor Ronald R. James** of San Jose
* **Councilman Bernice Hubbard May** of Berkeley
* **Thomas J. Mellon,** Chief Administrative Officer of San Francisco

Mayor Garland Oliver of Alviso

Mayor James P. Thurber, Jr., of Los Altos

Mayor Michael Wornum of Mill Valley

LEGISLATORS

Assemblyman John T. Knox of Richmond

Senator J Eugene McAteer of San Francisco

* **Senator John F. McCarthy** of San Rafael
* **Assemblyman John J. Miller** of Oakland

Senator (former Assemblyman) Nicholas C. Petris of Oakland

[1] This list includes all Commissioners who served at any time between 1965 and 1969. Members of the Commission as of the date of completion of this report are indicated by an asterisk opposite their name. Identification of each Commissioner is as of his period of service on the Commission.

Proxies for Commissioners, 1965–1969[1]

Mrs. Ann Alanson, civic leader, San Francisco

* **Supervisor Dewey K. Andersen** of Napa County

* **David Balmer,** Solano County Administrator

* **Edmond C. Baume,** administrative assistant to the State Planning Officer

* **Mrs. David D. Boyden,** civic leader, Berkeley

* **Mrs. Arthur F. Bridge,** civic leader, Belvedere

Mayor Edward R. Burton of San Carlos

Councilman Victor Calvo of Mountain View

Supervisor T. J. Coll of Contra Costa County

* **Herbert G. Crowle,** Public Works Director of Alameda County

Supervisor Howard H. Dickenson of Napa County

Roderic Duncan, attorney, Oakland

Myron J. Elkins, administrative assistant to the State Planning Officer

Clyde B. Eller, sanitary engineer, U. S. Public Health Service

John Erreca, Director of the State Department of Public Works

* **Mrs. Morse Erskine,** civic leader, San Francisco

* **Councilman Bernard Esser** of Millbrae

Curtiss M. Everts, Regional Program Director, Office of Solid Wastes, U. S. Public Health Service

* **Mrs. John A. Gast,** former Belmont planning commissioner

William F. Grader, assistant to the Administrator of the State Resources Agency

Joel Gustafson, Professor of Biology, San Francisco State College

* **Ellis M. Harris,** food broker, San Francisco

* **Charles W. Henderson,** vice president of the Ets-Hokin Corporation

* **F. J. Hortig,** Executive Officer of the State Lands Division

Mrs. Ralph N. Jacobson, chairman of the Council for Governmental Responsibility, Hillsborough

* **G. Paul Jones,** manager of the the Marin County Mosquito Abatement District

* **Dr. David C. Joseph,** Executive Officer of the North Coast Regional Water Quality Control Board

* **Michael Kahl,** administrative assistant to Senator John F. McCarthy

* **George R. Kane,** publisher of the Los Gatos Times

* **Donald M. Keagy,** Acting Regional Representative of the National Center for Urban and Industrial Health, U. S. Public Health Service

Mrs. Clark Kerr, Vice President of the Save San Francisco Bay Association

Dr. Eugene C. Lee, Vice President-Executive Assistant of the University of California, Berkeley

Daniel M. Luevano, Director of the Joint Committee on Bay Area Regional Organization

Alan S. Maremont, Director of the San Francisco Bay Area Office of the Kate Maremont Foundation

Councilman Bernice Hubbard May of Berkeley

* **Frank E. McClure,** structural engineer, Oakland

* **James McCormick,** member of the San Francisco Bay Regional Water Quality Control Board

Supervisor Robert Mendelsohn of San Francisco, former administrative assistant to Senator J Eugene McAteer

Councilman Douglas M. Merrill of Novato

* **Councilman Norman Y. Mineta** of San Jose

* **Hugh E. Mulholland,** Deputy Director of the State Department of Public Works

Councilman David M. Pierce of Richmond

* **Supervisor Robert E. Rath** of Sonoma County

* **Victor W. Sauer,** Public Works Director of Contra Costa County

William B. Schreeder, Deputy Regional Program Director, Department of Health, Education, and Welfare

Ellis W. Shamp, director and past president of the Associated Sportsmen of California

* **Robert Lee Sims,** Vice President, Secretary, and Treasurer of the Lakeside Corporation and Lakeside Foundation

* **George E. Slevin,** public relations consultant, San Rafael

Bernard J. Smith, Engineering Division, U. S. Army Corps of Engineers

John A. Stirton, Engineering Division, U. S. Army Corps of Engineers

* **S. Myron Tatarian,** Public Works Director of San Francisco

Supervisor Ignazio A. Vella of Sonoma County

* **Bertrand H. Voss,** Chief of the Regional Planning Branch, U. S. Army Corps of Engineers

Cecil H. Wells, Jr., consulting engineer, San Mateo

* **Michael Wornum,** former Mayor and City Councilman of Mill Valley

* **Richard M. Zettel,** Study Director of the Bay Area Transportation Study Commission

---

[1] This list includes persons who served as Proxy members of the Commission at any time between 1965 and 1969. Proxies as of the date of completion of this report are indicated by an asterisk opposite their name. Identification of each Proxy is as of his period of service on the Commission.

BCDC Advisory Committee

George M. Dean, Vice President (retired) of the Pacific Telephone and Telegraph Company, Hillsborough, CHAIRMAN

Herbert Blumer, Professor of Sociology at the University of California, Berkeley

Henry Bostwick, Jr., Executive Vice President and General Manager of the San Mateo County Development Association, Inc., San Mateo

Richard M. Boswell, secretary of the Pacific Inter-Club Yacht Association, El Cerrito

Leslie E. Carbert, tax economist for Pacific Gas and Electric Co. and former State Planning Officer, San Francisco

James K. Carr, General Manager of the San Francisco Public Utilities Commission, which operates San Francisco International Airport, San Francisco

Eric E. Duckstad, Director of Regional and Urban Studies at Stanford Research Institute, Menlo Park

Mrs. Ward Duffy, past President of the Bay Area Leagues of Women Voters, San Francisco

George O. Gates, Assistant Chief Geologist, U. S. Geological Survey, Menlo Park

Mrs. P. K. Gilman, Vice President of the Marin Conservation League, Larkspur

John S. Harnett, General Manager of the East Bay Municipal Utility District and former San Francisco District Engineer, U. S. Army Corps of Engineers, Oakland

John P. Harville, Director of Moss Landing Marine Laboratories, Moss Landing

Ralph Jones, landscape architect Oakland

Carl B. Metoyer, attorney, Oakland

Ben E. Nutter, Executive Director of the Port of Oakland

Burton Rockwell, architect, San Francisco

Ralph Shaw, Director of San Mateo County Department of Parks and Recreation, Redwood City

Julius von Nostitz, President of the California Wildlife Federation, San Francisco

Robert W. Walker, Vice President-Executive Representative of the Atchison, Topeka and Santa Fe Railway System, owners of large tideland areas, San Francisco

BCDC Staff

Joseph E. Bodovitz
Executive Director

Alvin H. Baum, Jr.
Deputy Executive Director

William E. Chandler
Assistant Executive Director

Legal Advisor: E. Clement Shute
Deputy Attorney General

Helen Krotozyner
Secretary to Executive Director

Irene E. Sullivan
Secretary to Deputy Executive Director

Myrna F. Carter
Receptionist

E. Jack Schoop
Chief Planner

Clifford W. Graves
Associate Planner

George E. Reed
Associate Planner

Bernard J. Smith [1]
Staff Engineer

Peter A. Stromberg
Assistant Planner

Marguerite Dorsey [2]
Graphic Artist

Elinor H. Rhodes
Graphic Artist

Mary Wong
Planning Secretary

[1] Resigned January 1967

[2] Resigned March 1968

Principal BCDC Consultants

Baxter, McDonald & Co., consultants in planning & management, Berkeley, authors of BCDC report, "Sources of Funds to Carry out the Bay Plan"

John C. Bollens, Professor of Political Science, University of California at Los Angeles, co-author of BCDC report, "Government: Regional Organization for Bay Conservation and Development"

James W. Cutter, commercial and industrial cartographer, Los Altos

Robert E. Grunwald of Grunwald, Crawford & Associates, resource planners, Hanford

Lawrence Halprin and Associates, environmental planners, San Francisco

H. Thomas Harvey, Professor of Biology, San Jose State College, author of BCDC report, "Some Ecological Aspects of San Francisco Bay," and ecological consultant to the Commission

I. Michael Heyman, Professor of Law, University of California, Berkeley, author of BCDC report, "Regulation—Legal Questions"

Maury Homes, real property appraiser, Oakland, author of BCDC report, "Costs of Acquiring Bay Lands"

Richard W. Karn of Bissell & Karn, civil engineers, San Leandro, author of BCDC report, "Review of Barrier Proposals for San Francisco Bay," and engineering consultant to the Commission

Albert Miller, Professor of Meteorology, San Jose State College, author of BCDC report, "Smog and Weather: The Effect of San Francisco Bay on the Bay Area Climate"

Mrs. Dorothy A. Muncy, city planner, specialist in industrial planning, Arlington, Virginia, author of BCDC report, "Waterfront Industry Around San Francisco Bay"

Okamoto/Liskamm, planners and architects, San Francisco, authors of BCDC report, "Appearance and Design: Principles for Design and Development of San Francisco Bay"

Lee and Praszker, consulting engineers, San Francisco, authors of BCDC report, "Bay Mud Deveolpments and Related Structural Foundations"

Mrs. Roselyn B. Rosenfeld, attorney, Berkeley

Stanley Scott, Assistant Director, Institute of Governmental Studies, University of California, Berkeley, co-author of BCDC report, "Government: Regional Organization for Bay Conservation and Development"

Sedway/Cooke, urban and regional planners, San Francisco, authors of BCDC report, "Municipal, State, and Federal Programs Affecting San Francisco Bay," and co-authors of BCDC report, "Regulation—A Practical System"

H. Bolton Seed, Professor of Engineering, University of California, Berkeley, author of BCDC report, "Seismic Problems in the Use of Fills in San Francisco Bay"

William Spangle & Associates, city and regional planners, Menlo Park, co-authors of BCDC report, "Municipal, State, and Federal Programs Affecting San Francisco Bay"

Barbara Stauffacher, Graphic Designer, San Francisco

Karl V. Steinbrugge, structural engineer, San Francisco, author of BCDC report, "Seismic Risk to Buildings and Structures on Filled Lands in San Francisco Bay"

State of California:

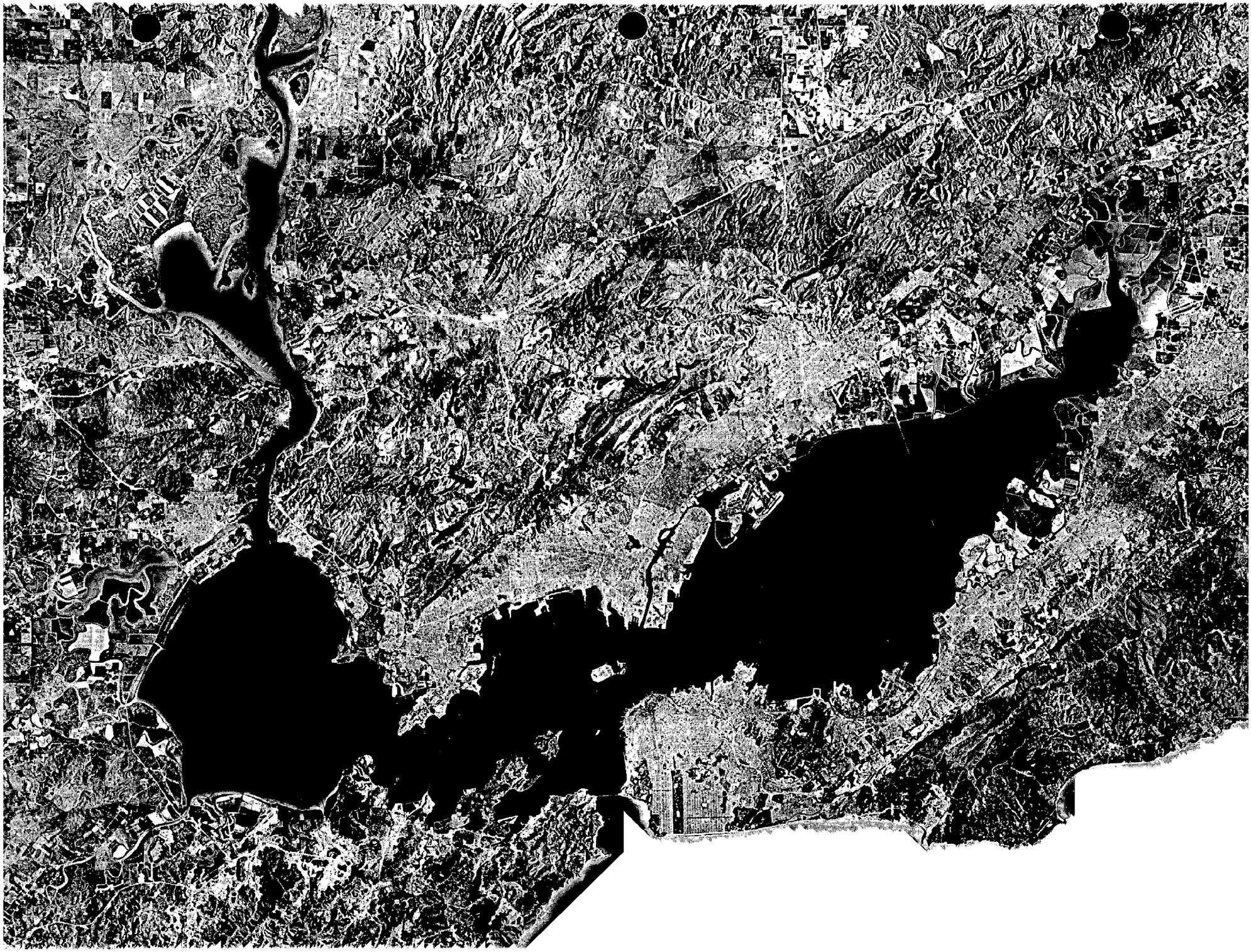
Attorney General

Department of Fish and Game, which prepared BCDC report, "Preliminary Fish and Wildlife Plan for San Francisco Bay-Estuary"

Department of Parks and Recreation, which helped prepare BCDC report, "Recreation on and Around San Francisco Bay"

Division of Mines and Geology, which prepared BCDC report, "Geology of San Francisco Bay"

State Lands Commission, which furnished background material for BCDC report, "Ownership"



Part I Summary

Introduction

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

The Bay Plan presented in this report recognizes that the Bay is a single body of water, in which changes affecting one part may also affect other parts, and that only on a regional basis can the Bay be protected and enhanced.

The Bay can serve human needs to a much greater degree than it does today. The Bay can play an increasing role as a major world port. Around its shores, many job-producing new industries can be developed. And new parks, marinas, beaches, and fishing piers can provide close-to-home recreation for the Bay Area's increasing population

But the Bay must be protected from needless and gradual destruction. The Bay should no longer be treated as ordinary real estate, available to be filled with sand or dirt to create new land. Rather, the Bay should be regarded as the most valuable natural asset of the entire Bay region, a body of water that benefits not only the residents of the Bay Area but of all California and indeed the nation.

Adoption of the Plan presented in this report will guarantee to future generations their rightful heritage from the present generation: San Francisco Bay maintained and enhanced as a magnificent body of water that helps sustain the economy of the western United States, provides great opportunities for recreation, moderates the climate, combats air pollution, nourishes fish and wildfowl, affords scenic enjoyment, and in countless other ways helps to enrich man's life.

Major Conclusions and Policies

From its studies of San Francisco Bay, the Commission has concluded that:

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

2. **Uses of the Bay.** The most important uses of the Bay are those providing substantial public benefits and treating the Bay as a body of water, not as real estate.

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

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

   a. 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.

   b. Developing adequate land for industries that require access to shipping channels for transportation of raw materials or manufactured products.

   c. Developing new recreational opportunities—shoreline parks, marinas, fishing piers, beaches, hiking and bicycling paths, and scenic drives.

   d. Developing expanded airport terminals and runways if regional studies demonstrate that there are no feasible sites for major airport development away from the Bay.

   e. Developing new freeway routes (with construction on pilings, not solid fill) if thorough study determines that no feasible alternatives are available.

   f. Developing new public access to the Bay and enhancing shoreline appearance—over and above that provided by other Bay Plan policies—through filling limited to Bay-related commercial recreation and public assembly.

5. **Effects of Bay Filling.** Bay filling should be limited to the purposes listed above, however, because any filling is harmful to the Bay, and thus to present and future generations of Bay Area residents. All Bay filling has one or more of the following harmful effects:

   a. 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.

b. 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; this reduces the ability of the Bay to maintain adequate levels of oxygen in its waters, and also reduces the strength of the tides necessary to flush wastes from the Bay.

c. 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.

d. Indiscriminate filling will diminish the scenic beauty of the Bay.

6. **Pressures to Fill.** As the Bay Area's population increases, pressures to fill the Bay for many purposes will increase. New flat land will be sought for many urban uses because most, if not all, of the flat land in communities bordering the Bay is already in use—for residences, businesses, industries, airports, roadways, etc. Past diking and filling of tidelands and marshlands 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:

a. The Bay is shallow. About two-thirds of it is less than 18 feet deep at low tide; in the South Bay and in 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.

b. Ownership of the Bay is divided. Private owners claim about 22 per cent 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 of land from the State totaling about 23 per cent of the Bay. The State now owns only about 50 per cent of the Bay, and the Federal government owns about 5 per cent. The lands that are closest to shore, most shallow, and thus easiest to fill are held by either private owners or local governments that may wish to fill for various purposes irrespective of the effects of filling on the Bay as a whole.

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

8. **Fill Safety.** Virtually all fills in 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 can be taken, however, to reduce these potential hazards to acceptable levels.

The agency designated to carry out the Bay Plan should appoint a Fill 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 in the future; (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 would complement the functions of local building and planning departments, none of which are presently staffed to provide soils inspections.

Definitions

As used in this report, *San Francisco Bay* means all the open water and slough areas from the Golden Gate and the southern end of the Bay to the eastern end of Suisun Bay and Montezuma Slough (a line between Stake Point and Simmons Point, extended northeasterly to the mouth of Marshall Cut), including submerged lands (which are always under water), tidelands (which are covered and uncovered by the daily tides), and marshlands (which are between mean high tide and five feet above mean sea level).

As used in this report, *shoreline areas* or *shoreline lands* are the uplands bordering the Bay.

As used in this report, *salt ponds* are areas diked off from the Bay and used for making salt by solar evaporation, and *managed wetlands* are marshes diked off from the Bay and managed as wildfowl habitat (generally under the ownership of duck-hunting clubs).

Foundations of the Bay Plan

The Bay Plan was prepared during three years of study and public deliberation by the members of the San Francisco Bay Conservation and Development Commission. This report presents the two essential parts of the Bay Plan: the recommended *policies* to guide future uses of the Bay and shoreline, and the recommended *maps* that apply these policies to the present Bay and shoreline. (The Bay Plan also includes recommended procedures for amending the policies and maps in light of changing circumstances and new information in the future.)

In making its study of the Bay, the BCDC had the help of numerous consultants and received extensive and invaluable aid from city, county, state, and federal agencies, and from specialists on university faculties and on the staffs of business organizations. In addition, the Commission was assisted by an Advisory Committee, whose 19 members contributed greatly in the review of the Commission's work.

The Commission's study resulted in the publication of 23 volumes of technical reports. Summaries of the studies are printed as a supplement to this report, and the detailed reports are available in numerous public libraries and in the offices of the Commission.

Also printed as a supplement to this report is an analysis of the hazards of building on filled land (hazards during normal settling of fills and during earthquakes), and of the engineering steps necessary to reduce these risks to acceptable limits. This supplementary report was prepared by a Board of Consultants appointed by the BCDC and consisting of some of the Bay Area's leading geologists, structural engineers, architects, and civil engineers specializing in soil mechanics.

Major Plan Proposals

1. Port expansion should be planned for Benicia, Oakland, Redwood City, Richmond, and San Francisco.

2. Major shipping channels should be deepened from the Golden Gate to the Delta, and to Oakland, Redwood City, Richmond, and San Francisco.

3. 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.

4. 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.

5. 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, which should be prepared as soon as possible by a governmental agency with region-wide responsibilities for transportation planning. Studies leading to this airport plan should evaluate all reasonable alternatives for meeting the Bay Area's growing need for aviation facilities, and should specifically evaluate the needs of commercial, military, and general (small plane) aviation. Airport expansion or construction on Bay fill should be permitted only if no feasible alternatives are available.

6. 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.

7. Private investment in shoreline development should be vigorously encouraged. For example, shoreline areas can be developed in many places for attractive, water-oriented housing.

Carrying out the Bay Plan

1. **General.** A governmental agency should be created or designated by the 1969 Legislature to carry out the Bay Plan. This Bay agency should be specifically authorized and directed to carry out the Plan, should be empowered to raise sufficient funds for this purpose, and should have the right to acquire Bay or shoreline land through negotiated purchase or through eminent domain if necessary. Preferably, the agency should be a limited regional government, concerned with more than one of the problems generally agreed to be of a regional nature in the Bay Area. If for any reason a limited regional government is not created in 1969, however, an agency should be created or designated with the single responsibility of carrying out the Bay Plan.

(The Commission's recommendations on governmental organization to carry out the Bay Plan, together with the Commission's studies of this matter, have been submitted to the Joint Legislative Committee on Bay Area Regional Organization.)

2. **Permits for Bay Filling and Dredging.** The agency designated to carry out the Bay Plan should be empowered to grant or deny permits for all Bay filling or dredging, in accordance with the standards in the Plan. Any public agency or owner of privately-held Bay property should be required to obtain a permit before proceeding with fill or dredging. (Although Federal agencies would not legally be subject to the jurisdiction of the future State-created Bay agency, it is Federal policy to conform generally to State laws and plans if they do not unduly interfere with national purposes or objectives, and Federal cooperation in carrying out the Bay Plan should thus be sought and expected.) For purposes of this Plan, fill should be defined to include earth or any other substance or material placed in the Bay including piers, pilings, and floating structures moored in the Bay for extended periods. Public hearings should be held on all permit applications except those of a minor nature. (This procedure is similar to the permit procedure that the BCDC has been administering since September, 1965, under the Government Code [Sections 66600-66653].)

3. **Permits for Shoreline Development.** The agency designated to carry out the Bay Plan should have limited jurisdiction over development in shoreline areas. This is necessary (1) to insure that prime shoreline sites are reserved for priority uses—ports, water-related industry, airports, wildlife refuges, and water-related recreation,

(2) to insure that public access to the Bay is provided to the maximum extent feasible, (3) to insure that if any salt ponds or managed wetlands are proposed for development, consideration is given to public purchase and return of these areas to the Bay, or alternatively, that any development is in accordance with the guidelines recommended in the Bay Plan, (4) to insure that shoreline areas not needed for priority use are developed in ways that do not adversely affect the Bay, and (5) to encourage attractive design of shoreline developments. The regional regulation of shoreline development should clearly be limited, and, in general, shoreline development should continue to be subject principally to local controls. The Bay agency should administer its shoreline jurisdiction through a permit system.

Costs of Carrying out the Plan

The Bay Plan proposes development of ports, water-related industry, airports, wildlife areas, and water-related recreation. Some of this development can and should be financed by private investment, and some by joint private-public efforts; but other types of development will depend on public funds.

Industrial growth along the shoreline will, over the next 50 years, require the private investment of many millions of dollars. Expansion of existing port and airport terminals, and creation of new ones, will require both public and private investment; these terminals generate revenues that can repay the private investment and at least part of the public investment, however.

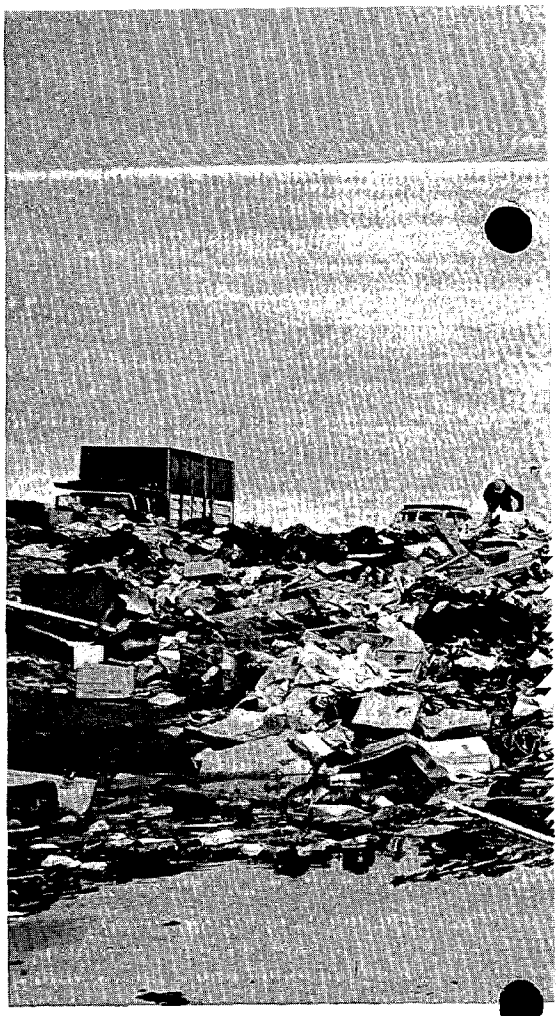
Private financing of recreational development should be vigorously encouraged, but even with extensive private investment, substantial public funds will be needed if all the recreational development in the Bay Plan is to be provided. Public funds will also be required for addititional wildlife refuges. The Bay Plan maps show some 5,800 additional waterfront acres as being of particular importance for recreational development, and 1,600 acres of new wildlife areas. No detailed appraisals of the value of this land have been made, but on the basis of county assessors' records, the purchase price could be estimated at $30–50 million. If present inflationary trends continue, however, this cost would probably increase every year. (In addition to the funds necessary to buy land, money would also be needed to later develop beaches, parks, etc., on this land.)

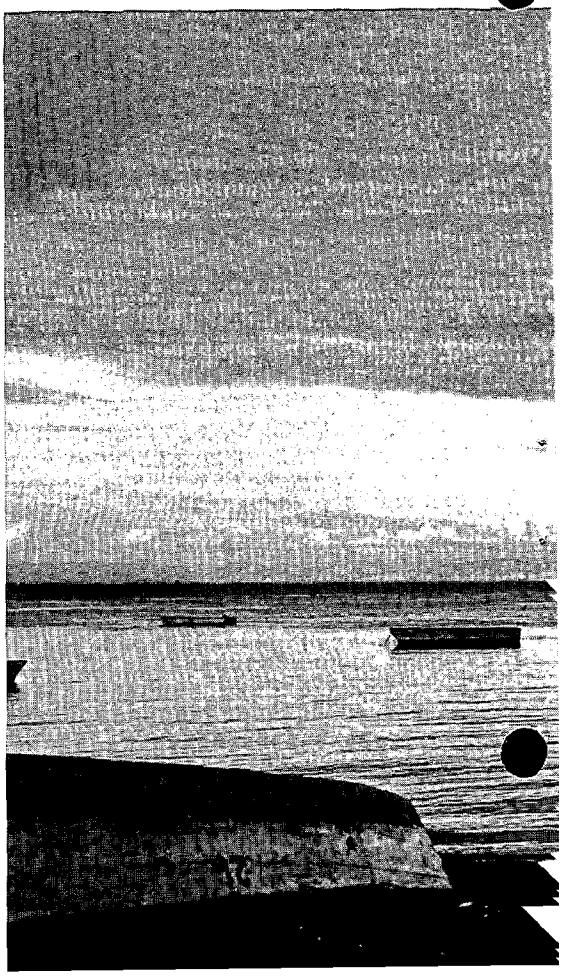
Carrying out the Plan will also require that administrative funds be provided for the Bay agency. An estimated $400–500,000 per year would be needed to pay for necessary staff to keep the Plan up to date, make engineering inspections, process permit applications, assist local governments in detailed shoreline planning, etc., and to pay for office expenses.

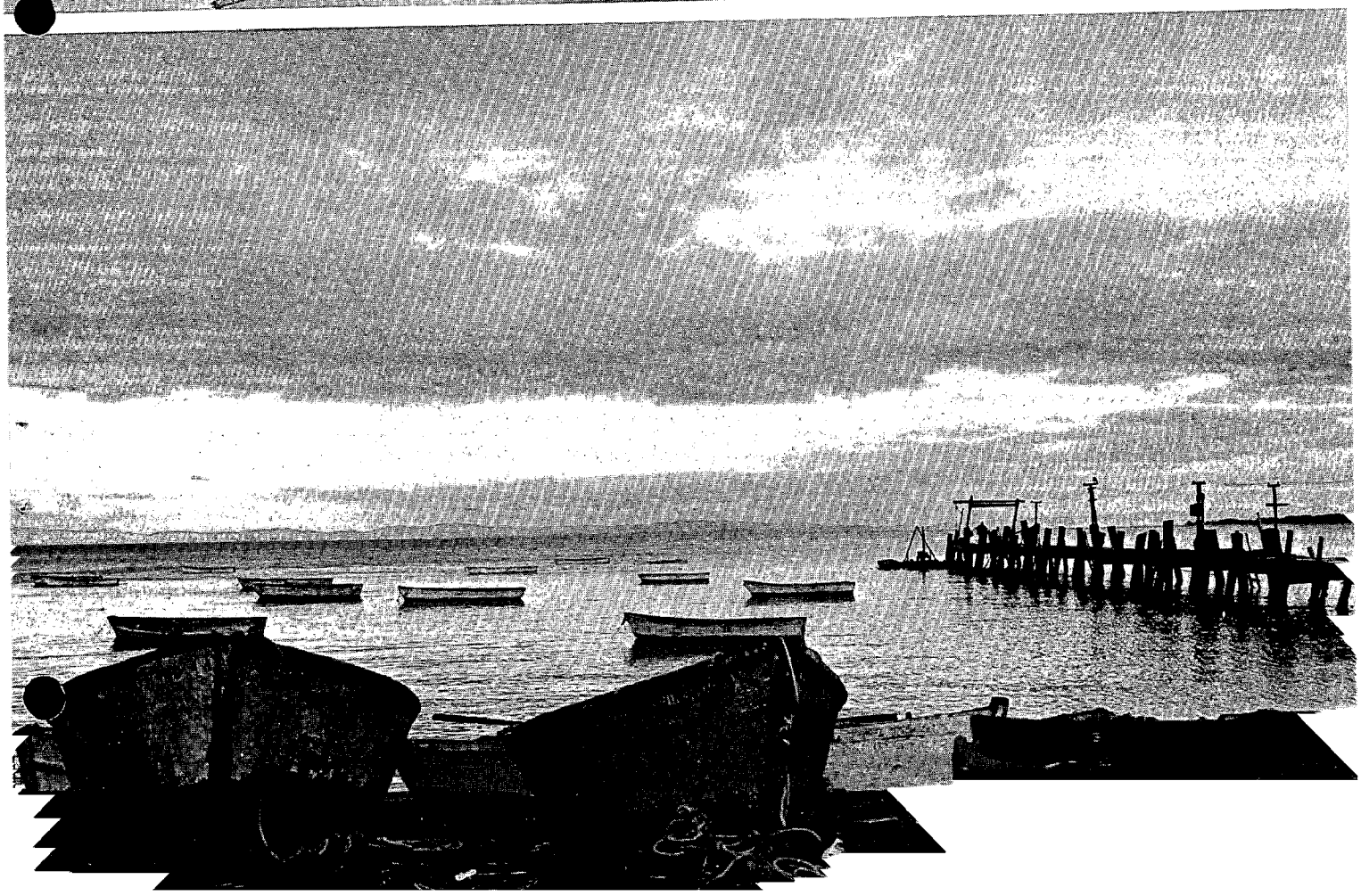
Further costs would be incurred if it were determined that private owners of parts of the Bay were to be paid for keeping their property as open water. The Bay Plan does not provide for such payments because many owners will be able to make economic use of their holdings under the Plan, and because many legal questions exist as to the rights of some owners to fill. The amount of money that would be required for compensation cannot be determined with any precision; estimates of the total value of all the privately-held property at the bottom of the Bay are as low as $28.5 million and as high as $285 million.

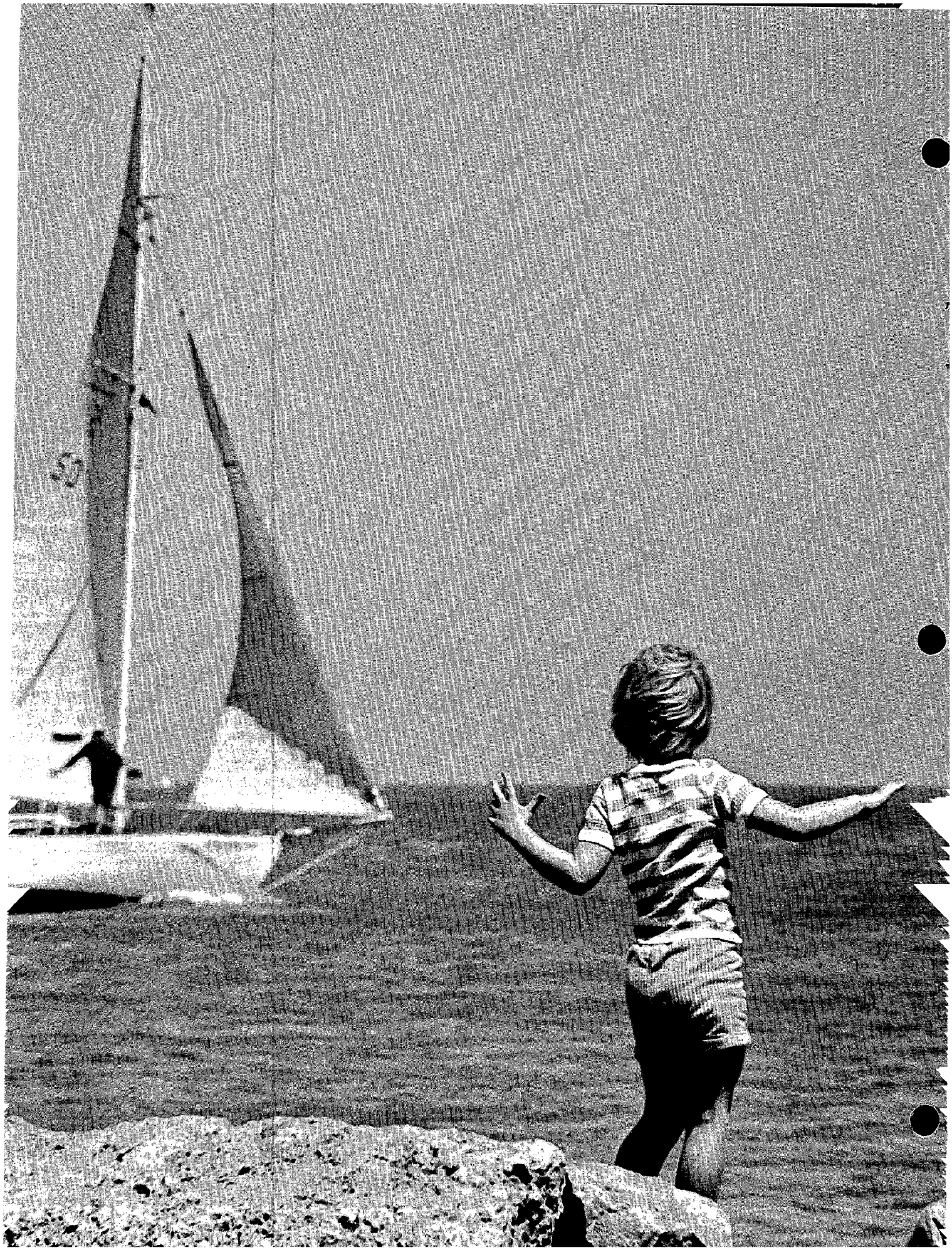
Conclusion

The Bay is a single physical mechanism in which actions affecting one part may also affect other parts. The Bay Plan provides a formula for developing the Bay and shoreline to their highest potential, while protecting the Bay as an irreplaceable natural resource. A governmental agency should be created or designated by the 1969 Legislature to carry out the Bay Plan.









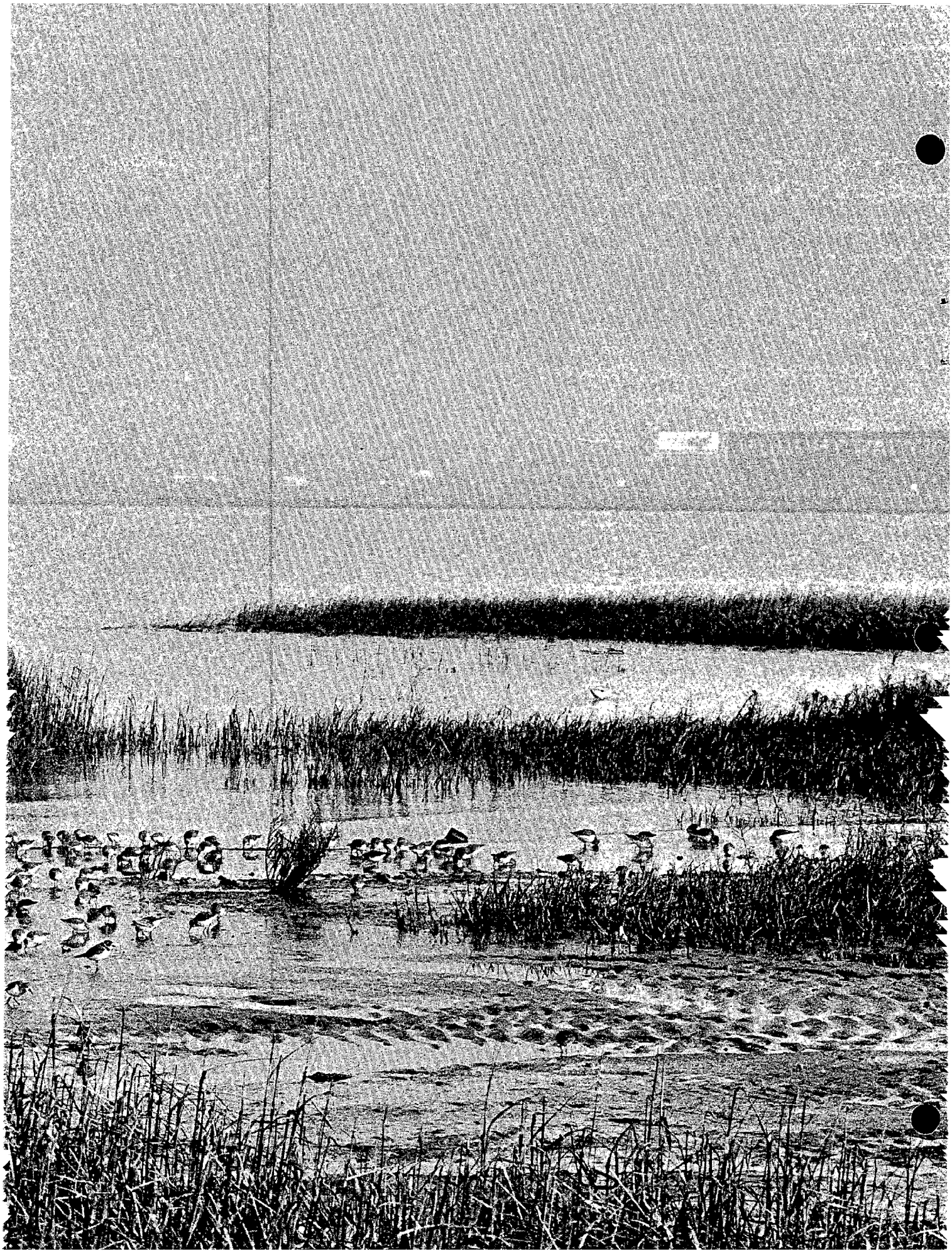
Part II
Objectives

Objective 1

Protect the Bay as a great natural resource for the benefit of present and future generations.

Objective 2

Develop the Bay and its shoreline to their highest potential with a minimum of Bay filling.



Part III The Bay as a Resource: Findings and Policies

Fish and Wildlife

Findings and policies concerning Fish and Wildlife In the Bay

Findings

a. San Francisco Bay is by far the largest estuary along California's long coastline. It is an essential resting place, feeding area, and wintering ground for millions of birds on the Pacific Flyway from Canada to Mexico. Nearly one hundred species of fish are also supported by the estuarine environment that includes marshlands, mudflats, salt production lands, and open water.

b. Human benefit from the fish and wildlife of the Bay includes food, economic gain, recreation, scientific research, education, and an environment for living. No comprehensive estimate of the value of fish and wildlife for these purposes is available, but such value can only increase unless man diminishes the Bay. In future decades the Bay may become of inestimable additional value as a fish and marine plant "farm," augmenting the nation's and the world's food resources for a rapidly-growing population.

c. Maintaining fish and wildlife depends upon availability of: (1) sufficient oxygen in the Bay waters, (2) adequate amounts of the proper foods, (3) sufficient shelter space, and (4) proper temperature, salt content, and velocity of the water. Requirements vary according to the species of fish and wildlife. Maintenance of these habitat requirements is essential to insure for present and future generations of Californians the benefit of fish and wildlife in the Bay. The key elements of the Bay fish and wildlife habitat are: marshes and mudflats, total water volume and total surface area of the Bay, good water circulation, and some fresh water inflow.

d. Plan Map 1, Natural Resources of the Bay, indicates the shoreline areas of greatest value for shore birds and water fowl. All parts of San Francisco Bay are assumed to be important for the perpetuation of fish and other marine life because any reduction of habitat reduces the marine population in some measure.

Policies

1. The benefits of fish and wildlife in the Bay should be insured for present and future generations of Californians. Therefore, to the greatest extent feasible, the remaining marshes and mudflats around the Bay, the remaining water volume and surface area of the Bay, and adequate fresh water inflow into the Bay should be maintained.

2. Specific habitats that are needed to prevent the extinction of any species, or to maintain or increase any species that would provide substantial public benefits, should be protected, whether in the Bay or on the shoreline behind dikes. Such areas on the shoreline are designated as Wildlife Areas on the Plan maps.

Water Pollution

Findings and policies concerning Water Pollution In the Bay

Findings

a. San Francisco Bay receives a variety of municipal, industrial, and agricultural wastes from sources throughout its tributary drainage area. Pollution occurs when waste discharges cause water quality conditions that damage or destroy varied uses of the Bay. Such conditions can result from toxic (poisonous) substances, from residues that unduly stimulate organic growth in the Bay, and from sewage that consumes oxygen in the water as it disintegrates. Polluted waters may be unsafe for human contact or use, offensive to the senses, damaging or lethal to marine life, and even unsuitable for industrial use.

b. Compared to rivers and estuaries in other parts of the country, San Francisco Bay is relatively unpolluted. In recent years, extensive improvements in the treatment of industrial and municipal wastes have greatly reduced the pollution that once existed in the Bay. But some parts, especially in the South Bay, are still polluted at certain times of the year. As long as the Bay continues to receive wastes from an expanding population and industry, there must be constant improvement in waste management to upgrade presently polluted areas and prevent pollution problems in the future.

c. While waste disposal poses a continuing threat to water quality in the Bay, this use of Bay waters will continue for some time. Pollution of Bay waters from these wastes can be prevented by: (1) transporting wastes directly to the ocean (but without allowing waste discharges to damage the ocean's marine life); (2) prohibiting the discharge into the Bay of toxic wastes (poisons) that do not break down; (3) adequate treatment of wastes before discharge into the Bay; and (4) natural breakdown of any biodegradable wastes placed in the Bay, which can be encouraged by maintaining adequate flushing action and an adequate supply of dissolved oxygen in the Bay.

d. Key elements that affect flushing and the supply of dissolved oxygen are (1) the **volume** of water flowing in and out with the tides (and fresh water flowing into the Bay), (2) the **temperature** of Bay waters, and (3) the rates of **oxygen interchange** at the surface of the Bay, including the tidal flats.

e. Several governmental programs are now seeking to determine the best methods of controlling water quality and preventing water pollution in the Bay. The San Francisco Bay Regional Water Quality Control Board has set water quality limits and time schedules for treatment facilities, so as to protect and enhance designated beneficial water uses of the Bay. The State's Bay-Delta Water Quality Control Program will present in early 1969 its long-range plan for preventing Bay pollution. And the State Water Resources Control Board is studying the California laws on water quality control to determine whether they should be strengthened.

Policies

1. To the greatest extent feasible, the remaining marshes and mudflats around the Bay, the remaining water volume and surface area of the Bay, and fresh water inflow into the Bay should be maintained.

2. Water quality in all parts of the Bay should be sufficiently high to permit water contact sports and to provide a suitable habitat for all indigenous and desirable forms of aquatic life. It is assumed that this will be achieved, in time, as the result of measures taken in response to requirements and enforcement proceedings of the Regional Water Quality Control Board, and measures resulting from current governmental studies. (Because of the work of these agencies, this Commission has not dealt extensively with the problem 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.)

3. The water quality laws and practices should insure that no project is built within the watershed of San Francisco Bay unless its liquid wastes will be treated, on the premises or in a public treatment plant having sufficient capacity, so that the effluent would not cause delay in compliance with applicable water quality standards anywhere in the Bay.

Smog and Weather

Findings and policies concerning Effect of the Bay on Smog and Weather

Findings

a. The Bay plays a significant role in determining the climate of the Bay Area.

b. The waters of the Bay maintain a relatively constant temperature, and this helps to moderate extremes of heat and cold in surrounding areas. The Bay surface provides a cool pathway for summertime ocean winds, enabling them to help cool areas at the "ends" of the Bay (the Santa Clara Valley and the Carquinez Strait areas).

c. Present research indicates that filling a substantial part of the Bay—as much as 25 per cent—would cause (1) higher summertime temperatures and reduced rainfall in the Santa Clara Valley and the Carquinez Strait-Suisun Bay area; and (2) increases in the frequency and thickness of both fog and smog in the Bay Area. Converting Bay surface to land would increase smog-producing temperature inversions in the Bay Area; in addition, the new land would probably be used for smog-producing concentrations of urban developments, including automobiles.

Policies

1. To the greatest extent feasible, the remaining water volume and surface area of the Bay should be maintained.

Water Surface Area and Volume

Findings and policies concerning Water Surface Area and Volume

Findings

a. Dissolved oxygen is needed to support marine life and to help break down pollutants in the water. The amount of oxygen in the Bay is largely determined by the surface area of the Bay because primary sources of oxygen are: (1) churning waves that trap oxygen from the air, (2) the water surface, which absorbs oxygen from the air, and (3) the exposed mudflats, which both produce and absorb oxygen while the tide is out and transfer it to the water when the tide comes in.

b. Water circulation might be greatly improved by some of the major barrier proposals that have been made for the Bay. But barriers affect—for better or for worse—the appearance and ecology of the Bay, sedimentation, flood control, and existing and proposed uses of the shores of the Bay. They are also very costly. For all barrier proposals fully evaluated thus far, disadvantages outweigh advantages.

c. About 40 per cent of the original surface area of the Bay has been diked off or filled in since 1850. Because this has involved some of the most effective oxygenation areas, the ability of the Bay to take up oxygen has been sharply reduced.

d. The dissolved oxygen that is absorbed at the Bay surface or from the mudflats must be transmitted to the deeper waters by mixing of the water. The necessary mixing is accomplished by tidal interchange, by fresh water inflow from tributaries, and by circulation resulting from wind action upon the surface of the Bay. The strength of tidal flow and water circulation are greatly affected by the shape of the Bay bottom and the shoreline; fills, dikes, and piers can speed or retard water circulation, depending upon both the water circulation pattern in the affected area and the shape of the fill, dike, or pier.

Policies

1. The surface area of the Bay and the total volume of water should be kept as large as possible in order to maximize active oxygen interchange, vigorous circulation, and effective tidal action. Filling and diking that reduce surface area and water volume should therefore be allowed only for purposes providing substantial public benefits and only if there is no reasonable alternative.

2. Water circulation in the Bay should be maintained, and improved as much as possible. Any proposed fills, dikes, or piers should be thoroughly evaluated to determine their effects upon water circulation and then modified as necessary to improve circulation or at least to minimize any harmful effects.

3. Because further study is needed before any barrier proposal to improve water circulation can be considered acceptable, the Bay Plan does not include any barriers. Before any proposal for a barrier is adopted in the future, the agency carrying out the Bay Plan will be required to replan all of the affected shoreline and water area.

Marshes and Mudflats

Findings and policies concerning Marshes and Mudflats Around the Bay

Findings

a. Salt marshes are extraordinarily fertile. Living marsh plants fix the energy of sunlight into their tissues through photosynthesis, and expel oxygen into the surrounding environment. One type of marsh plant, cord grass, has seven times the energy-generating capacity or food value of an equal acreage of wheat.

b. Large numbers of birds, including ducks and geese, come to the marshes to feed on the lush vegetation or on the brackish-water animals that thrive there. Their wastes, together with the decomposition products of plant decay and other elements of the complex food web, contribute nutrients from the marshes to the mudflats and the shallows of the Bay margin, supporting a vast marine-life nursery.

c. Most marine life in the Bay either depends directly on the marshes and mudflats for its sustenance or indirectly depends upon them by feeding upon other marine life so nourished. Shore birds depend upon the marshes and mudflats for both food and shelter.

d. Algae on the mudflats, exposed to abundant light alternating with abundant water, produce and expel oxygen into the water and into the air. This is an important source of oxygen that water must have both to support marine life and to combat water pollution.

e. The marshlands bordering the Bay now total about 75 square miles. In 1850, before diking and filling had been begun, marshlands covered some 300 square miles.

Policies

1. Marshes and mudflats should be maintained to the fullest possible extent to conserve fish and wildlife and to abate air and water pollution. Filling and diking that eliminate marshes and mudflats should therefore be allowed only for purposes providing substantial public benefits and only if there is no reasonable alternative. Marshes and mudflats are an integral part of the Bay tidal system and therefore should be protected in the same manner as open water areas.

2. Any proposed fills, dikes, or piers should be thoroughly evaluated to determine their effects on marshes and mudflats, and then modified as necessary to minimize any harmful effects.

3. To offset possible additional losses of marshes due to necessary filling and to augment the present marshes, (a) former marshes should be restored when possible through removal of existing dikes, (b) in areas selected on the basis of competent ecological study, some new marshes should be created through carefully placed lifts of dredged spoils, and (c) the quality of existing marshes should be improved by appropriate measures whenever possible.

Fresh Water Inflow

Findings and policies concerning Fresh Water Inflow Into the Bay

Findings

a. Fresh water carries about 20 to 30 per cent more dissolved oxygen than salt water. Fresh water, from tributaries around the Bay and especially from the Delta, is an important (but not the major) source of the oxygen necessary in the waters of the Bay to support marine life and to abate pollution.

b. The fresh water flow from the Sacramento and San Joaquin Rivers assists in flushing the northern parts of the Bay system, particularly during the spring when the snows melt in the Sierra.

c. The waters of the Bay provide a gradual change from the salt of the ocean to the fresh flow of the Sacramento and San Joaquin Rivers. This gradual change appears necessary for the survival of anadromous fish such as king salmon, steelhead, striped bass and American shad as they progress upstream toward their spawning grounds, and for the survival of their fingerlings as they descend to salt water. An abrupt change from salt to fresh water would probably end the anadromous fish runs.

d. The State Water Project, which will transport water from northern California to the central and southern parts of the State, may divert from the Bay as much as 80 per cent of the present flow in the Sacramento and San Joaquin Rivers. Many studies are under way or planned by Federal and State agencies to determine whether this diversion will adversely affect the Bay. Strong arguments have been made that the diversion will be harmful, and strong arguments have been made that the effects will be minimal.

Policies

1. If conclusive evaluations determine there will be substantial damage to the oxygen content or flushing of the Bay or to marine life in the Bay and Delta resulting from diversion of fresh water inflow into the Bay, appropriate corrective measures should be taken by the State Water Resources Control Board or other governmental agencies.

Dredging

Findings and policies concerning Dredging In the Bay

Findings

a. Much of the Bay bottom is covered with sediment—silt, sand, and clay—that has been carried by tributaries from dry land upstream. Sediment continues to flow into the Bay at the rate of about 6 million cubic yards a year; this amount is expected to decline, however, because of improved soil conservation programs and the diversion of silt-carrying waters from the Delta and Bay to other parts of the State. Only 30 per cent of the sediment entering the Bay is carried out the Golden Gate by the tides. The remainder settles to the bottom of the Bay, but may be picked up again by changing currents and carried to other parts of the Bay. Eventually, much of the sediment lodges in harbors and shipping channels from which it must be dredged at considerable cost.

b. Dredged mud is sometimes used as a fill material, and occasionally some is barged out to sea; but most often, the sediment is simply dumped in a part of the Bay where it is expected to cause as little harm as possible. Even at the best of these dumping gounds, near Alcatraz Island, only 47 per cent of the sediment is carried out to sea by the tides; at the Yerba Buena Island dumping area, only 30 per cent is carried out the Golden Gate; and at the dumping area in Carquinez Strait, probably less than 5 per cent ever reaches the ocean. The remaining sediment is simply recirculated in the Bay by the tides, and eventually settles to the bottom where it may have to be dredged again.

c. Dredged spoils dumped at sea could return to the Bay with tidal currents or could cause local damage to marine organisms or beaches near the dumping site. These conditions are capable of being analyzed prior to dumping at sea.

d. To reduce the cost of dredging harbors and navigation channels, sedimentation resulting from upstream erosion and redumping of dredged materials should be reduced as much as possible.

e. Underground fresh water supplies are an important supplement to surface water now brought into the Bay Area by aqueduct from mountain reservoirs. Deep dredging of Bay mud, or excavation for tunnels or bridge piers,

could strip the "cover" from the top of a fresh water reservoir under the Bay, allowing the salt water to contaminate the fresh water, or allowing the fresh water (if artesian) to escape in large quantities and thus cause land to sink. The precise location of ground water reservoirs under the Bay is not yet well known, however.

Policies

1. To prevent sedimentation resulting from dredging projects, mud from future dredging should be disposed of in one of the following ways: (a) placement on dry land, (b) placement as fill in approved fill projects, (c) barging or piping to suitable disposal sites in the ocean, or (d) if no other alternative is feasible, dumping in designated parts of the Bay where the maximum possible amount will be carried out the Golden Gate on the ebb tides; areas should be designated for this purpose upon approval by both the Bay agency and the Army Corps of Engineers. This policy is intended to apply as soon as possible to all dredging in the Bay, whether to create new channels or to maintain existing ones, but it is recognized that Federally-assisted maintenance dredging projects under way as of January 1, 1969, may require discharge of spoils in open waters of the Bay where relatively little of the dredged material is carried out to sea.

2. Vigorous efforts should be made to find methods of spoils disposal that will provide for construction of vitally-needed shipping channels, such as the John F. Baldwin Ship Channel from the Golden Gate to the Delta, while at the same time protecting the Bay from unnecessary filling solely to dispose of dredged mud.

3. Pending the completion of studies into the feasibility of new or improved methods of spoils disposal, complete compliance with the spoils disposal policy will not be immediately possible. Additional areas for spoils disposal may thus be needed within the Bay system, for maintenance dredging as well as for new channels for shipping or for pleasure boating, but disposal areas should be selected with due consideration as to which feasible disposal methods will be least harmful to the ecology of the Bay. In no case, however, should spoil be used to create artificial islands in the Bay unless competent studies demonstrate that these fill islands would have no harmful effect on water quality or on air quality.

4. All proposed channels should be carefully designed so as not to undermine the stability of any adjacent dikes and fills.

5. The Bay agency should encourage increased efforts by soil conservation districts and public works agencies in the 50,000-square-mile tributary area to continuously reduce soil erosion as much as possible.

6. To protect underground fresh water reservoirs (aquifers), (a) all proposals for dredging or construction work that could penetrate the mud "cover" should be reviewed by the Regional Water Quality Control Board and the State Department of Water Resources, and (b) dredging or construction work should not be permitted that might reasonably be expected to damage an underground water reservoir. Applicants for permission to dredge should be required to provide additional data on ground water conditions in the area of construction to the extent necessary and reasonable in relation to the proposed project.

Shell Deposits

Findings and policies concerning Shell Deposits In the Bay

Findings

a. Oyster shells are dredged from the Bay floor primarily for use as lime in the production of cement. A small portion of the shells are used as soil conditioner, as cattle feed, and as poultry grit by local poultry and egg producers.

b. The shell deposits are an important mineral resource because the other principal source of lime, limestone, is more distantly located in Santa Clara, Santa Cruz, and San Benito Counties to the south. Cement is expensive to transport over great distances, so a nearby source of lime is important to the Bay Area economy.

Policies

1. Filling or diking that adversely affect known shell deposits, illustrated in Plan Map 1, Natural Resources of the Bay, should be allowed only for purposes providing more public benefit than the availability of the shells.

Part IV Development of the Bay and Shoreline: Findings and Policies

Economic and Population Growth

Findings and policies concerning Economic and Population Growth

Findings

a. Estimates of population and economic growth are important in developing predictions of future demands on the Bay—uses of the Bay for recreation, for example, and uses of the waterfront for industry.

Policies

1. In preparing the Bay Plan, preliminary estimates of total population for the nine-county Bay Area published by the Bay Area Transportation Study Commission in April, 1968, have been used. Middle range estimates (comparable to California Department of Finance projections) were selected: 6,200,000 in 1980 and 7,560,000 in 1990. By extension of the BATSC data, a total population of 10,800,000 was estimated for 2020.

2. In preparing the Bay Plan, employment data were needed only for water-oriented manufacturing to estimate future demand for water-related industry. Therefore, preliminary estimates of manufacturing employment in nine water-oriented industrial categories in the nine-county Bay Area have been used. Estimates by the Bay Area Transportation Study Commission based on the above population figures were selected: 225,000 in 1980 and 249,000 in 1990. By extension of the BATSC data, water-oriented manufacturing employment was estimated at 321,000 in 2020.

Safety of Fills

Findings and policies concerning Safety of Fills In the Bay

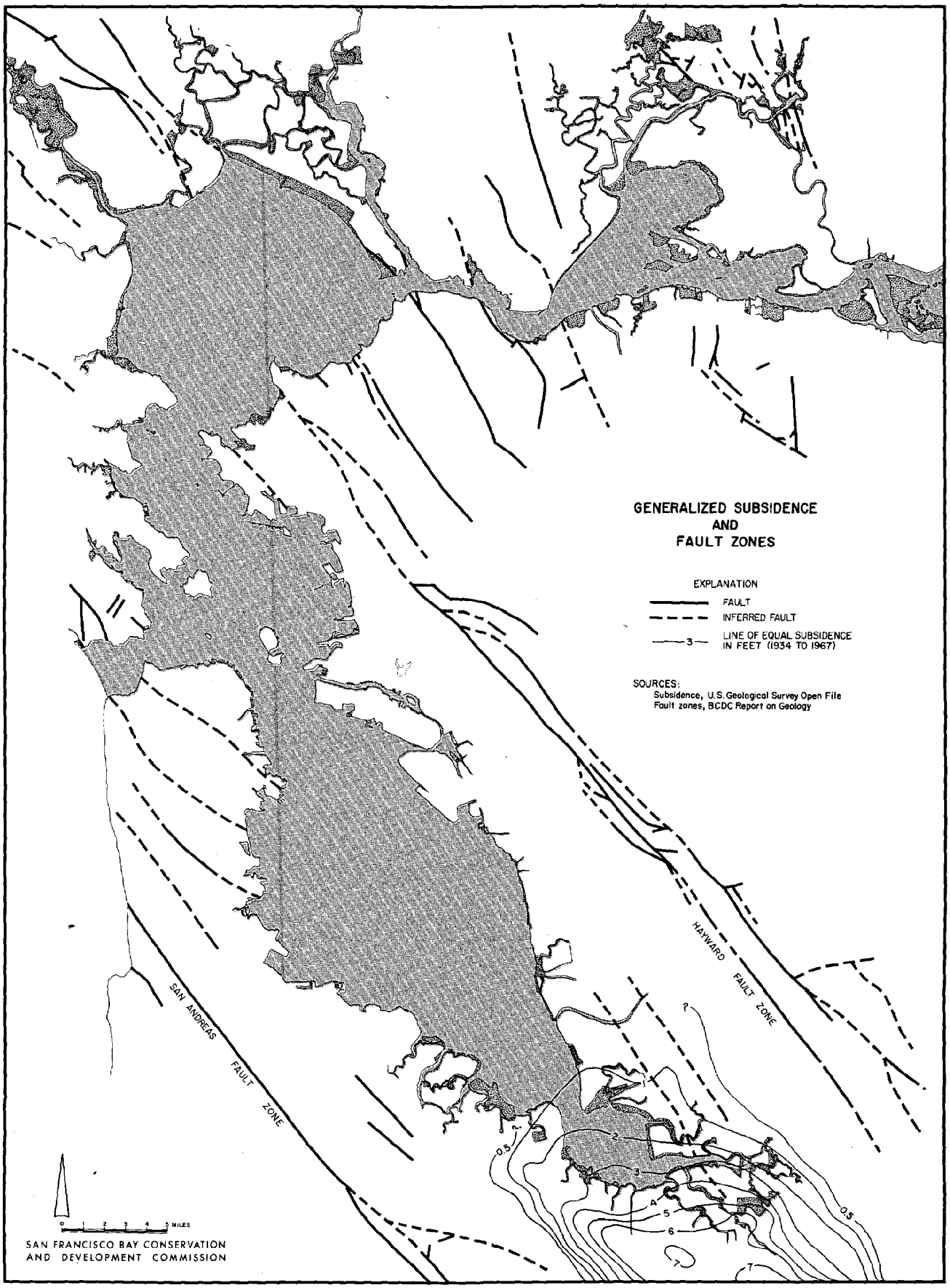
Findings

a. To reduce risk of life and damage to property, special consideration must be given to construction on filled lands in San Francisco Bay. (Similar hazards exist on other poor soils throughout the Bay Area, including soft natural soils, steep slopes, earthquake fault zones, and extensively graded areas.)

b. Virtually all fills in San Francisco Bay are placed on top of Bay mud. Under most of the Bay there is a deep, packed layer of old Bay mud. More recent deposits, called younger Bay mud, lie on top of the older muds. The top layer of young mud presents many engineering problems. The construction of a sound fill depends in part on the stability of the base upon which it is placed.

c. Safety of a fill also depends on the manner in which the filling is done, and the materials used for the fill. Similarly, safety of a structure on fill depends on the manner in which it is built and the materials used in its construction. Construction of a fill or building that will be safe enough for the intended use requires (1) recognition and investigation of all potential hazards—including (a) settling of a fill or a building over a long period of time, and (b) ground failure caused by the manner of constructing the fill or by shaking during a major earthquake—and (2) construction of the fill or building in a manner specifically designed to minimize these hazards. While the construction of buildings on fills overlying Bay deposits involves a greater number of potential hazards than construction on rock or on dense hard soil deposits, adequate design measures can be taken to reduce the hazards to acceptable levels.

d. There are no minimum construction codes regulating construction of fills on Bay mud because of the absence of sufficient data upon which to base such a code. Hazards vary with different geologic and foundation conditions, use of the fill, and the type of structures to be constructed on new fill areas. Therefore, the highest order of skilled judgment, utilizing the available knowledge of all affected disciplines, is required to (1) recognize and investigate all potential hazards of constructing a fill, and (2) design the fill and any construction thereon to minimize these hazards.


GENERALIZED SUBSIDENCE
AND
FAULT ZONES
EXPLANATION
FAULT
INFERRED FAULT
3
LINE OF EQUAL SUBSIDENCE IN FEET (1934 TO 1967)
SOURCES:
Subsidence, U.S. Geological Survey Open File
Fault zones, BCDC Report on Geology
HAYWARD FAULT ZONE
SAN ANDREAS FAULT ZONE
0.5
2
3
4
5
6
7
0 1 2 3 4 5 MILES
SAN FRANCISCO BAY CONSERVATION
AND DEVELOPMENT COMMISSION

e. In the absence of adequate fill construction standards or codes, the BCDC appointed a Board of Consultants consisting of geologists, civil engineers specializing in soils engineering, structural engineers, and other specialists, to review, on the basis of available knowledge, all new fills that might be permitted in the Bay Plan, so that no fills would be included upon which construction might be unsafe. No specific fills are included in the Plan, but the Board of Consultants has completed an initial set of criteria (published separately as "Carrying Out the Bay Plan: The Safety of Fills") as a guide to future consideration of specific fill proposals.

f. Flood damage to fills and shoreline areas can result from a combination of heavy rainfall, high tides, and winds blowing onshore. To prevent such damage, buildings near the shoreline should be above the highest expected flood mark (nine feet above sea level is generally set as the safe mark except in the southern part of the South Bay, where the higher tides require almost a foot more elevation), or should be protected by dikes of an adequate height.

g. Excessive pumping from underground fresh water reservoirs has caused extensive subsidence of the ground surface in the San Jose area and as far north as Dumbarton Bridge (map of Generalized Subsidence and Fault Zones shows subsidence from 1934 to 1967). Indications are that if heavy groundwater pumping is continued indefinitely in the South Bay area, land in the Alviso area (which has already subsided about seven feet since 1912) could subside up to seven feet more; if this occurs, extensive dikes may be needed to prevent inundation of low-lying areas by the high tides.

Policies

1. The Bay agency should appoint a Fill Review Board consisting of geologists, civil engineers specializing in soils engineering, structural engineers, and architects competent to and adequately-empowered to (a) establish and revise safety criteria for Bay fills and structures thereon, (b) review all except minor projects for the adequacy of their specific safety provisions, and make recommendations concerning these provisions, (c) prescribe an inspection system to assure placement of fill according to approved designs, and (d) gather, and make available, performance data developed from specific projects. These activities would complement the functions of local building departments and local planning departments, none of which are presently staffed to provide soils inspections.

2. Even if the Bay plan indicates that a fill may be permissible, no fill or building should be constructed if hazards cannot be overcome adequately for the intended use in accordance with the criteria prescribed by the Fill Review Board.

3. To provide vitally-needed information on the effects of earthquakes on all kinds of soils, installation of strong-motion seismographs should be required on all future major land fills. In addition, the Bay agency should encourage installation of strong-motion seismographs in other developments on problem soils, and in other areas recommended by the U. S. Coast and Geodetic Survey, for purposes of data comparison and evaluation.

4. To prevent damage from flooding, buildings on fill or near the shoreline should have adequate flood protection as determined by competent engineers. As a general rule, buildings near the shoreline should be at least nine feet above mean sea level (standard U.S.G.S. datum) or should be protected by dikes of an equivalent height and by any necessary pumping facilities. In the southern half of the South Bay, this height should be at least ten feet. Exceptions to the general height rule may be made for developments specifically designed to tolerate periodic flooding.

5. To minimize the potential hazard to Bayside development from subsidence due to groundwater withdrawal, all proposed developments at the lower end of the South Bay should be sufficiently high above mean sea level or sufficiently protected by dikes to allow for the effects of additional subsidence, utilizing the latest information available from the U. S. Geological Survey.

Water-Related Industry

Findings and policies concerning Water-Related Industry on the Bay

Findings

a. Industries of many types require frontage on navigable waters to receive raw materials and to distribute processed materials by ship. These are "water-related industries."

b. Water-related industry is basic to the economy of the Bay Area and of the western United States. Therefore, the needs of water-related industry must be given high priority in the Bay Plan.

c. Land suitable for water-related industry will probably be in short supply well within the next 50 years. Such land is therefore a resource that must be carefully managed and ultimately used only by industries specifically requiring a waterfront site. Waterfront industrial sites should also be planned so as to avoid wasteful use of the limited supply.

d. Many other industries compete with water-related industries for waterfront sites: (1) industries that need to have large volumes of water available for cooling and therefor seek sites near the Bay; these are "water-using industries;" (2) industries that supply or use the products of water-related industries and therefore seek locations near them; these are "linked industries;" (3) other industries that simply seek locations close to freeways and railroads, which are often along the Bay shoreline.

Policies

1. Because shoreline land suitable for water-related industry will eventually become scarce, such land should be reserved now specifically for this purpose. The amount of additional land to be reserved should be determined on the basis of the best data available, using a 50-year planning period to anticipate future needs as well as possible. On the basis of the 50-year manufacturing employment estimates derived from data published by the Bay Area Transportation Study Commission in April, 1968, a range of from 11,000 to 19,000 additional acres of land suitable for water-related industry and not now in that use should be reserved. The Bay Plan provides for reserving the higher figure of approximately 19,000 acres. This amount will be supplemented

by: (a) additional lands within the nine-county Bay Area but outside the proposed Bay agency jurisdiction, (b) acreage that might be added by authorized fills, (c) acreage that might be used by water-related industries in addition to the reserved priority areas, and (d) very large acreages available in the Delta, outside the nine-county Bay Area. In addition, the Plan reserves 6,000 acres of prime industrial land now used predominantly by existing water-related industries.

2. The determination as to which lands to reserve for water-related industry should be made on the basis of the following location criteria:

	Maximum Points
Channel (or Pipeline) Access	20
Rail Access	10
Freeway Access	10
Major Highway Access	5
Size of Land Area	15
Grade of Site	10
Foundation Suitability	15
Size of Ownership Units	5
Present Use	10
Highest count	100

Preference for industrial use should be given to lands on the basis of these criteria, but with due regard that such sites not unnecessarily interfere with the recreational and fish and wildlife resources of San Francisco Bay and with the use of these resources.

3. Land reserved for water-related industries should ultimately be used only by industries specifically requiring waterfront sites for extensive shipping by water. (Water-using industries and linked industries should be located otuside of the area reserved for water-related industry; local jurisdictions should take steps to reserve sites for them in the vicinity of water-related industry reserves.)

4. All of the land reserved for water-related industry will not be needed at once, and other uses can be allowed in the interim. Tax policy and property tax assessments should recognize that water-related industrial uses may be many years away.

5. Water-related industrial sites should be planned so as to avoid wasteful use of the limited supply of waterfront land. The following principles should be followed to the maximum extent feasible in planning for water-related industry:

a. Extensive use of the shoreline for storage of raw materials, fuel, products, or wastes should not be permitted on a longterm basis. If required, such storage areas should generally either be at right angles to the main direction of the shoreline or be as far inland as feasible, so other use of the shoreline may be made possible.

b. Where large acreages are available for industry, site planning should strive to provide access to the shoreline for all future plants that might locate in the same area. (As a general rule, therefore, the longest dimension of plant sites should be at right angles to the shoreline.) Docking facilities at waterfront industrial concentrations should also be shared as much as possible among industries and, also, if appropriate, with public port agencies.

c. If the shoreline that is freed by sharing of the shoreline or inboard location of storage areas is put to public use, the industries involved may need to be compensated for any excessive added capital and operating costs for longer pipelines and conveyor systems.

d. Waste treatment ponds for water-related industry should occupy as little land as possible.

e. Any new highways, railroads, or rapid transit lines in existing or future water-related industrial areas should be located sufficiently far away from the waterfront so as not to interfere with industrial use of the waterfront. New access roads to waterfront industrial areas should be approximately at right angles to the shoreline, topography permitting.

Some filling may be necessary at some sites despite the most careful attention to proper site layout.

6. Water-related industry should be planned so as to make industrial sites attractive (as well as economically-important) uses of the shoreline. The following criteria should be employed to the maximum extent possible:

a. Air and water pollution should be minimized through enforcement of the highest feasible standards.

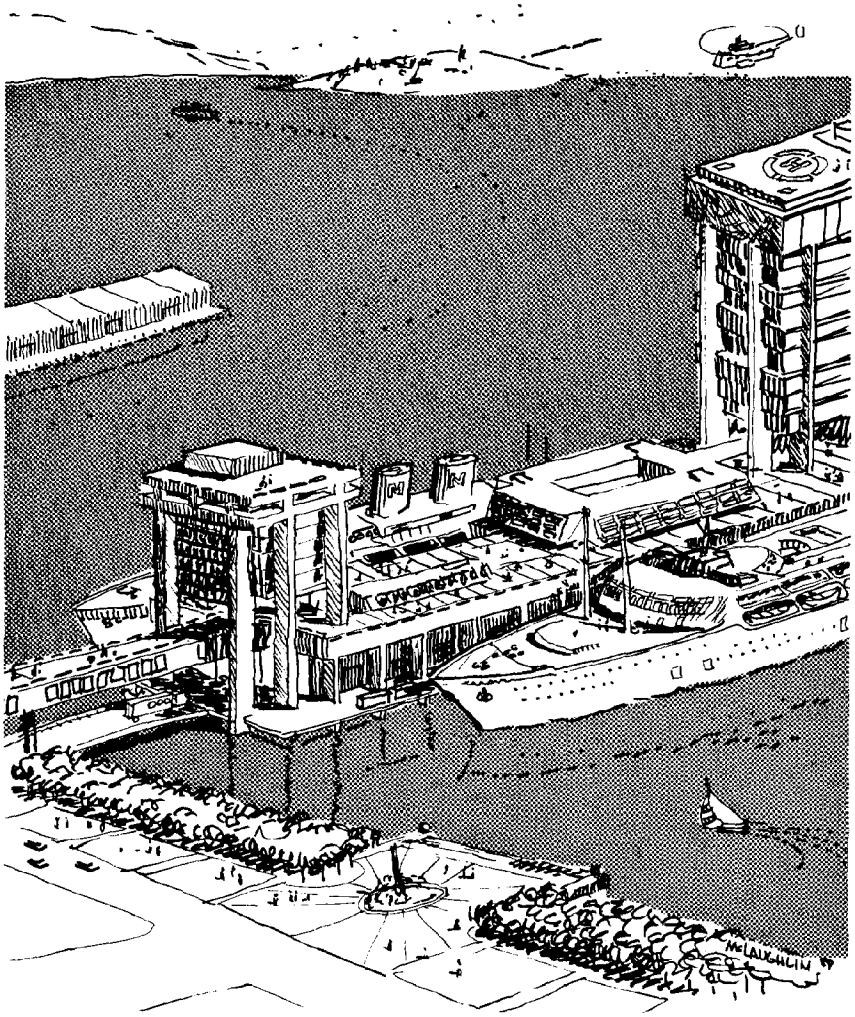
b. When Bayfront hills are used for water-related industries, terracing should generally be required and leveling of the hills should not be permitted.

c. Important Bay overlook points, and historic areas and structures that may be located in water-related industrial areas, should be preserved and incorporated into the site design, if at all feasible. In addition, shoreline not actually used for shipping facilities should be used for some type of public access or recreation, to the maximum extent feasible. Public areas need not be directly accessible by private automobiles with attendant parking lots and driveways; access may be provided by hiking paths or by forms of public transit such as elephant trains or aerial tramways.

d. Regulations, tax arrangements, or other devices should be drawn in a manner that encourages industries to meet the foregoing objectives. In addition, if a sizeable area is to be obtained for public use in an existing industrial site, a public agency should be authorized, but not obligated, to assist the industry in obtaining suitable adjacent land to replace areas given over to public use. Once industry and public agencies agree on site development and design plans, the public agency should be firmly committed to (1) construct and maintain agreed-upon improvements, (2) enact and enforce controls to prevent encroachment of incompatible uses into the industrial area, and (3) refrain from making unreasonable additional demands on the industry that were not included in the original plan approval.

7. To reduce pressure for use of waterfront areas by non-water-related industries seeking only freeway and railroad access, construction of needed freeways and railways in inland locations should be encouraged by the Bay agency. As soon as possible, a comprehensive regional planning agency should make an adequate study of **all** (not just water-related) industrial land needs in the Bay Area; it may well prove necessary for a limited regional government to reserve industrial sites near railways and freeways in and around the Bay Area for industries that specifically require rail and freeway access, if pressure is to be effectively removed from waterfront areas.

Ports



Passengership Terminal in a Multipurpose Structure

Findings and policies concerning Ports on the Bay

Findings

a. San Francisco Bay is one of the world's great natural harbors, and maritime commerce is of primary importance to the entire economy of the Bay Area.

b. Adequate modern port terminals and deeper shipping channels will be needed to preserve and enhance the standing of the Bay Area as a major world harbor and to keep pace with changes in shipping technology.

c. Of particular importance for Bay planning are the expected growth in size of tankers and bulk carriers, which will require deeper channels than any now in the Bay; and new methods of cargo handling such as containerization, which require exceptionally large specially-designed terminals and supporting transportation facilities.

d. Planning for port terminals should be carefully coordinated with other shoreline uses, should consider the Ports of Sacramento and Stockton as part of the port system available to meet future needs, and should have as a major objective the avoidance of unnecessary Bay filling.

e. No single port agency is responsible for coordinated planning and development of Bay Area port terminals. As a result, new port facilities may be built by whichever individual port can command the necessary financing, even though another site might serve regional needs equally well but with less Bay filling. In addition, a major investment by one publicly-operated port can be jeopardized by the unnecessarily duplicating actions of another publicly-operated Bay Area port. And, of particular importance to proper use of the Bay, parts of the Bay can be filled, and shoreline areas taken, for unnecessarily competing port uses.

f. Ports are not supported completely by revenues from shipping, but must be subsidized, either directly through taxes or else indirectly through revenues derived from housing, industry, restaurants, and other such uses of port-owned property.

Policies

1. Future port planning and development—but not necessarily port operation—should be guided by an overall regional port development plan.

2. If some ports in the regional system do not have the funds necessary to complete facilities needed by the region, a regional agency may be required to finance or develop them. Otherwise, there will be tremendous pressure to allow the ports with the strongest finances to provide all of the regional facilities, even though this might result in unnecessary filling of the Bay.

3. Some filling and dredging will be required to provide for necessary port expansion, but any permitted fill or dredging should be in accord with an overall regional port development plan.

4. The initial regional port development plan should be as illustrated in the Bay Plan maps. The Plan accommodates the total projected cargo tonnage requirements to the year 2020 with a minimum of Bay filling. It provides for:

a. Major expansion of port facilities at Benicia, Redwood City, and Richmond;

b. Substantial redevelopment of existing facilities at Alameda, Oakland, and San Francisco;

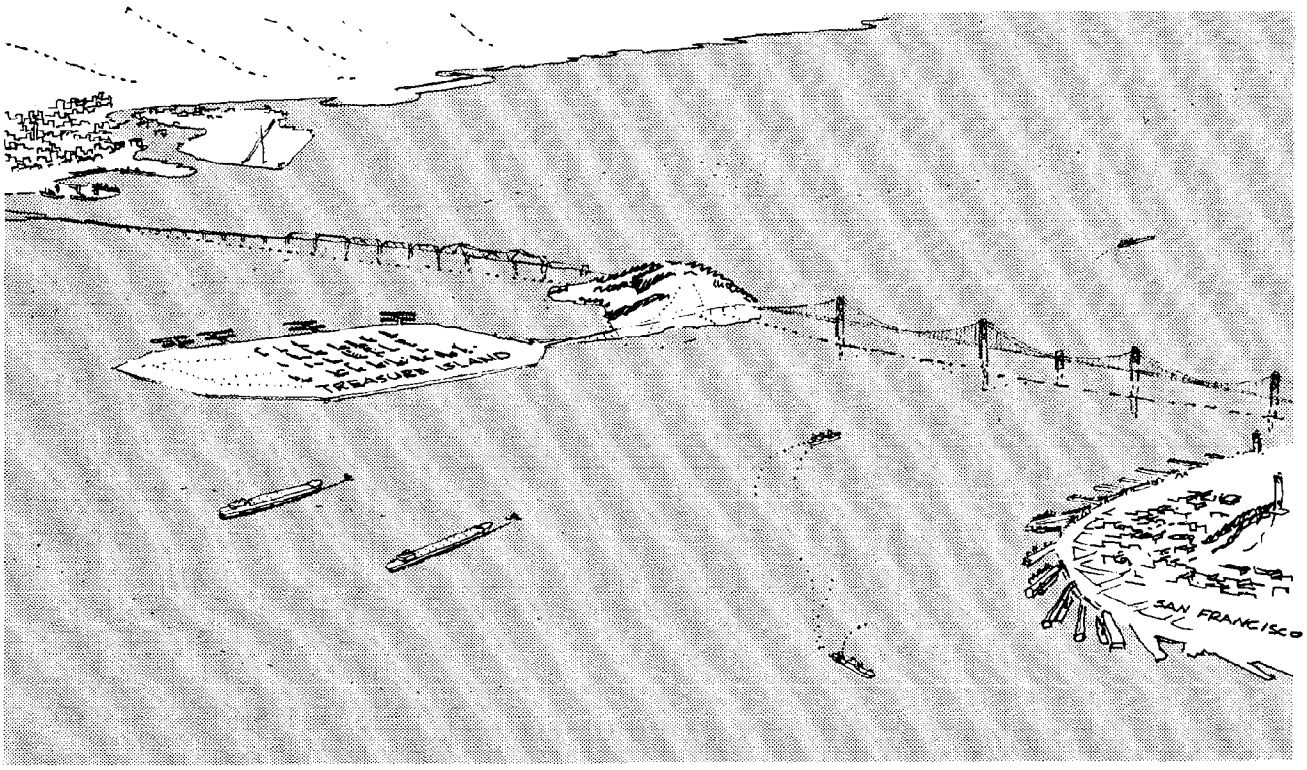
c. Possible new shallow-draft terminals near Napa, Petaluma, and San Jose;

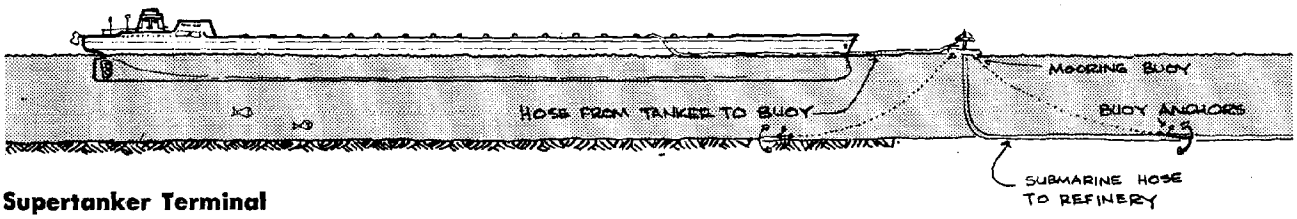
d. A possible supertanker terminal in the Central Bay, as a long-range alternative to constructing and maintaining ever deeper channels to North Bay refineries. (The giant ships, which may have drafts in excess of 60 feet, would use the terminal to transfer their cargoes to smaller vessels or pipelines.) The Central Bay terminal could be a small, pile-supported structure to hold pipeline connections or it could simply be a reserved anchorage; no Bay fill or storage facilities would be needed; and

e. Further deepening of ship channels as needed to accommodate expected growth in ship size, possibly as deep as 70 feet through the Golden Gate, up to 60 feet to North and Central Bay ports, and 45 feet to Redwood City.

5. It is possible that in the future, cargoes moving between the Orient and the East Coast of the U. S. will be shipped across the United States by special trains. This would tend to concentrate additional shipping volume in one port where special facilities would be available for transfer of cargoes between ships and the special trains. Any additional port facilities required for this method of transportation should be provided with as little Bay filling as possible.

6. Port areas on the shores of the Bay should be able to include within their premises marine terminals and directly-related ancillary activities such as warehousing and other temporary storage, ship repairing, support transportation uses including trucking and railroad yards, freight forwarders, government offices related to the Port activity, chandlers and marine services. Other uses, especially public access and public and commerical recreational development, should also be permissible uses provided they do not significantly impair the efficient utilization of the port area.





Supertanker Terminal

Airports

Findings and policies concerning Airports on the Bay

Findings

a. The shoreline of the Bay is a favored location for airports because the Bay provides an open space for takeoffs and landings away from populated areas. A Bayshore location is also conveniently close to present population centers.

b. The introduction of larger and faster aircraft has caused rapid rises in passenger volume and has made air transportation of cargo increasingly economical. Further sharp increases in passenger and cargo volume may be expected.

c. The growth of aviation in the Bay Area will require additional land area for (1) expansion of terminals, (2) aircraft operating, loading, and parking, (3) automobile parking, (4) surface transportation routes linking airports with major population centers, and (5) cargo storage. In addition, land near airports will be sought by industries that ship large quantities of products by air, and by warehousing firms and others heavily dependent on air commerce.

d. Effective, long-term operation of airports requires that a buffer zone be created to keep tall buildings and residential areas at some distance from aircraft operations.

e. The aviation needs of the Bay Area are regional in extent, and effective planning to provide for the growth of aviation can only be done on a comprehensive, regional basis.

Policies

1. To enable the Bay Area to have adequate airport facilities, and to minimize the harmful effects of airport expansion upon the Bay, a regional airport system plan should be prepared at the earliest possible time by a responsible regional agency. The study should have the full participation of all governmental agencies having region-wide planning responsibilities and all other agencies, including private groups, having a substantial interest in the Bay Area's present or future aviation needs and facilities. The plan should include as a minimum:

a. An analysis of expected air traffic in the Bay Area, by types—commercial, military, and general (small plane).

b. An analysis of alternative sites for building new airports or expanding present ones, taking into account the effect of each site on the surrounding environment.

c. An analysis of the surface transportation necessary to serve the alternative sites for future airports.

d. An analysis of the effects of new airports upon the location of jobs and homes within the Bay Area.

2. Pending completion of a comprehensive airport system plan, and recognizing that various classes of airports must be included in any plan for the region or the Bay, it is assumed that:

a. A system of **reliever airports** will be created throughout the region instead of one or two very large facilities. Some short-range traffic (500 miles or less, e.g., San Francisco-Los Angeles), which is a major portion of total air carrier traffic, will be diverted to reliever airports, and improved ground and air transportation links will be provided among the airports in the system. Under this concept, it is assumed that San Francisco and Oakland International Airports will continue to service most long-distance flights and that pressures for continued expansion of these airports can be reduced by diverting a portion of the short-range and general aviation traffic to reliever airports in such cities as San Jose, Santa Rosa, and Napa.

It is assumed that three years will be needed to complete an adequate regional airport system plan, and as many as five to seven years thereafter to build facilities proposed in the plan. Therefore, pending completion of the comprehensive airport system plan, capital investment in, and any Bay filling for, major airports in the Bay region should be limited to improvements needed within the next 10 years (i.e., before 1979).

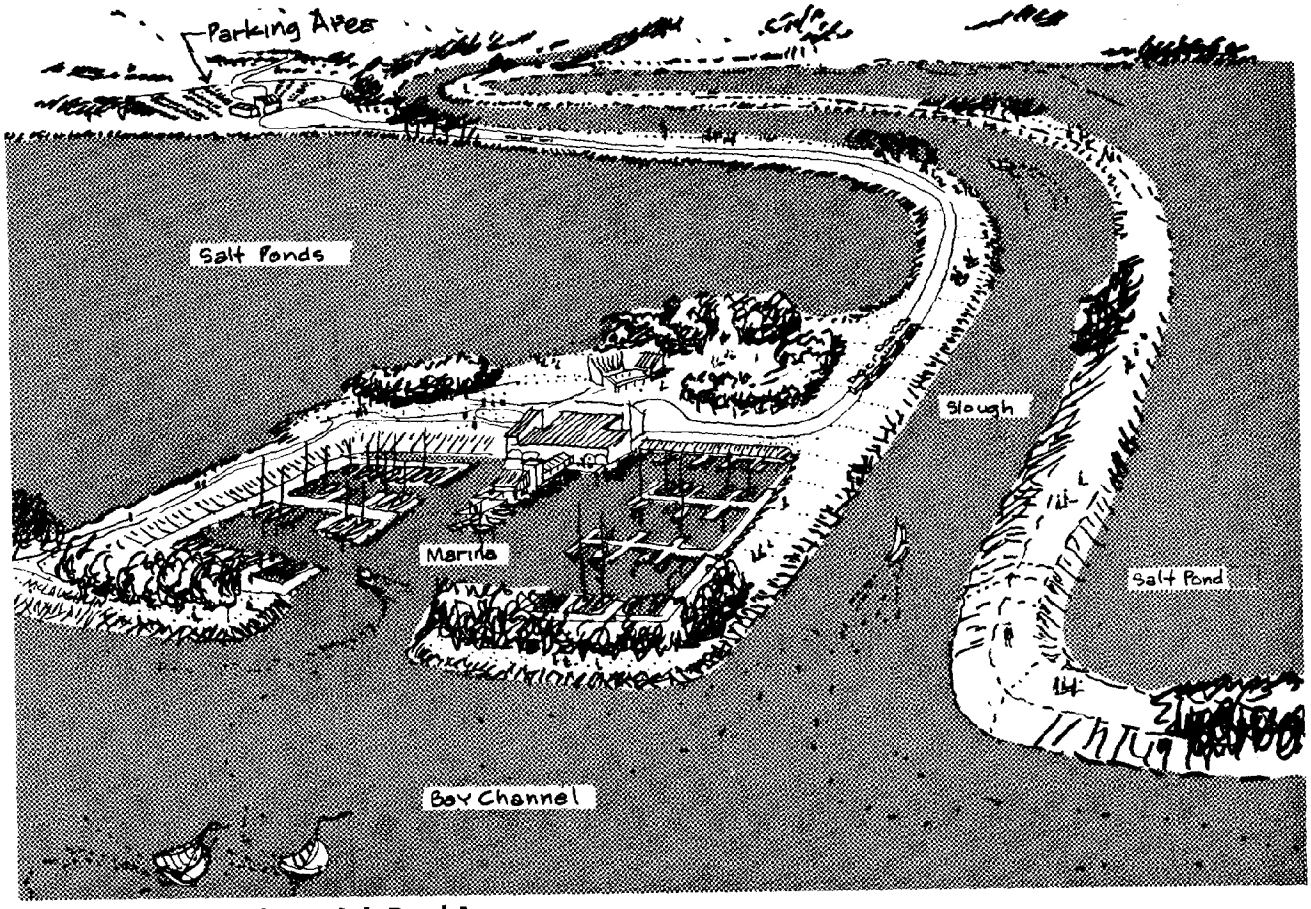
b. Airports for **general aviation** can and should be at inland sites whenever possible. New airports for this purpose should be constructed away from the Bay; Bayshore sites and Bay filling should be allowed only if there is no feasible alternative. Expansion of *existing* general aviation airports should be permitted on Bay fill only if no feasible alternative is available.

c. **Heliports** may in some instances need to be located on the shores of the Bay to be close to a traffic center with minimum noise interference. In general, existing piers should be used for this purpose and new piers, floats, or fill should be permitted only if it is demonstrated that no feasible alternative is available.

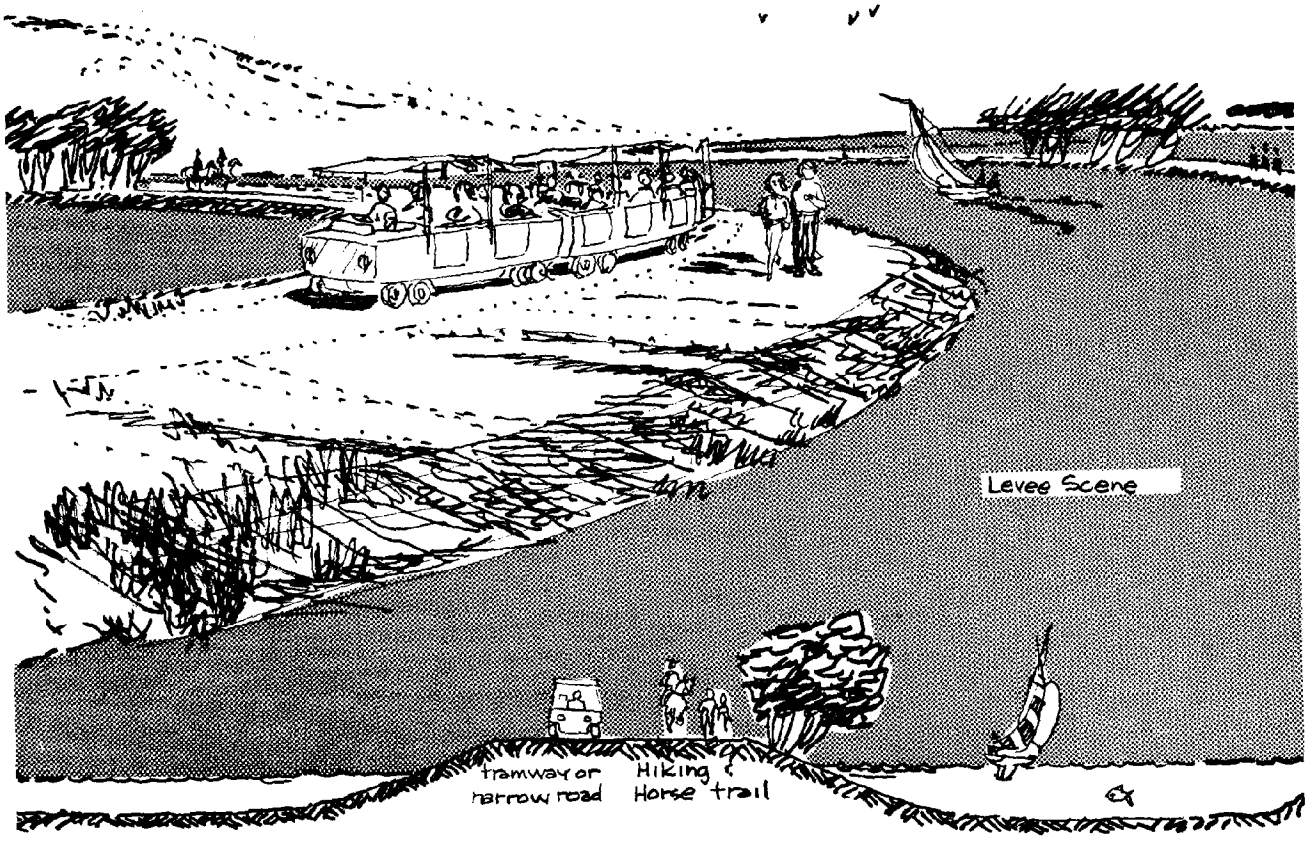
3. Airports on the shores of the Bay should be permitted to include within their premises terminals for passengers, cargo, and general aviation; parking and supporting transportation facilities; and ancillary activities such as aircraft maintenance bases that are necessary to the airport operation. Airport-oriented industries (those using air transportation for the movement of goods and personnel or providing services to airport users) may be located within airports designated in the Bay Plan if they cannot feasibly be located elsewhere, but no fill should be permitted to provide space for these industries directly or indirectly.

4. If some airports in the regional system do not have the funds necessary to complete facilities needed by the region, a regional agency may be required to finance or develop them. Otherwise, there will be tremendous pressure to allow the airports with the strongest finances to provide all of the regional facilities, even though this might result in unnecessary filling of the Bay.

5. To enable airports to operate without additional Bay filling, tall buildings and residential areas should be kept from interfering with aircraft operations. The Bay agency should prevent incompatible developments within its area of jurisdiction around the shoreline.



Bayside Park in South Bay Salt Pond Area



Salt Pond **Levee (Strengthened)** **Slough**

Levee Details

Recreation

Findings and policies concerning Recreation On and around the Bay

Findings

a. Seven years ago, only about four miles of the 276-mile Bay shoreline were being used for waterfront parks. Since then, increased interest in the Bay has resulted in development of additional parks, marinas, and other forms of water-oriented recreation. But the full recreational potential of the Bay has by no means yet been reached.

b. The demand for recreational facilities in the Bay Area will increase even more rapidly than the population increases, and will be accelerated as the work week is shortened and as spending power per capita increases. Many more recreational facilities will be needed.

c. Planning for recreational uses of the Bay and shoreline should anticipate needs as far into the future as possible. All sites near the Bay that may be needed for recreation in the future should be reserved now; otherwise, most of this land will have been taken for other uses by the time it is needed. At the present time, 50 years appears to be the farthest into the future that any needs can be projected reasonably, so recreational needs to the year 2020 should be considered.

d. A major supplement to parks, marinas, and other forms of water-oriented recreation are the several areas of water-oriented commercial recreation and public assembly that have been developed around the Bay, such as the Ghirardelli Square-Fisherman's Wharf-Northern Waterfront area in San Francisco, Jack London Square in Oakland, and the downtown waterfronts of Sausalito and Tiburon.

e. Additional commercial recreation and public assembly are desirable uses of the shoreline if they permit large numbers of persons to have direct and enjoyable access to the Bay. These uses can often be provided by private development at little or no direct cost to the public.

Policies

1. Based on an estimated future population of 10.8 million, the Plan maps should include the following facilities:

Marinas [2]	1,290 acres [1]
Launching ramp facilities [3]	2,230 acres [1]
Swimming beaches	230 acres [1]
Total shoreline acreage	3,750 acres
Fishing piers (lineal feet of gross length)	40,000 lineal feet

[1] Dry land only, including parking and ancillary requirements. Some fill may be needed.
[2] Based on estimated requirement of 70,000 boat slips by 2020, including about 750 square feet of dry land per berth for support facilities (would necessitate around 200 marinas at an average density of 44 boats per acre). Excludes dry storage acreage estiamted at 540 acres on basis this need not be provided directly on the waterfront.
[3] Based on estimated requirement for 210 launching ramp facilities with an average of six 12-foot wide launching lanes each (rough guide; actual sizes will vary).

For parks, there is no practical estimate of the acreage that should be provided on the shoreline of the Bay, but it is assumed the largest possible portion of the total regional requirement should be provided adjacent to the Bay.

2. The Bay Plan maps indicate 77 marinas and 39 fishing pier sites. If present trends continue, these will be adequate for the immediate future but not for the next 50 years. Therefore, sites should be reserved for all marina and fishing pier installations indicated on the maps. The Bay agency should also allow additional marinas, boat-launching lanes, and fishing piers elsewhere on the Bay, provided they would not preempt land or water areas needed for other priority uses and provided they would be feasible from an engineering viewpoint.

3. The Bay Plan maps include about 5,000 acres of existing shoreline parks and 5,800 acres of new parks on the waterfront. In addition, 4,400 acres of military establishments (especially around the Golden Gate) are proposed as parks if and when military use is terminated.

4. The following general standards have been used in determining locations for each type of recreational facility (and should be used as a guide in allowing additional ones):

a. **General.** Each type of facility should be well distributed around the shores of the Bay to the extent consistent with more specific criteria below. Any concentrations of facilities should generally be as close to major population centers as is feasible. Recreational facilities should not preempt sites needed for ports, waterfront industry, or airports, but efforts should be made to integrate recreation into such facilities to the extent they might be compatible. Different types of compatible public and commercial recreational facilities should be clustered to the extent feasible to permit joint use of ancillary facilities and provide greater range of choice for users.

b. **Marinas and launching lanes.** (1) Sites that tend to fill up unusually rapidly with silt or mud, or that are subject to unusal amounts of dense fog, should be avoided, (2) launching lanes should be placed where wind and water conditions would be most favorable for smaller boats, (3) some launching lanes should be located near prime fishing areas and others near calm, clear water suitable for water-skiing. Fill permitted for marina development should be the minimum necessary to provide support facilities (parking, service buildings, launching lanes, etc.). At a density of 44 berths per acre of water surface, about ¾ acre of land is generally sufficient for each acre of water surface (750 sq. ft. per berth). Marinas having fewer than 44 boats per acre require less land per berth. No fill for marinas should be permitted to exceed ¾:1 land/water ratio.

c. **Fishing piers** should not block navigation channels, nor interfere with normal tidal flow.

d. **Beach sites.** (1) Beaches for swimming and sun-bathing should generally be in warm areas protected from the wind. (2) Some new beaches could be planned adjacent to power plants or other industrial plants that warm the nearby waters as they discharge heated water that has been used to cool industrial machinery.

e. **Water-oriented commercial-recreational establishments,** such as restaurants, specialty shops, theaters, and amusements, should be encouraged in urban areas adjacent to the Bay. Some suggested locations for this type of activity are indicated on the Plan maps. Effort should be make to link commercial recreation centers (and major shoreline parks) by a fleet of small, inexpensive ferries similar to those operating on some European lakes and rivers.

5. Features to be included. To assure optimum use of the Bay for recreation, the following facilities should be encouraged in shoreside parks and in or near yacht harbors or commercial ferryboat facilities:

a. **In shoreside parks.** (1) Where possible, parks should provide some camping facilities accessible only by boat. Up to 2,200 such campsites will be needed by the year 2020. In addition, docking and picnic

facilities should be provided for boaters. (2) To capitalize on the attractiveness of their Bayfront location, parks should emphasize *hiking, bicycling, riding trails, picnic* facilities, viewpoints, beaches, and fishing facilities. Recreational facilities that do not need a waterfront location, e.g., golf courses and playing fields, should generally be placed inland, but may be permitted in shoreline areas if they are part of a park complex that is primarily devoted to water-oriented uses. (3) Where shoreline open space includes areas used for hunting waterbirds, public areas for launching rowboats should be provided so long as they do not result in overuse of the hunting area. (4) Where open areas include ecological reserves, access via catwalk or other means should be provided for nature study to the extent that such access does not excessively disturb the natural habitat. (5) Limited commercial recreation facilities, such as small restaurants, should be permitted within waterfront parks provided they are clearly incidental to the park use, are in keeping with the basic character of the park, and do not obstruct public access to and enjoyment of the Bay. Limited commercial development may be appropriate (at the option of the park agency responsible) in all parks shown on the Plan maps except where there is a specific note to the contrary.

b. **In or near yacht harbors or commercial ferryboat facilities.** Private boatels and restaurants should be encouraged.

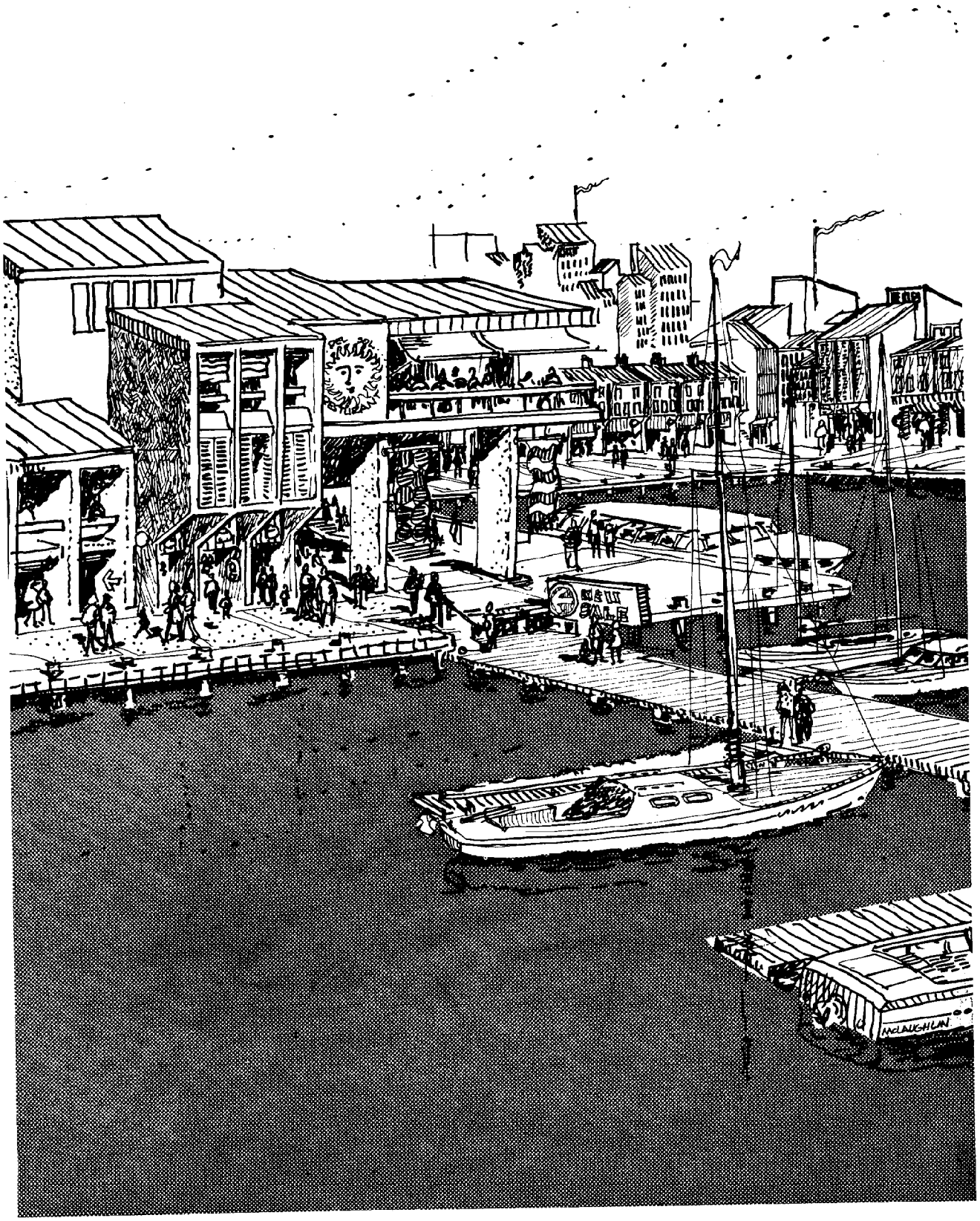
6. All the waterfront *land* needed for recreation by the year 2020 should be reserved now, because delay may mean that needed shoreline will otherwise be preempted for other uses. However, recreational *facilities* need not be built all at once; their development can proceed in accordance with recreational demand over the years.

7. In addition to the major recreational facilities indicated on the Plan maps, public access should be included wherever feasible in any shoreline development, as described in the policies for Public Access to the Bay (page 29). That policy is intended to result in much more access to the Bay than can be provided by public parks alone, especially in urban areas, and to encourage private development of the shoreline.

8. Further study should be given to the feasibility of dredging a network of channels paralleling the shoreline in shallow areas, for use by small boats and recreational ferries. Channels could open up large areas, particularly in the South Bay and San Pablo Bay, for recreational boating, could make possible the development of marinas and launching lanes at more frequent intervals, and could add visual interest to shoreline areas. In addition, the channels could separate marshes and mudflats from dry land, thus enhancing the wildlife value of these areas.

9. To enhance the appearance of shoreline areas, and to permit maximum public use of the shores and waters of the Bay, flood control projects should be carefully designed and landscaped and, whenever possible, should provide for recreational uses of channels and banks.

10. Because of the need to increase the recreational opportunities available to Bay Area residents, small amounts of Bay filling may be allowed for shoreline parks and recreational areas that provide substantial public benefits and that cannot be developed without some filling.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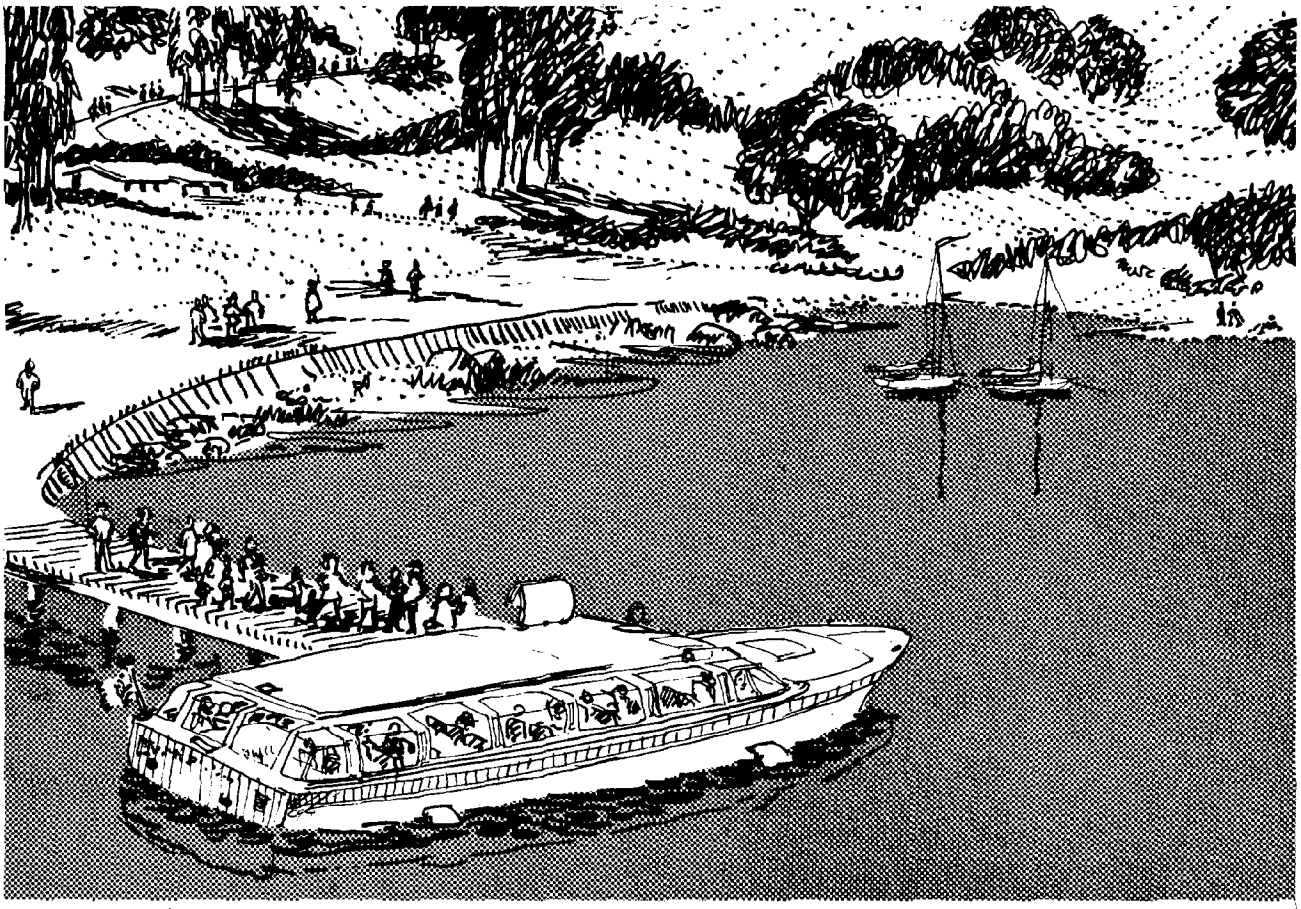
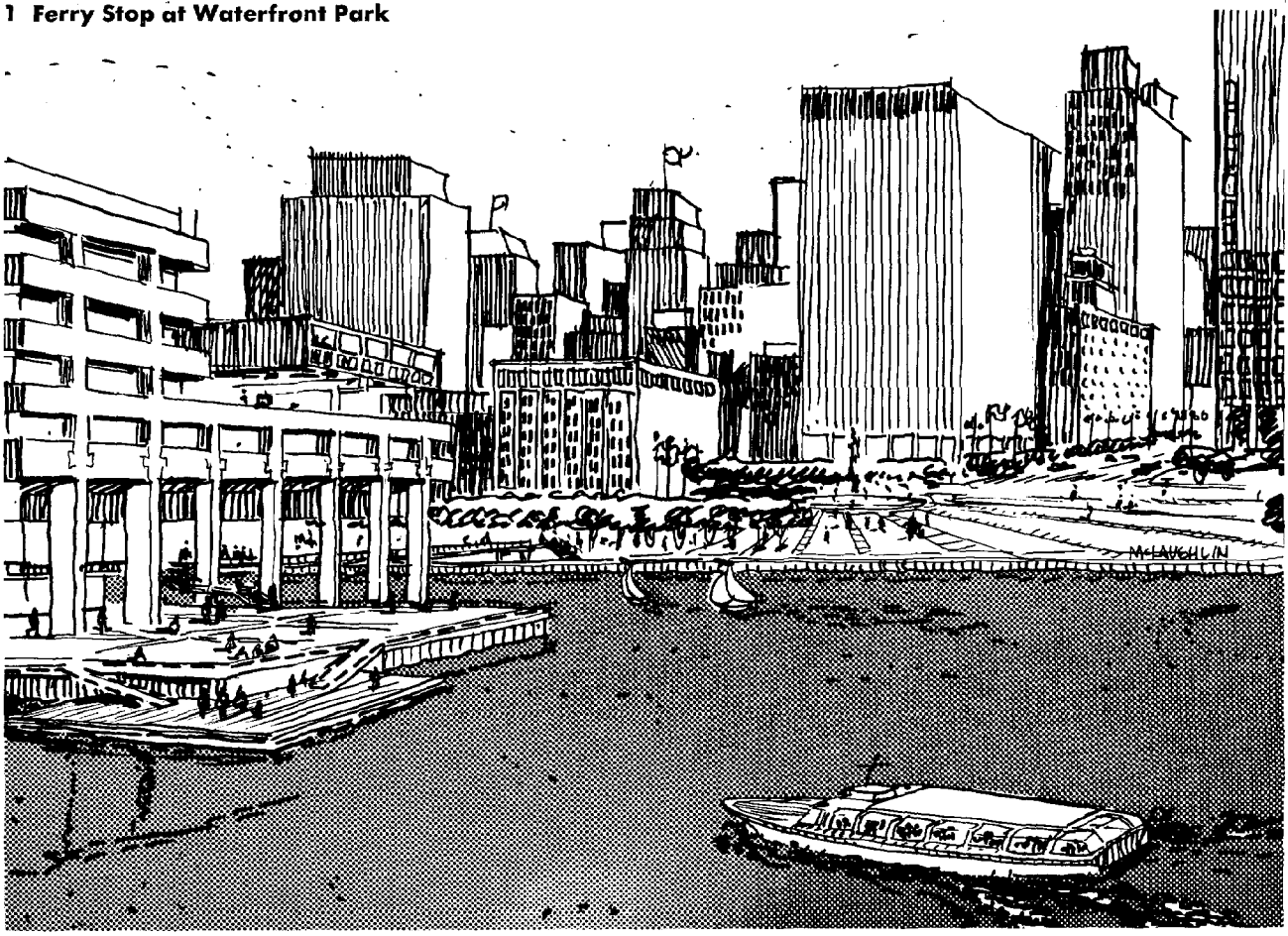


1 Ferry Stop at Waterfront Park



2 Ferry Stop in an Urban Area

Salt Ponds and Other Managed Wetlands

Findings and policies concerning Salt Ponds and Other Managed Wetlands

Findings

a. Salt ponds total some 36,000 acres in the South Bay and some 10,000 acres in the North Bay. About 4,200 acres of salt ponds have been removed from salt production and are now being converted into the Redwood Shores community, which will ultimately house some 60,000 persons.

b. The salt ponds are an economically important and productive use of the waters of the Bay (for extracting salt), and the salt is an important raw material for the Bay Area chemical industry.

c. The ponds provide 15 percent of the total Bay and pond water surface. This large pond surface area supplements the water surface of the Bay and thus helps to moderate the Bay Area climate and to prevent smog.

d. The ponds are used as a habitat by shore birds.

e. More than 50,000 acres of managed marshland, adjacent to the Bay but diked off from it, are maintained as duck hunting preserves, game refuges, and occasionally as farming areas. In most of these areas, tide gates permit occasional intakes of Bay water.

f. The diked marshlands are as important to wildlife as the tidal marshes. Substantial further diminution would result in a proportionate reduction in the amount of wildlife the Bay system can support.

g. The ponds and other wetlands provide some of the open space character of the Bay.

Policies

1. As long as is economically feasible, the salt ponds should be maintained in salt production and the wetlands should be maintained in their present use. Property tax policy should assure that rising property taxes do not force conversion of the ponds and other wetlands to urban development. In addition, the integrity of the salt production system should be respected (i.e., public agencies should not take for other projects any pond or portion of a pond that is a vital part of the production system).

2. If, despite these provisions, the owner of the salt ponds or the owner of any managed wetland desires to withdraw any of the ponds or marshes from their present uses, the public should make every effort to buy these lands, breach the existing dikes, and reopen these areas to the Bay. This type of purchase should have a high priority for any public funds available, because opening ponds and managed wetlands to the Bay represents man's last substantial opportunity to enlarge the Bay rather than shrink it. (In some cases, if salt ponds are opened to the Bay, new dikes will have to be built on the landward side of the ponds to provide the flood control protection now being provided by the salt pond dikes.)

3. If public funds do not permit purchase of *all* the salt ponds or marshes proposed for withdrawal from their present uses, and if some of the ponds or marshes are therefore proposed for development, consideration of the development should be guided by the following criteria:

a. Just as dedication of streets, parks, etc., is customary in the planned unit development and subdivision laws of many local governments, dedication of some of the pond or marsh areas as open water can and should be required as part of any development. Highest priority to such dedication should be given to ponds that (1) would, if opened to the Bay, significantly improve water circulation, (2) have especially high wildlife values, or (3) have high potential for water-oriented recreation.

b. Depending on the amount of pond or marsh area to be dedicated as open water, the public may wish to purchase additional areas. Plans to purchase any ponds or marshes should give first consideration to the priorities in paragraph a. above.

c. Development of the ponds or marshes should provide for retaining substantial amounts of open water, should provide for substantial public access to the Bay, and should be in accord with the Bay Plan policies for non-priority uses of the shoreline.

4. As soon as possible, recreational developments such as marinas and small parks should be built in appropriate areas outboard of the present salt ponds, or in sloughs; but these developments should in no way jeopardize the salt production system or be so located as to prevent opening of ponds to the Bay at any future time.

5. The agency designated to carry out the Bay Plan should study the possibility of public purchase of "development rights" to the ponds. If these rights were bought by the public, the owner of the ponds would remain fully able to continue using them for salt production but would not be able to fill the ponds for urban development. Similar study should be given to acquisition of "development rights" to the duck clubs and other diked wetlands, to continue them in their present uses.

Transportation

Findings and policies concerning Transportation On and around the Bay

Findings

a. At present, there is no regional coordination of all the means of moving people and goods that make up the total transportation system of the Bay Area. Transportation planning for the Bay Area is divided among highway agencies, transit agencies, planning agencies, and regulatory agencies. The only comprehensive transportation planning agency in the Bay region is the Bay Area Transportation Study Commission, which was created by the State Legislature and which will present its transportation plans in early 1969.

b. Primary emphasis in recent years has been placed on freeways, which in some instances have been built on fill in the Bay because acceptable routes could not be found ashore. Little attention has been given in recent years to using the waters of the Bay for modern boat transportation.

c. Massive use of the automobile during a time of rapid population growth in the Bay Area endangers the environment both because of the air pollutants emitted by automobiles and because of the space required by automobiles for roadways and for parking.

d. Primary reliance on the automobile for surface transportation in the Bay Area means further pressures to use the Bay as a route for future freeways. Therefore, a primary goal of transportation planning, from the point of view of preserving and properly using the Bay, should be substantial reduction in dependence on the automobile. While the private car will still be needed and used for many types of travel, the goal should be development of new systems of transportation that can carry large volumes of people and goods without damaging the environment of the Bay Area.

Policies

1. The Bay represents a great but, at present, little-used resource for transportation within the region. New types of faster barges may be able to move trucks and freight from point to point within the region at low cost and without adding to surface congestion. Also, a system of modern ferries (capable of high speeds with minimum noise and waves) may be able to provide service between major traffic generators (e.g., between downtowns, or between downtowns and airports) and eventually to provide scheduled service from one end of the Bay to the other for both commuting and pleasure use. The Bay Plan maps indicate possible sites for commuter ferry terminals and shallow-draft ports.

2. Because of the continuing vulnerability of the Bay to filling for freeways, an effective program should be created to develop, test, and inaugurate new methods of transportation within the Bay Area. This should be undertaken by a regional transportation agency, preferably one that is part of a limited regional government.

3. If any additional freeway or bridge route is proposed in or across the Bay other than those indicated on the Bay Plan maps, adequate research and testing should determine whether new methods of transportation could overcome the particular congestion problem without a route in the Bay and, if not, whether a tunnel beneath the Bay is at all feasible.

4. If a route must be located over the Bay, the following provisions should apply:

a. The freeway or other crossing should be placed on bridge-like structures, not on fill.

b. Structures should provide adequate clearance for commercial ships, Navy ships, and pleasure boats to have uninterrupted passage at all times.

c. Toll plazas, service yards, or other ancillary features should be located on new fill only if there is no feasible alternative.

d. To provide maximum ultimate capacity on any new major facility that is allowed over the Bay (and thus to minimize the number that might have to be allowed in the Bay), the design of the structures should anticipate future mass transit facilities (unless they are adequately paralleled by such facilities) and subsequent installation of automatic power and guidance elements for vehicles.

Other Uses of the Bay and Shoreline

Findings and policies concerning Other Uses of the Bay and Shoreline

Findings

a. In addition to the foregoing uses of the Bay and its shores, there are at present many others including:

Housing
Public facilities (prisons, military installations, etc.)
Public utilities (power transmission lines, pipelines, etc.)
Industry not related to the Bay
Recreation facilities not related to the Bay
Commercial facilities not related to the Bay
Refuse disposal sites

b. Some uses of the shore take no advantage of the water as an asset, and some current uses abuse and despoil the water frontage.

Policies

1. Shore areas not proposed to be reserved for a priority use should be used for any purpose (acceptable to the local government having jurisdiction) that uses the Bay as an asset and in no way affects the Bay adversely. This means any use that does not adversely affect enjoyment of the Bay and its shoreline by residents, employees, and visitors within the site area itself or within adjacent areas of the Bay or shoreline.

2. Accessory structures such as boat docks and portions of a principal structure may extend on piles over the water when such extension is necessary to enable actual use of the water, e.g., for mooring boats, or to use the Bay as an asset in the design of the structure.

3. Wherever waterfront areas are used for **housing,** (a) the amount of shoreline and the surface area of the Bay should be increased to the maximum extent feasible by dredging additional channels *inland* from the Bay, and (b) whenever feasible, high densities should be encouraged to provide the advantages of waterfront housing to larger numbers of people. Houseboats (floating homes useable as

year-round residences) may be permitted in some areas of the Bay provided the boats (a) would not adversely effect the ecology of the Bay, (b) would not cause a harmful amount of sedimentation, (c) would either be connected to a shoreline sewage treatment system or have on-board treatment facilities acceptable to public health and water quality control agencies, (d) would require no fill except for a pedestrian walk on pilings, and (e) would be acceptable to local governments having jurisdiction over the areas in question.

4. High voltage transmission lines should be placed in the Bay only when there is no reasonable alternative. Whenever high voltage transmission lines must be placed in the Bay or in shoreline areas:

a. New routes should avoid interfering with scenic views and with wildlife, to the greatest extent possible.

b. The most pleasing tower and pole design possible should be used.

High voltage transmission lines should be placed underground as soon as this is technically and economically feasible.

5. Power distribution and telephone lines should either be placed underground (or in an attractive combination of underground lines with streamlined overhead facilities) in any new residential, commercial, public, or view area near the shores of the Bay.

6. Whenever waterfront areas are used for **sewage treatment or waste water reclamation plants,** the plants should be located where they do not interfere with and are not incompatible with residential, recreational, or other public uses of the Bay and shoreline.

7. New AM and short-wave **radio transmitters** may be placed in marsh or other natural areas. Whenever possible, however, consolidation of transmitting towers should be encouraged.

8. Desalinization and power plants may be located in any area where they do not interfere with and are not incompatible with residential, recreational, or other public uses of the Bay and shoreline, provided that any pollution problems resulting from the discharge of large amounts of heated brine into Bay waters, and water vapor into the atmosphere, can be precluded.

9. Pipeline terminal and distribution facilities near the Bay should generally be located in industrial areas but may be located elsewhere if they do not interfere with, and are not incompatible with, residential, recreational, or other public uses of the Bay and shoreline.

10. To eliminate any further demand to fill any part of the Bay solely for **refuse disposal sites,** new waste disposal systems should be developed; these systems should combine economical disposition with minimum consumption of land. Pending development of new waste disposal systems, immediate waste disposal problems should be solved through full utilization of existing dump sites and through development of new dump sites, if needed, in acceptable inland locations.

11. Types of development that could not use the Bay as an asset (and therefore should not be allowed in shoreline areas) include: (a) refuse disposal (except as it may be found to be suitable for an approved fill), (b) use of deteriorated structures for low-rent storage or other non-water related purposes, and (c) junkyards.

Public Access

Findings and policies concerning Public Access To the Bay

Findings

a. San Francisco Bay is one of the dominant features of the nine-county Bay Area. It has great potential for numerous forms of public enjoyment, including viewing, photography, nature study, fishing, wading, and walking, or just sitting, beside the water.

b. Until recently, there were few points of public access in the entire 276-mile Bay shoreline. While many communities have recently taken new looks at their waterfronts and have proposed new points of public access to the Bay, the full potential for access to the Bay has by no means yet been reached.

c. The public parks proposed in the Bay Plan will not all be built in the near future, and even if all were completed immediately, there would still be only a small part of the shoreline open to the public. Clearly, additional public access to the Bay is needed, and this can be provided, in part at least, by private capital in a wide variety of shoreline developments.

Policies

1. In addition to the public access to the Bay that will be provided by waterfront parks, beaches, marinas, and fishing piers, maximum feasible opportunity for pedestrian access to the waterfront should be included in every new development in the Bay or on the shoreline, whether it be for housing, industry, port, airport, public facility, or other use. If no such access can reasonably be provided, the development should not be allowed on the waterfront unless it must of necessity be there (i.e., unless it is an industry requiring access to deep water, a shipping terminal, etc.).

2. Public access should be provided into some "natural" areas retained as ecological assets, to permit study and enjoyment of these areas (e.g., by catwalks or piers in some sloughs or marshes).

3. Any permitted fills should be designed to produce a net increase in the amount of shoreline, so as to provide additional public access to the Bay.

4. Whenever public access to the Bay is provided as a condition of development, on fill or on the shore-

line, the access should be permanently guaranteed. This should be done wherever appropriate by requiring dedication of fee title or easements at no cost to the public, in the same manner that streets, park sites, and school sites are dedicated to the public as part of the subdivision process in cities and counties.

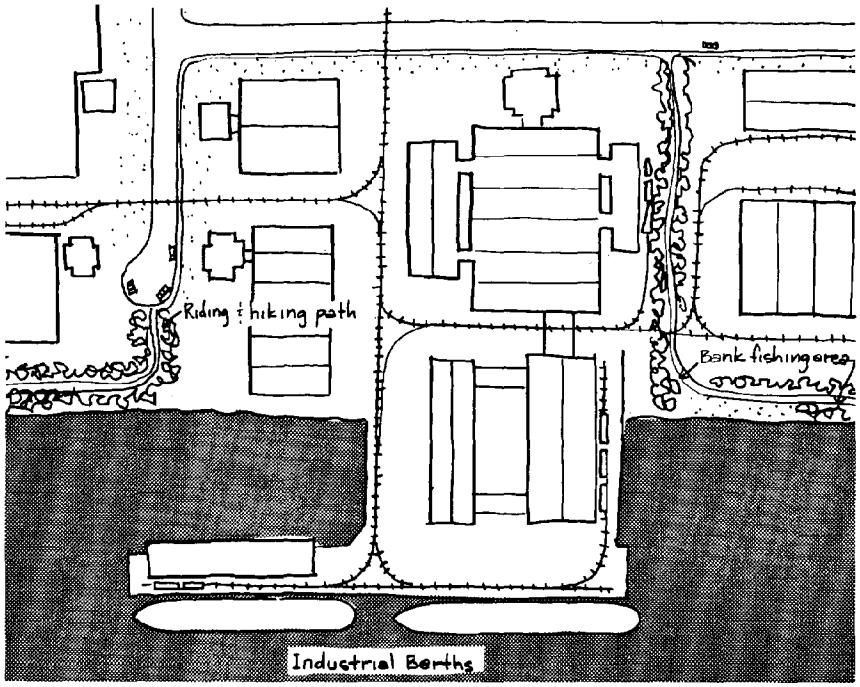
5. Roads near the edge of the water should be designed as scenic parkways for slow-moving, principally recreational, traffic. The right-of-way design should discourage through traffic and provide for safe pedestrian access to the shore.

6. Access to the waterfront should be provided by walkway, tramway, etc., if adjacent parking is not feasible or desirable.

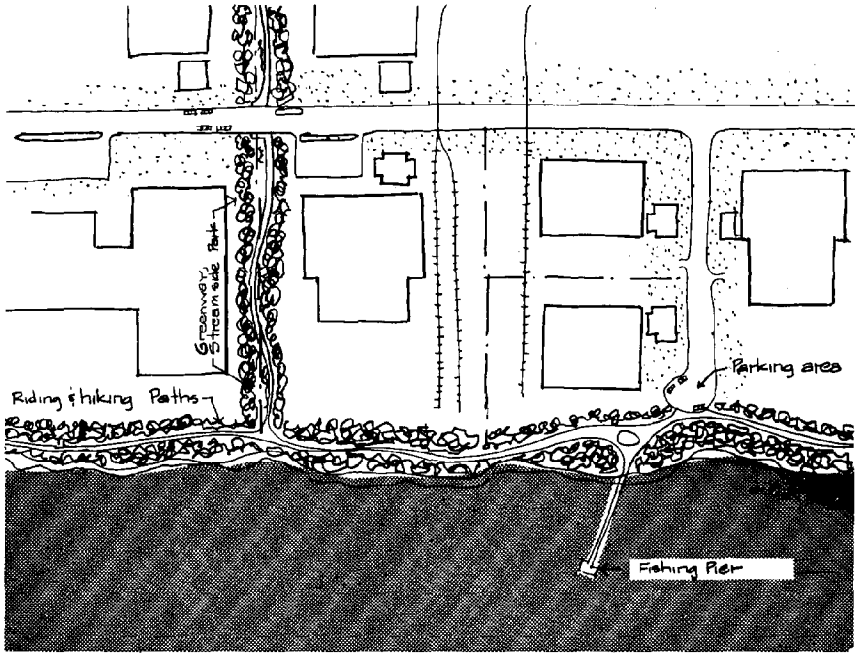
7. In some shoreline projects, a small amount of fill may be allowed if the fill is necessary—and is the minimum absolutely required—to develop the site in accordance with the Bay agency's public access requirements.

8. Local jurisdictions and the Bay agency should cooperate to link the entire series of shoreline parks and public access points to the extent feasible without additional Bay filling. Many types of connection can be employed, such as scenic drives, hiking paths, and a system of inland waterways.

9. The Bay agency should issue more detailed standards and criteria to carry out the intent of the above policies on public access to the Bay, and should publish a manual to guide developers and designers, including examples of various ways of meeting the policies, with due consideration to costs and to practical problems of maintenance, public liability, and policing.

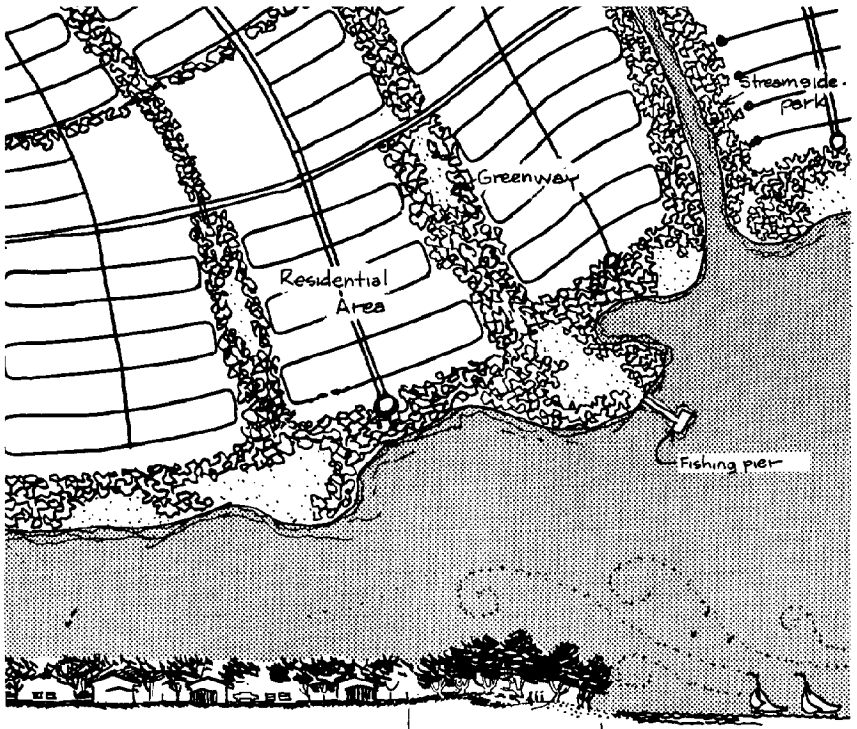


1 Industries Requiring Direct Water Access



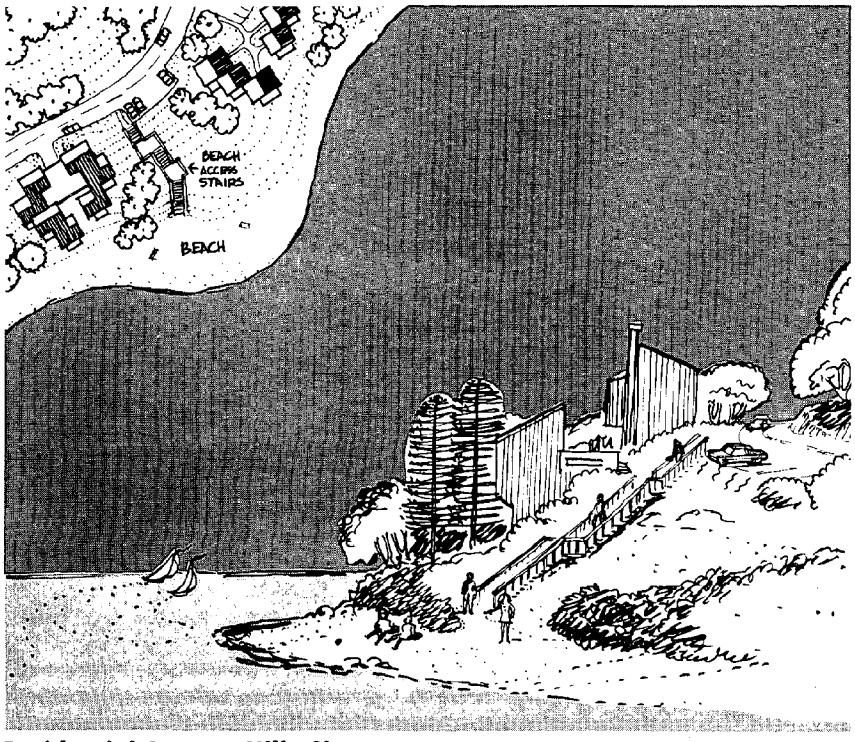
2 Industries Not Requiring Direct Water Access

Appearance and Design



Residential Area | **Public Area** | **Bay**

Residential Area on Flat Site



Residential Area on Hilly Site

Public Access to the Bay

Findings and policies concerning Appearance and Design Of Development Around the Bay

Findings

a. Much too often, shoreline developments have not taken advantage of the magnificent setting provided by the Bay. Some shoreline developments are of poor quality or are inappropriate to a waterfront location. Over time, existing shoreline development of poor quality and inappropriate uses could be phased out or up-graded by normal market forces and by public action.

b. Collections of debris sometimes mar the appearance of marshes, mudflats, and sloughs.

c. The appearance of the Bay, and man's enjoyment of it as a scenic resource, contribute to the enjoyment of daily life in the Bay Area. As a special kind of open space, the Bay acts as both the unifying element of the entire Bay region and as a physical divider of its parts. The wide surface of the Bay, and the distant vistas it affords, offer relief from the crowded, often chaotic, urbanized scene and help to create a sense of psychological well-being.

Policies

1. To enhance the visual quality of development around the Bay and to take maximum advantage of the attractive setting it provides, the shores of the Bay should be developed in accordance with the Bay Plan's General Development Guide (Appendix A).

2. All Bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay. To this end, planning of waterfront development should include participation by professionals such as landscape architects, urban designers, or architects, working in conjunction with engineers and professionals in other fields.

3. To enhance the maritime atmosphere of the Bay Area, **ports** should be designed, whenever feasible, to permit public viewing of port activities by means of (a) view points, restaurants, etc., that would not interfere with port operations, and (b) openings between buildings and other site designs that permit views from nearby roads.

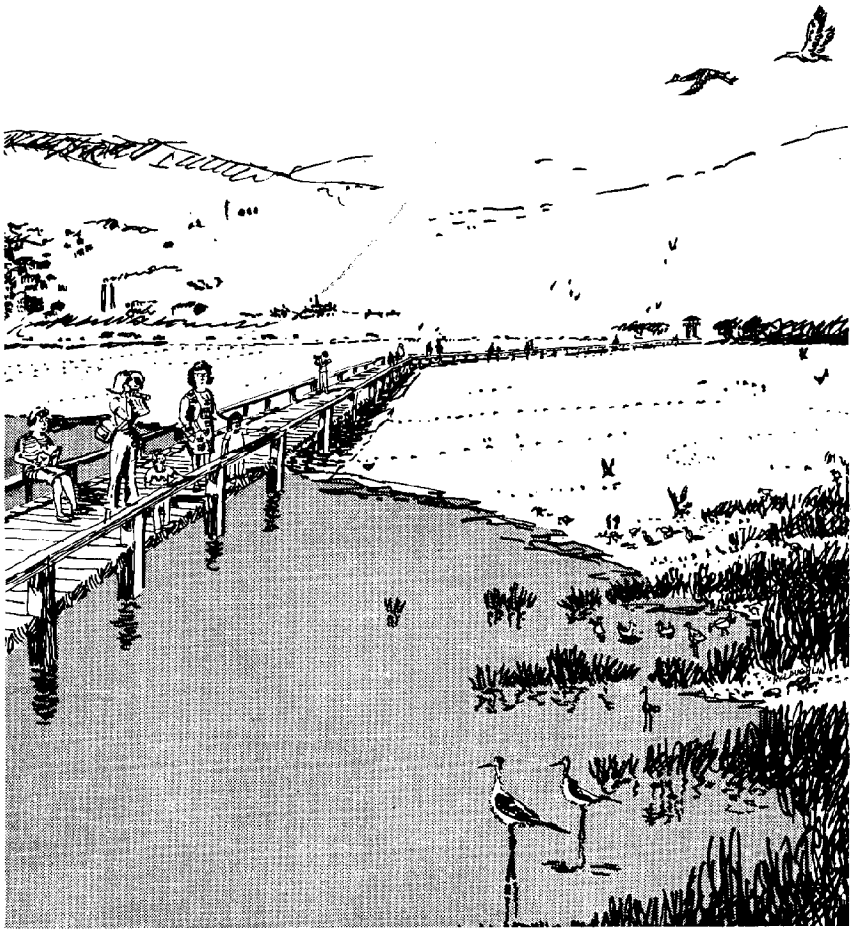
4. Towers, bridges, or other structures near or over the Bay should be designed as landmarks that suggest the location of the waterfront when it is not visible, especially in flat areas. But such landmarks should be low enough to assure the continued visual dominance of the hills around the Bay.

5. Additional surface crossings of the Bay should be avoided, to the extent possible, to preserve the visual impact of the large expanse of the Bay. The design of new crossings deemed necessary should respect the fact that the Bay consists of a series of natural "bowls" that are "closed" at each end by a constriction. The crossing should be placed whenever feasible at such "ends" between promontories or other land forms that naturally suggest themselves as connections reaching across the Bay (but without destroying the obvious character of the promontory). To the extent possible, crossings should also be of one "family" of structural types (e.g., all might be suspension bridges).

6. Access routes to Bay crossings should be designed in a manner that orients the traveler to his new direction of movement in relation to the water (as in the main approaches to the Golden Gate Bridge). Similar consideration should be given to the design of highway and mass transit routes paralleling the Bay at any elevation (by providing frequent views of the Bay or by having turns toward or away from the water made in sight of the water, if possible, so the traveler knows which way he is moving in relation to the Bay).

7. Developments near the mouth of tributary waterways should be designed to preserve the view of the juncture of the tributary with the Bay from as far upstream as the alignment of the waterway will permit, so as to preserve maximum visual contact with the Bay. Developments farther upstream, beyond the view of a tributary's mouth, should be used for purposes related to the Bay, if at all possible (e.g., marina and boat service facilities or private docks, on navigable tributaries).

8. In areas of the Bay where **oil and gas drilling or production platforms** are permitted, only the minimum number of platforms necessary to recover the oil or gas should be permitted, and platforms and structures on them should be no larger than necessary. All platforms and equipment on them should be painted or screened so they will be compatible with the surrounding open water, mudflat, marsh, or shore area.



Walkways For Wildlife Observation in Marsh and Shallow Water Areas

9. "Unnatural" debris should be removed from sloughs, marshes, and mudflats that are retained as part of the ecological system. Sloughs, marshes, and mudflats should be restored to their former "natural" state if they have been despoiled by human activities.

10. A design review system is needed to evaluate developments that affect the appearance of the Bay. The system must have sufficient standing and influence to make it effective. Initially, (a) city and county governments, and all affected regional, state and federal agencies, should use the General Development Guide (Appendix A) for affected developments, and (b) a regional Design Review Board should review the proposed design of all projects and strive for a high level of design quality. Subsequently, the Bay agency might by ordinance adopt basic design controls upon recommendation of the Design Review Board.

11. Local governments should be encouraged to eliminate inappropriate shoreline uses and poor quality shoreline conditions by regulation and by public actions (including development financed wholly or partly by public funds). If local governments do not achieve this, the Bay agency should be able to take such actions, including financing development wholly or partly from funds at its disposal.

12. In some shoreline projects, a small amount of fill may be allowed if the fill is necessary—and is the minimum absolutely required—to develop the site in accordance with the Bay agency's design recommendations.

Scenic Views

Findings and policies concerning Scenic Views Of the Bay

Findings

a. Probably the most widely enjoyed "use" of the Bay is simply viewing it—from the shoreline and from afar. One indicator: a Bay view can add 8 to 10 per cent to the value of a home, office, or apartment building in San Francisco. And there is little question the Bay is a major visitor attraction for the tourist industry.

b. But full advantage has not been taken of the dramatic view potential from the hills surrounding the Bay, often because of poor road layout and poorly located buildings or plantings. There are some local zoning controls on building heights but there is no general attention to maximizing views from roads and to obtaining public view areas.

Policies

1. Maximum efforts should be made to provide, enhance, or preserve views of the Bay from public areas.

2. Shoreline developments should be built in clusters, leaving open area around them, to permit more frequent views of the Bay.

3. Views of the Bay from vista points and from roads should be maintained by appropriate arrangements and heights of all developments and landscaping between the view areas and the water. In this regard, particular attention should be given to all areas as waterfront locations, areas below vista points, and areas along roads that provide good views of the Bay for travelers, particularly areas below roads coming over ridges and providing a "first view" of the Bay (shown in Plan map 2, Proposed Major Uses of the Bay and Shoreline).

4. Vista points should be provided in the general locations indicated in the Plan maps. Access to vista points should be provided by walkway, tramway, etc., if adjacent parking is not feasible or desirable. In some cases, exhibits, museums, or markers would be desirable at vista points to explain the value or importance of the areas being viewed.

5. Scenic parkways commanding views of the Bay should generally be encouraged in the hills above the Bay and in areas along the shores of the Bay.

6. New or remodeled bridges across the Bay should be designed to permit maximum viewing of the Bay and its surroundings by both motorists and pedestrians. Guard rails and bridge supports should be designed with views in mind.

Part V Carrying Out the Plan

A Regional Agency is Needed

To carry out the Bay Plan effectively, a regional agency is needed. The agency should have the power to analyze, plan, and regulate the entire Bay and shoreline **as a unit.** The agency's jurisdiction should include the Bay, and limited shoreline areas in the nine Bayfront counties.

The Plan for the Bay can be carried out by either of two types of governmental agency: (1) a single-purpose agency concerned only with the Bay, or (2) a multi-purpose, limited regional government, concerned with other regional matters in addition to the Bay.

The Commission recommends that a limited regional government be created for the Bay Area. A limited regional government would (1) avoid further fragmentation of regional responsibility by forestalling the proliferation of additional special-purpose districts, (2) be able to consider the overall needs of the region as a whole, and thus minimize wasteful duplication in regional development, and (3) attract broad public attention and thus help to insure public awareness of regional problems and needs. As one of its principal assignments, a limited regional government should be required to carry out the BCDC Plan for the Bay and shoreline.

If a limited regional government is not established, the Commission recommends that a special agency be created to carry out the Plan for the Bay. To the maximum extent feasible, the special Bay agency should be organized so as to permit smooth transfer of powers to a limited regional government that might be created in the future.

(The Commission's recommendations on governmental organization to carry out the Bay Plan, together with the Commission's studies of this matter, have been submitted to the Joint Legislative Committee on Bay Area Regional Organization.)

Scope of Authority Required

Protection of the Bay and enhancement of its shoreline are inseparable parts of the Bay Plan. Clearly, what happens to the shoreline helps determine what happens to the Bay; if, for example, the relatively few shoreline areas suitable for water-oriented industry are used for housing, pressures will develop to provide new industrial land by filling the Bay. Therefore, in the public interest, the Bay agency should have adequate controls over both (1) Bay filling and dredging, and (2) Bay-related shoreline development.

Control of Filling and Dredging in the Bay

1. Permit Procedures for Filling and Dredging

Bay filling (including placement of piers, pilings, and floating structures moored in the Bay for extended periods) and Bay dredging should be controlled through a permit system. The Bay agency (whether a single-purpose agency or a part of a limited regional government) should be empowered to issue or deny permits for any filling and dredging in the Bay. Any public agency or owner of privately-held lands should be required to obtain a permit before proceeding with fill or dredging.

Permits should be granted or denied only after public hearings, and after the city or county having jurisdiction over the area of the proposed project has made its views known to the Bay agency (or has failed to do so within a reasonable period of time). Ordinarily, this process (including adequate time for investigation and analysis by the Bay agency's staff and consultants) would require no more than 60 days, but additional time should be allowed for permit applications of unusual complexity; in no case should more than six months be required, however. The Bay agency should circulate copies of each permit application to all concerned agencies and individuals and should coordinate the review process with those of the other agencies so as to minimize the time, paperwork, and cost required by all concerned.

Permits should be granted by the affirmative vote of a majority of the members of the governing body of the Bay agency. But the Bay agency should be empowered to delegate the function of holding public hearings and of granting or denying permits to the staff or to a committee of the governing body, subject in all cases to appeal to the full governing body.

The costs of processing permit applications should be borne by the applicants, not by the general public. In some cases, the costs would be nominal; in others, they might be relatively high, depending on the complexity of the work involved. The Bay agency should establish a fee schedule to cover the costs of processing permit applications.

The Bay agency should insure that work is performed in the manner and for the purposes that it was authorized. To this end, it should have the customary governmental powers to require performance bonds in appropriate circumstances, to suspend or revoke permits for violation, and to enjoin

actions not in accordance with an active permit. It should also have sufficient staff to monitor work subject to its jurisdiction, and should issue certificates of compliance upon the completion of work and prior to occupancy, just as many cities and counties do now.

The Bay agency should approve a permit application if it specifically determines that a proposed project meets the following conditions, each of which is necessary for effectively carrying out the Bay Plan.

a. **Fills in Accord With Bay Plan.** A proposed project should be approved if the filling is the minimum necessary to achieve its purpose, and if it meets one of the following four conditions:

(1) The filling is in accord with the Bay Plan policies as to the Bay-related purposes for which filling may be needed (i.e., ports, water-related industry, and water-related recreation) and is shown on the Bay Plan maps as likely to be needed; or

(2) The filling is in accord with Bay Plan policies as to purposes for which some fill may be needed if there is no other alternative (i.e., airports, roads, and utility routes); or

(3) The filling is in accord with the Bay Plan policies as to minor fills for improving shoreline appearance or public access; or

(4) The filling would provide on privately-owned property for new public access to the Bay and for improvement of shoreline appearance—in addition to what would be provided by the other Bay Plan policies—and the filling would be for Bay-oriented commercial recreation and Bay-oriented public assembly purposes. The Bay agency should issue permits under this criterion provided:

(a) The proposed project would limit the use of land to be filled to: (i) public recreation (beaches, parks, etc.), **and** (ii) Bay-oriented commercial recreation and Bay-oriented public assembly, defined as facilities specifically designed to attract large numbers of people to enjoy the Bay and its shoreline, such as restaurants, specialty shops, and hotels.

(b) The proposed project would be designed so as to take advantage of its nearness to the Bay, and would provide opportunities for enjoyment of the Bay in such ways as viewing, boating, fishing, etc., by keeping a substantial portion of the development, and a substantial portion of the new shoreline created through filling, open to the public free of charge (though an admission charge could apply to other portions of the project).

(c) The proposed private project would not conflict with the adopted plans of any agency of local, regional, state, or federal government having jurisdiction over the area proposed for filling, and would be in an area where governmental agencies have not planned or budgeted for projects that would provide adequate access to the Bay.

(d) The proposed project would either provide recreational development in accordance with the Bay Plan maps or would provide additional recreational development that would not unnecessarily duplicate nearby facilities.

(e) A substantial portion of the project would be built on existing land, and the project would be planned to minimize the need for filling. (For example, all automobile parking should, wherever possible, be provided in multi-level structures rather than in extensive parking lots.)

(f) The proposed project would result in permanent public rights to use specific areas set aside for public access and recreation; these areas would be improved at least by filling to finished grade and by installation of necessary basic utilities, at little or no cost to the public.

(g) The proposed project would, to the maximum extent feasible, establish a permanent shoreline in a particular area of the Bay, through dedication of lands and other permanent restrictions on all privately-owned and publicly-owned property Bayward of the area approved for filling.

(h) The proposed project would provide to the maximum extent feasible for enhancement of fish and wildlife resources in the area of the development.

b. **Safety.** A proposed project should be approved by the Bay agency if its Fill Review Board determines that the proposed project is in accordance with the policies for Safety of Fills (page 17). The Fill Review Board should be appointed by the Bay agency, and should consist of leading professionals in the fields of geology, structural engineering, and civil engineering (with specialty in soils engineering).

c. **Public Access.** A proposed fill project should increase public access to the Bay to the maximum extent feasible, in accordance with the policies for Public Access to the Bay (page 29).

d. **Effects on the Bay.** A permit for a proposed fill, dike, or pier, should be approved if it has been evaluated on the basis of the policies on Water Pollution (page 10), Smog and Weather (page 10), Water Surface Area and Volume (page 11), and Marshes and Mudflats (page 11), and modified as necessary to minimize any harmful effects. Proposed dredging should be in accordance with the Dredging policy (page 13).

e. **Valid Title.** Because there is some question as to the conditions under which some private parties originally received lands in the Bay, a private claimant should be required to show that he has a valid title to any Bay lands proposed for filling. Ordinarily, this could be done by submission of a current title insurance report including the derivation of title from original sale by the State. Where titles are disputed, the legal issues should be resolved as soon as possible by court action or other appropriate steps.

f. **Public Trust.** Many private owners of Bay lands hold title subject to rights of the public, derived from English common law and the California Constitution, as to use of waterways for commerce, navigation, and fishing. These rights, sometimes called the "public trust" for commerce, navigation, and fishing, are the subject of considerable legal debate, and court tests may be required to determine their practical significance. Any necessary court tests should be completed as soon as possible; in the meantime, an applicant for a fill permit should be required to show either that the public trust does not apply to his lands, or that the filling would be consistent with the trust.

g. **Appearance.** Plans for a proposed fill project should be submitted to a Design Review Board appointed by the Bay agency and consisting of professionals in the fields

of urban design, architecture, and landscape architecture. The Design Review Board should determine whether the proposed project is in accordance with the policies for Appearance and Design of the Bay and shoreline (page 31), and should report its recommendations to the governing body of the Bay agency before a permit is issued. The jurisdiction over appearance and design should be only advisory, but the Bay agency should encourage local governing bodies to exercise controls in accordance with the policies on Appearance and Design and the Design Review Board's recommendations.

2. **Permit Decisions**

If a permit application meets the standards listed above, a permit should be granted. If the proposal does not meet these standards, a permit should not be issued. In some cases, however, a permit could be conditionally approved subject to the applicant's later meeting clearly-specified requirements relating to one or more of the seven standards above. In other cases, an applicant might be able to change his proposal to conform to the Bay Plan policies, and he could then reapply.

3. **Area of Jurisdiction**

The Bay agency should control filling and dredging in San Francisco Bay. The Bay should be defined as extending from the Golden Gate (Point Bonita-Point Lobos) and the southern end of the Bay to the eastern end of Suisun Bay and Montezuma Slough (a line between Stake Point and Simmons Point, extended northeasterly to the mouth of Marshall Cut)—and including the submerged lands and tidelands that are part of the open Bay waters, all sloughs (as shown on the current U.S. Geological Survey maps as of September 1, 1968), and also all marshlands subject to tidal action up to 5 feet above mean sea level (the general area included in the definition is colored light blue on the Plan maps). The Bay agency should also control filling and dredging in creeks and other tributaries to the Bay (other than those east of the Simmons Point-Stake Point-Marshall Cut line) as far upstream as they are determined to be a vital part of the ecological system of the Bay, but in no event farther upstream than the mean high tides extend. The few tributaries proposed to be within the jurisdiction of the Bay agency are listed on the Bay Plan map notes and shown on the Plan maps.

The Bay agency should be enabled, by resolution, to relinquish jurisdiction over any part of the Bay or any particular reach of a tributary to the Bay that it finds, after scientific study, to be of little or no ecological value.

Developing the Bay and Shoreline to Their Highest Potential

1. **Necessity for Limited Shoreline Jurisdiction**

The Bay agency should have limited jurisdiction over shoreline areas, as defined below. Local governments should continue to regulate shoreline areas, subject only to the Bay agency's guidelines. This limited Bay agency jurisdiction is necessary to reduce pressures for Bay filling that would result from poor use of available shoreline land, and to insure that public access to the Bay is provided wherever feasible. The Bay agency should therefore be empowered to (1) designate and reserve shoreline lands needed for priority uses—ports, water-related industry, airports, wildlife areas, and water-related recreation; (2) require as much public access to the Bay in new projects as is feasible; and (3) encourage attractive and interesting shoreline development.

Failure to achieve these objectives will either (1) reduce the amount of water-related industry, ports, airports, and water-related recreation that the Bay Area can ultimately accommodate, with resulting damage to the region's economy and quality of life, or (2) create unnecessary pressures to fill the Bay to provide more land for these purposes.

2. **Purposes for Which a Permit May be Issued**

Shoreline development should be controlled through a permit system. This will insure that the Bay agency has full knowledge of all shoreline developments and can exercise its limited jurisdiction regarding them. (The alternative would leave enforcement of Bay agency policies to the many local governments having jurisdiction over shoreline areas, with the Bay agency able to intervene only after a violation of its standards took place.)

The Bay agency (whether a single-purpose agency or a part of a limited regional government) should therefore be empowered to issue or deny permits for shoreline development.

The Bay agency should approve a permit for shoreline development if the agency specifically determines that the proposed project is in accordance with the standards listed below for (a) use of the shoreline, (b) provision of public access, and (c) advisory review of appearance.

a. **Use of Shoreline.** The Bay agency should designate three categories of shoreline area, and should apply standards for each as follows:

(1) **Priority shoreline land uses** are listed below (not necessarily in order of importance). The Bay agency should designate and reserve the shoreline areas needed for each priority use, in a manner analagous to zoning, and should carry out the appropriate shoreline development policies:

(a) Ports (in accordance with policy on page 19).

(b) Water-related Industry (in accordance with policy on page 17).

(c) Water-oriented Recreation (in accordance with policy on page 23).

(d) Airports (in accordance with policy on page 21).

(e) Wildlife Areas (in accordance with policy on page 9).

(2) **Salt ponds and other managed wetlands** (as shown on the Bay Plan maps) should be used in accordance with the policies on page 27).

(3) **All other shoreline areas** should be used in any manner that would not adversely affect enjoyment of the Bay and shoreline by residents, employees, and visitors within the area itself or within adjacent areas of the Bay and shoreline, in accordance with the policies for Other Shoreline Uses on page 28.

b. **Public Access.** The Bay agency should insure that each new shoreline development increases public access to the Bay to the maximum extent feasible, in accordance with the policies for Public Access to the Bay on page 29.

c. **Appearance.** The Bay agency should submit plans for proposed shoreline improvements to its Design Review Board (described on page 33). The Board should evaluate each set of plans in light of the policies for Appearance and Design of the Bay on page 31, and should be empowered to make its recommendations public, but these recommendations should be advisory only, and not of themselves be grounds for denying a permit.

3. **Permit Procedures**

Any public agency or private owner holding shoreline lands should be required to obtain a permit before proceeding with any major shoreline development.

Permits should be granted or denied only after public hearings, and after the city or county having jurisdiction over the area of the proposed project has made its views known to the Bay agency (or has failed to do so within a reasonable period of time). Ordinarily, this process (including adequate time for investigation and analysis by the Bay agency's staff and consultants) would require no more than 60 days, but additional time should be allowed for permit applications of unusual complexity; in no case should more than six months be required, however. The Bay agency should circulate copies of each permit application to all concerned agencies and individuals and should coordinate the review process with those of the other agencies so as to minimize the time and paperwork required by all concerned.

Permits should be granted by the affirmative vote of a majority of the members of the governing body of the Bay agency. But the Bay agency should be empowered to delegate the function of holding public hearings and of granting or denying permits to the staff or to a committee of the governing body, subject in all cases to appeal to the full governing body.

The costs of processing permit applications for shoreline developments should be borne by the applicants, not by the general public. In most cases, processing costs would be small, and the Bay agency should establish a fee schedule to cover these costs.

The Bay agency should insure that work is performed in the manner and for the purposes that it was authorized. To this end, it should have the customary governmental powers to require performance bonds in appropriate circumstances, to suspend or revoke permits for violations, and to enjoin actions not in accordance with an active permit. It should also have sufficient staff to monitor work subject to its jurisdiction, and should issue certificates of compliance upon the completion of work and prior to occupancy just as many cities and counties do now.

4. **Extent of Shoreline Jurisdiction**

For **priority uses** (ports, water-related industry, airports, wildlife areas, and water-related recreation) the Bay agency's jurisdiction should encompass enough shoreline land to make an effective use of each prime site, and should encompass parcels of land of varying sizes and shapes as necessary to include all of each prime site. Initially, the Bay agency should have the jurisdiction recommended in this report over the priority use areas as shown on the Bay Plan maps.

For all **other shoreline areas,** the Bay agency's jurisdiction should extend inland only far enough to assure that no harmful uses are made of the shoreline, that attractive design of shoreline development is encouraged, and that public access is provided wherever feasible. This jurisdiction would most logically apply to the whole of each parcel of land fronting on the Bay that would ordinarily be the basic building or development unit, i.e., the whole of an owner's holding, whether it be a small lot for one house or a large parcel for an extensive residential or commercial development.

Therefore, this jurisdiction should extend inland from the Bay to include each whole parcel of land (or group of parcels in the same ownership and use) bordering the Bay as of September 17, 1965 (the effective date of the BCDC), or should extend inland a distance of 1,000 feet, *whichever is less*. The Bay agency should be enabled to declare by resolution that it will not exercise this jurisdiction over any particular area that it finds to be physically separated from the Bay shoreline and of no regional concern to the Bay. (In the case of unusually large parcels of land, extending inland a great distance, jurisdiction for shoreline development purposes need not cover the entire parcel to be effective, hence the 1,000 foot limitation. Similarly, in some cases even a smaller distance from the shoreline will be clearly beyond any relationship to the water, hence the option for the Bay agency to exclude areas from its jurisdiction.) This jurisdiction of the Bay agency should extend inland only from the shores of the Bay (including sloughs) and not from the shores of any tributaries to the Bay (even those in which control of filling and dredging is being exercised).

5. **Inland Advisory Role**

The Bay agency should have the specific right and duty to advise publicly on all development proposals, proposed legislation, or other measures that, in the judgment of the Bay agency, would affect San Francisco Bay. Such measures would include (for example) reserving inland industrial sites, developing or expanding inland airports, and any other steps that would relieve development pressures on the Bay; and steps necessary to preserve and enhance scenic views of the Bay from public vista points, scenic roadways and trails, and to preserve natural landmarks such as nearby hills that provide scenic views from the Bay. The Bay agency should establish a system whereby information is exchanged between the Bay agency and local, state, and federal governments as to inland proposals affecting the Bay.

6. **Regional Development Policies**

Many regional matters, such as air pollution control, regulation of water quality, planning and construction of waste disposal facilities, airport development, and regional transportation, are directly related to the future of the Bay. Some of these regional matters are now within the jurisdiction of state and regional agencies, but others are not now being dealt with at all on a regional basis. Some or all of these regional matters could be made the responsibility of a limited regional government, which would in addition carry out the Bay Plan, but obviously they could not be made the responsibility of a single-purpose Bay agency. In any event, however, it is essential that many regional policies directly related to the Bay be carried out if the Bay Plan is to be effective. For example:

a. Water quality should be maintained in accordance with the policy on Pollution (page 10).

b. Port planning and development should be carried out in accordance with the policy on Ports (page 19).

c. Airport planning and development should be carried out in accordance with the policy on Airports (page 21).

d. Views from vista points and from public roads should be protected and scenic roads and trails should be built in accordance with the policy on Scenic Views (page 33).

e. Inland industrial sites should be provided in accordance with the policy on Water-related Industry (page 18).

In addition, study should be given to whether a new policy is needed on property tax levels and distribution of property tax revenues. Present dependence of many communities on the property tax causes competition for industry, a high (net) property-tax-producing use. This may lead to pressures for industrial development in certain areas where more fill is required than would be required in other areas suitable for the same

industry. And competition for property tax base may have other unfortunate results. Subjects to be explored would include reduction in percentage of local government revenues derived from property taxes, and formulas for sharing property tax revenues on some basis of comparative need.

Applying and Amending the Bay Plan

The Bay agency should be directed to carry out the Bay Plan, i.e., to guide future development of the Bay and shoreline in accordance with the Bay Plan policies and Bay Plan maps.

Because the policies and maps are necessarily general in nature, the Bay agency should be authorized to clarify, interpret, and apply them as necessary. The agency should be specifically empowered to issue regulations containing more detailed standards and procedures based on the Plan policies, to assist in preparation of specific plans for shoreline areas, and to publish information to assist planners, architects, and engineers in the design of projects affecting the Bay.

In addition, over a period of time it may be expected that new information will come to light and that development trends will not precisely follow predictions made in 1968. The Bay Plan policies are intended to be comparable to the constitution or charter of a governmental body; i.e., to serve as guidelines under varying circumstances, and to be changed infrequently. However, application and interpretation of these policies, as shown on the Bay Plan maps, may need adjustment over the years. The Bay agency should therefore be specifically empowered to amend the Bay Plan, in accordance with the following procedures:

1. The Bay agency should be directed to make continuing studies of any matters related to the Bay that, in the judgment of the Bay agency, are necessary to keep the Bay Plan policies and Bay Plan maps up to date.

2. The Bay agency should be required to conduct a public hearing on any proposal to change the Bay Plan policies or the Bay Plan maps.

3. The Bay agency should be able to amend the Bay Plan policies upon the affirmative vote of two-thirds of the members of its governing body, such vote not to be taken less than 90 days following public notice of the proposed policy amendment. The Bay agency should be able to amend the Bay Plan maps upon the affirmative vote of a majority of the members of its governing body after reasonable public notice.

4. The Bay agency should state publicly the reasons for its decision in each case regarding a proposed change in Bay Plan policies or Bay Plan maps.

The Bay Plan policies and maps permit minor fills where necessary to improve shoreline projects, and also permit minor shoreline construction, without amending the Plan. Any change in either policies or maps would therefore necessarily involve a project of sufficient importance to justify careful study and a formal amendment process that includes public hearings.

Costs of Carrying Out the Bay Plan

Funds to carry out the Bay Plan are needed (1) to finance development of the Bay and shoreline to their highest potential, and (2) to pay the operating costs of the agency designated to carry out the Bay Plan. If it were desired to compensate private owners of Bay lands that cannot be filled under the Plan, additional funds would be needed for this purpose.

1. Development Costs

The Bay Plan proposes development of ports, water-related industry, airports, wildlife areas, and water-related recreation. Some of this development can and should be financed by private investment, but in other cases public funds will be needed.

Industrial growth along the shoreline will, over the next 50 years, require the private investment of many millions of dollars. Expansion of existing port and airport terminals, and creation of new ones, will require both public and private investment; however, these terminals generate revenues that can repay the private investment and at least part of the public investment.

Providing waterfront parks, beaches, and other recreational facilities will require substantial public financing. Private development of shoreline recreation should be vigorously encouraged, and in some cases, such as marinas and the Marine World in Redwood City, private investors will be able to provide various types of recreation. Even with large-scale private investment in recreation, however, public funds will still be needed to purchase lands for public beaches, parks, fishing piers, etc., and to develop these areas. (Public funds will also be needed to establish wildlife areas and may also be needed to assist in providing public access and improving the appearance of many parts of the shoreline.)

The Bay Plan maps show some 5,800 new waterfront acres of particular importance for recreation to be acquired (plus some 4,000 acres of land suitable for recreational development if eventually released by the military), and 1,600 acres of new wildlife areas. The time and funds available to BCDC have not permitted parcel-by-parcel appraisals of the value of the 5,800 acres of recreational land or the 1,600 acres of proposed wildlife refuges, but on the basis of county assessors' records, the purchase price could be estimated at $30–50 million. If present inflationary trends continue, however, this cost would probably increase every year. And in addition to the funds necessary to acquire land, money would be needed to develop beaches, parks, etc., on this land.

In general, high priority should be given to purchasing land, so it can be reserved for recreational development. But in the immediate future, top priority, and the first $3–5 million in recreational funds available, should be used to build fishing piers, beaches, and other shoreline recreational facilities in urban areas where large concentrations of persons live near the Bay but are presently unable to use or enjoy it for recreation.

Some of the waterfront recreational lands and wildlife areas will undoubtedly be purchased by various units of federal, state, and local government, through their existing park and recreational programs. But additional efforts will still be needed; it appears reasonable to assume that existing programs will buy no more than half of the needed lands. Purchasing the remaining lands will probably require a regional program that could be made the responsibility of a limited regional government, or of a special-purpose recreational agency, or of the Bay agency.

Similarly, a program of public assistance to improve access and appearance on parts of the Bay shoreline that are developed badly, where wholly private improvement is not economic or not forthcoming, would also require some action by a regional agency to supplement local programs.

Whichever type of agency is chosen, it will need adequate funds to acquire land and to finance development in whole or in part where necessary for public recreation and for wildlife refuges or to improve public access and appearance. It will also need the power of eminent domain. And perhaps the Bay agency will need the power to initiate redevelopment projects for specially difficult shoreline areas where local governments are unable to accomplish such redevelopment and where no dislocation of any significant numbers of residents would occur.

Sources of Funds for Development. Funds for recreational development could be derived from several sources, including various programs of the federal and state governments, but there would still be a need for local (regional) funds. Most federal and state grants (for example, the Federal Land and Water Conservation Fund and the open space program of the Federal Department of Housing and Urban Development) are given only on a matching basis, i.e., $1 of federal funds for each $1 of local funds. A regional bond issue would be a logical source of funds, both for direct purchase of recreational land and for local matching funds. The chances for passage of such bonds would increase materially if the bonds could be repaid from funds other than property taxes, and if, as is the case with State bond issues, a simple majority vote, rather than a two-thirds majority, were sufficient for passage.

Funds for improving public access and the appearance of existing shoreline areas and for removing incompatible development could be derived from many of the same sources. A major additional source could be the financing available for urban renewal projects—that is, Department of Housing and Urban Development grants on a two-thirds federal, one-third local basis. Most shoreline renewal projects would result in creation of properties with amenities such as views of the Bay and access to the water. A local government or the Bay agency, whichever sponsored the shoreline renewal project, could sell such lands for uses appropriate to the location and thereby recoup part or all of the public investment in the renewal area. Thus, funds available for this purpose would become in whole or in part revolving, and available for repeated use to improve the shoreline.

2. Administrative Costs

Carrying out the Bay Plan will require, as a minimum, (a) a planning staff to revise the Plan as necessary and keep it up to date, and to assist local governments in detailed planning of shoreline areas, (b) a staff to process permit applications and make the necessary inspections to insure that construction is in accordance with permits issued, (c) consultant help—primarily in the fields of engineering and ecology—to help with future planning and permit processing, (d) engineering review and inspection, to carry out recommendations of the Fill Review Board, (e) attorneys, appraisers, and other technical assistance in the acquisition of any lands bought for recreation and for wildlife preserves, and (f) other normal administrative expenses, such as printing, postage, and office rent.

These costs would differ somewhat depending upon whether the agency designated to carry out the Bay Plan is (1) a single-purpose district such as the Bay Area Air Pollution Control District, (2) a State-financed agency such as the BCDC, or (3) a department of a limited regional government. The difference in costs is due primarily to the potential economies available to a general-purpose government, e.g., use of a motor pool, leased telephone lines, centralized personnel and accounting services, etc.

Based on the considerations outlined above, it appears that the annual costs of effectively carrying out the Bay Plan would be about $400–500,000 per year. This is higher than the budget of the BCDC (which has averaged about $225,000 per year) because of the additional responsibilities the Bay agency would have.

Sources of Funds for Administrative Costs. If the agency designated to carry out the Bay Plan were a State agency, presumably it would receive an appropriation annually from the State General Fund. If the agency were an independent special district, such as the Bay Area Air Pollution Control District, it could be empowered to levy a small property tax. A tax of 1¢ per $100 of assessed valuation in the nine-county Bay Area would now produce about $1 million in revenue (and would produce more each year as valuations increase); thus a tax of ½¢ might suffice for operating expenses. If the Bay agency were part of a limited regional government, it would presumably receive most if not all of its financial support from the regional government; a broader range of tax sources (such as regional sales, income, or excise taxes) could presumably be made available to a limited regional government than to a special-purpose Bay agency.

3. Possible Compensation Costs

The Bay Plan does not provide for compensation of owners of lands in the Bay, for several reasons:

a. Many owners of parts of the Bay will have an opportunity to make some economic use of their holdings within the Bay Plan policies, i.e., they will be able to develop their shoreline property and some of their Bay holdings for purposes directly related to the Bay—ports, water-related industry, and water-related recreation—or for Bay-oriented commercial recreation and public assembly.

b. Although court clarification is needed, it appears that at least some owners of property at the bottom of the Bay hold their parcels subject to a public trust entitling the public to use water areas for commerce, navigation, and fishing. These owners would also not be entitled to compensation, because they have no absolute "right" to develop their properties.

c. Good arguments have been made that an owner of a part of the Bay does not have a right to either fill or be compensated. The owners of Bay property bought land under water, not ordinary dry land. Many, if not all, had at most a speculative belief that at some future date they could obtain the necessary governmental permissions, complete the expensive, necessary engineering and filling, and then lease, sell, or use the property profitably; due to the high cost of filling, Bay parcels in their original condition were ordinarily purchased for a fraction of the cost of uplands in similar locations. According to one of the nation's foremost experts on the law of public land use regulation, the courts would probably uphold a statute declaring that privately-owned property in the Bay could not be filled—and that the owners were not entitled to compensation as a result of this regulation. The legal basis for such a statute would take into account the overwhelming public interest in preserving the Bay for future generations, the often-low prices paid for underwater property initially (and the often-low taxes paid since), the special and expensive preparation that has to be made before Bay property can be built upon, and the precedents in zoning and other land use regulations that may reduce property values but do not compensate owners.

The amount of money that would be required to compensate owners cannot be determined with any precision, because the value of property in and adjacent to the Bay varies widely (sale prices from 1960 to 1967 ranged from $150 to about $22,000 per acre) and because some owners would be permitted to develop and receive some economic return under the Plan policies, and would therefore not be entitled to compensation. Nevertheless, for purposes of estimating, it is worth noting that about 57,000 acres of the Bay are in private ownership; at an average price of $500 per acre, the total purchase price would be some $28.5 million; at an average price of $5,000, the total price would be about $285 million. This higher figure is reasonably in line

with the "full market value" of all privately-owned property wholly or partly in the Bay, as determined from the records of the nine Bay Area county assessors. Based on assessors' records, the current total value is about $180 million; it appears reasonable to increase that figure by about one-third, however, to reflect the fact that unimproved land is apt to be valued for tax purposes somewhat below its actual market value. Such an adjustment would give a total estimated value of some $240 million.

Possible Sources of Funds for Compensation Costs. Various Federal programs have money available for purchase of open space and conservation lands, but as noted above, these generally require matching funds. Matching funds would be necessary in large amounts; even assuming funds from local governments, private foundations, and some gifts, additional sources would still be needed. As in the case of funds for recreational lands, a regional bond issue might be the most appropriate means of raising these funds, and the success of such a bond proposal might well depend on (1) whether the bonds were to be repaid from property taxes or from other sources of revenue, and (2) whether the bonds required a two-thirds majority vote for approval, or only a simple majority.

Further Research

The Bay Plan is based on the best information available. But new information is constantly being produced. Therefore, the Plan should be continually reviewed, and amended as necessary, in light of the further information that may become available as to various aspects of the Plan. The Bay agency should take the lead in further research on topics such as the following (which are in addition to specific research suggestions listed in other sections of the Plan):

1. Identification of specific diked-off areas which, if reopened to the Bay, would significantly improve water circulation.

2. The feasibility of an intra-regional water transportation system for containerized freight.

3. A program for gradually phasing out and relocating marginal and inappropriate developments occupying land needed for water-related uses.

4. Determination of the effects of specific fills on the climate of surrounding areas and the region.

5. Detailed mapping of fills, soils, and geology of the Bay and shoreline, with special reference to engineering characteristics, to be used as a basis for establishing risk classification zones.

6. The economic importance, future growth, and requirements of airport-oriented industries.

7. The effect upon marshland productivity and particular species of fish and waterfowl of salinity changes resulting from public works.

8. The potential of the Bay system as a commercial fishing area.

9. New methods of sedimentation control in the Bay through upstream improvements and new dredging techniques.

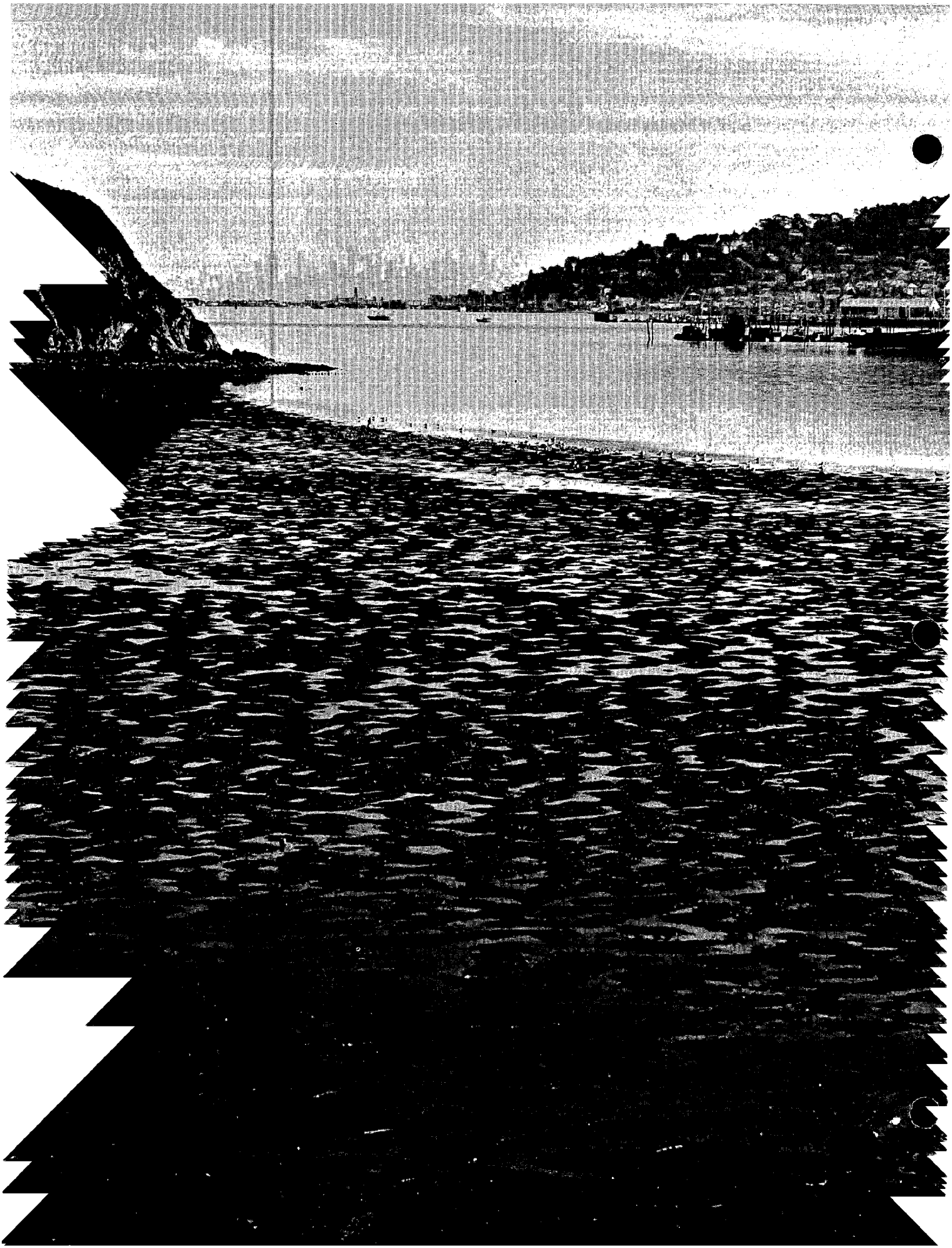
10. The specific effects of urban development on the wildlife habitat value of Baylands nearby.

11. Means of disposing of or economically utilizing spoil from channel-dredging projects, to reduce pressures to fill marshlands and tidelands with dredged mud.

12. Determining, if possible, the mathematical relationship between a particular amount of fill and the reduction in the Bay's waste-assimilative capacity.

13. Developing more detailed standards and criteria to carry out the intent of the policies on public access to the Bay, with due consideration to practical problems of maintenance, public liability, and policing.

14. Developing more detailed standards and criteria to carry out the intent of the policy that shoreline areas "be used in any manner that would not adversely affect enjoyment of the Bay and shoreline by residents, employees, and visitors within the area itself or within adjacent areas of the Bay and shoreline."



Part VI
The Plan Maps

The maps that follow are an integral part of the Bay Plan. They are based on—and show how to apply—the Bay Plan policies.

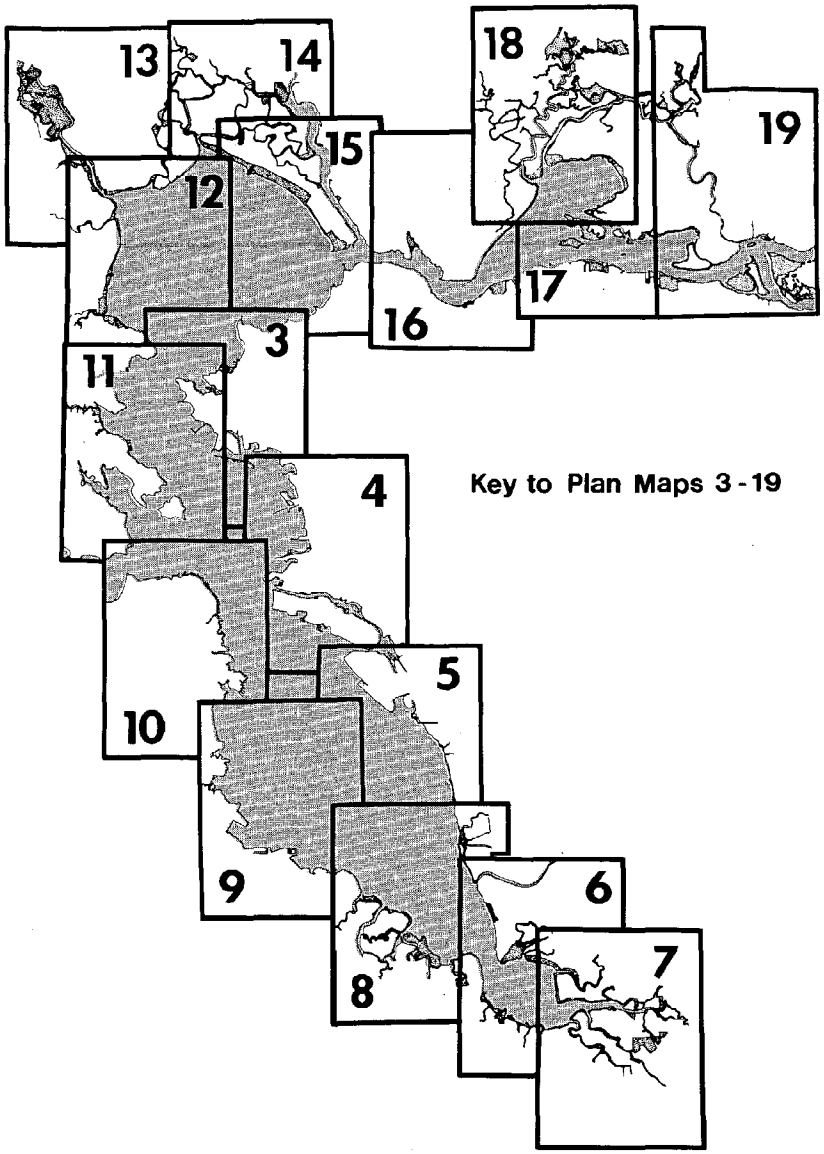
All areas of the Bay subject to tidal action (and thus proposed to be subject to the jurisdiction of the future Bay agency for control of filling and dredging) are shown on the maps in light blue. Similarly shown in light blue are certain tributaries in which filling and dredging are also proposed to be controlled because of their ecological importance.

All shoreline sites designated for priority uses (as identified in the Bay Plan policies) are indicated on the Plan maps. Development of these sites should be governed by the Bay Plan policies for each specific use. Development of shoreline areas not proposed for any specific use should be consistent with the Bay Plan policies for Other Shoreline Uses.

Bay Plan policies for which precise areas cannot be mapped—for example, policy statements as to proposed Bay or shoreline freeways—are printed on the maps in bold type.

Comments that are **not** part of the Bay Plan policies—for example, suggestions for further study, clarification of policy and alternative proposals—are printed in italic type. **Comments in italic type are not intended to be enforceable policies of the Bay agency.**

Plan Map 1

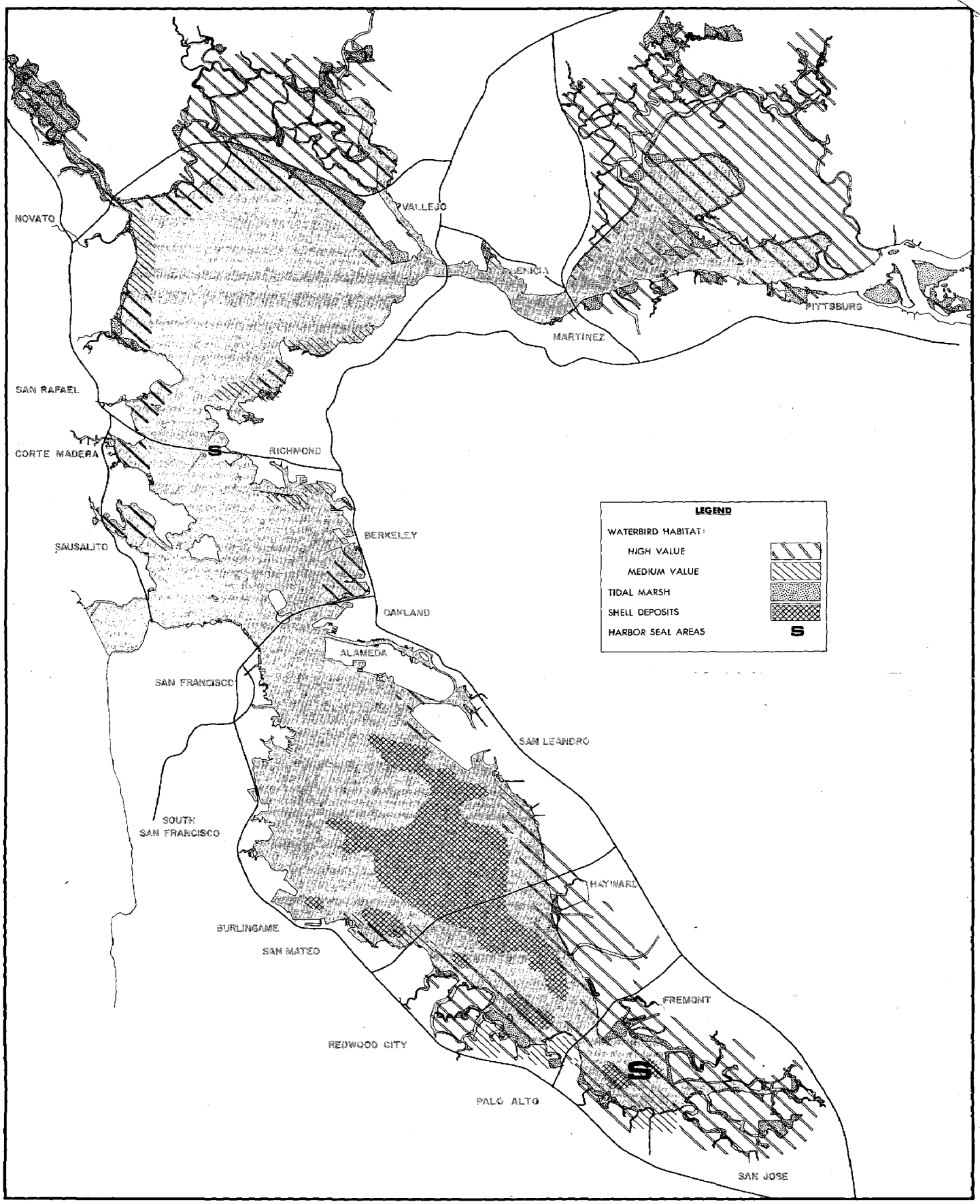


Key to Plan Maps 3 - 19

Notes to
Plan Map 1
Natural Resources of the Bay

Habitat Values. Plan map shows fish and wildlife habitat areas rated as "high value" and "medium value" by State Department of Fish and Game. Other areas have value as habitat, but lesser value than the portions marked.

Shell Deposits. Oyster shells dredged primarily for use in manufacturing cement.



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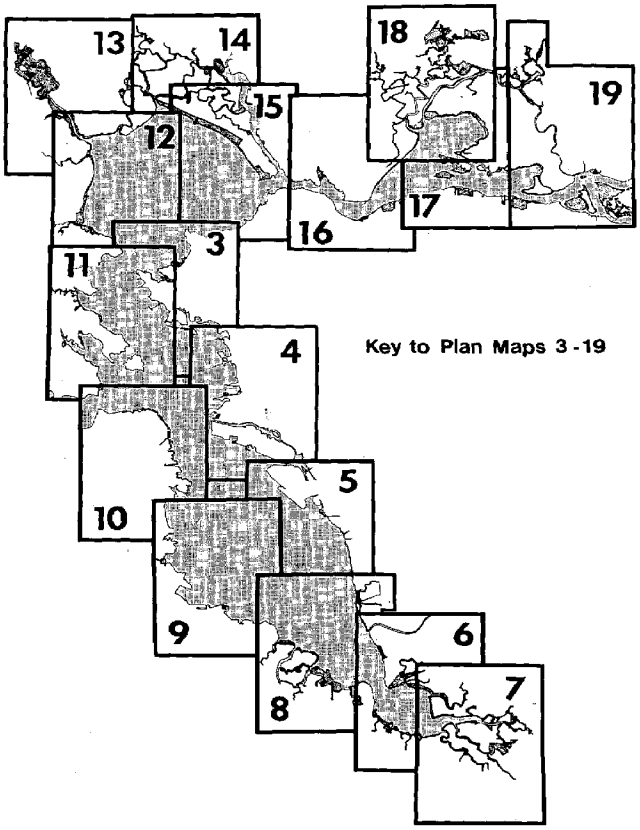
Plan Map 1

NATURAL RESOURCES OF THE BAY

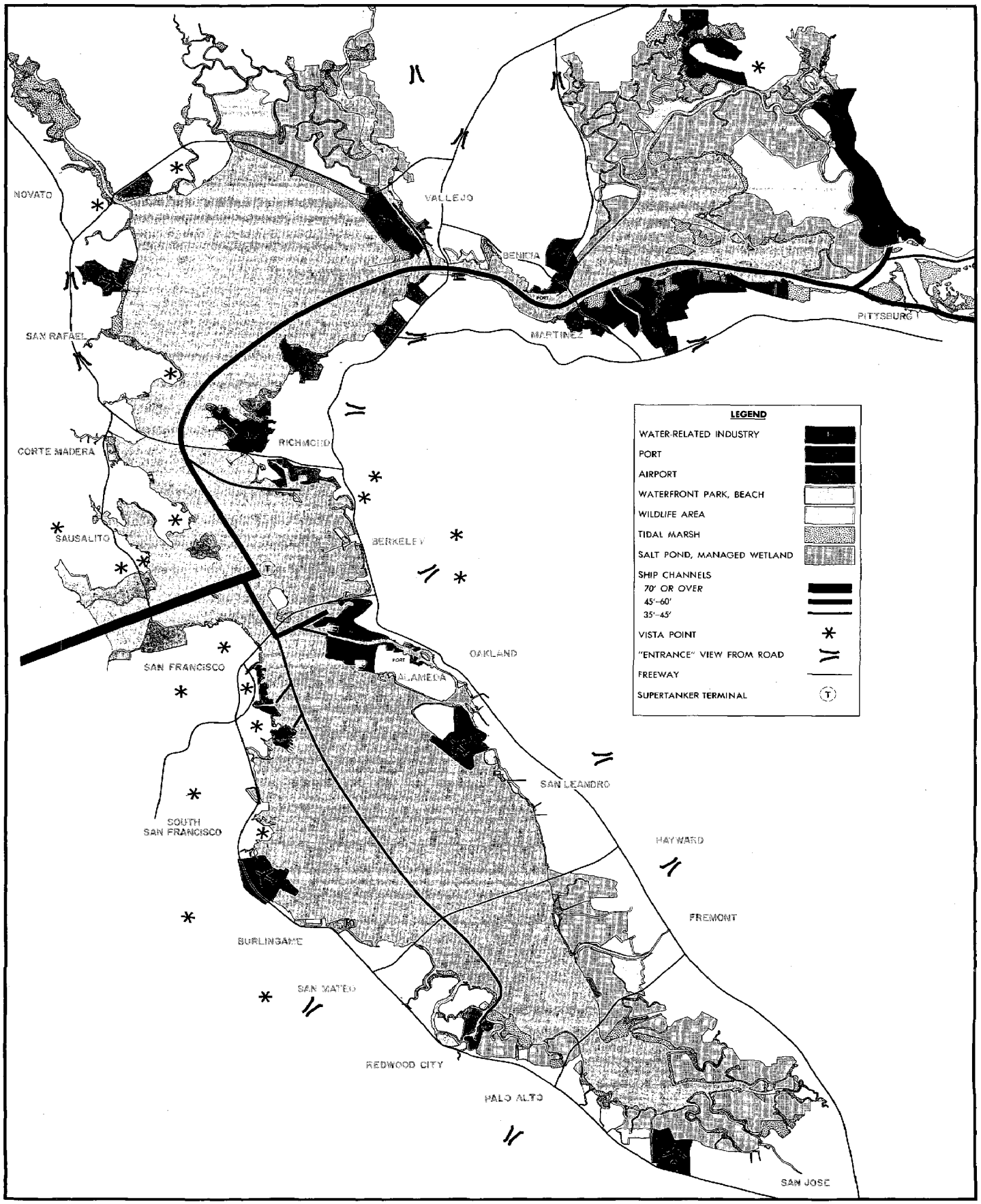
Plan Map 1
Natural Resources of the Bay

Plan Map 2



Notes to
Plan Map 2
Proposed Major Uses of the Bay and Shoreline

General. This map shows all areas proposed for priority uses—ports, water-related industry, waterfront recreation, airports, and wildlife areas. These areas are shown in greater detail on following maps. Also shown on this map are: (1) salt ponds and other managed wetlands, (2) proposed main ship channel depths and possible supertanker terminal in accordance with the policy on Ports; and (3) important vista points and "entrance views" (first views of the Bay from roads through passes in hills) that are intended for protection in the same manner as other view points shown on the detailed maps.



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Plan Map 2
PROPOSED MAJOR USES OF THE BAY AND SHORELINE

Plan Map 2
Proposed Major Uses of the Bay and Shoreline

Plan Map 3

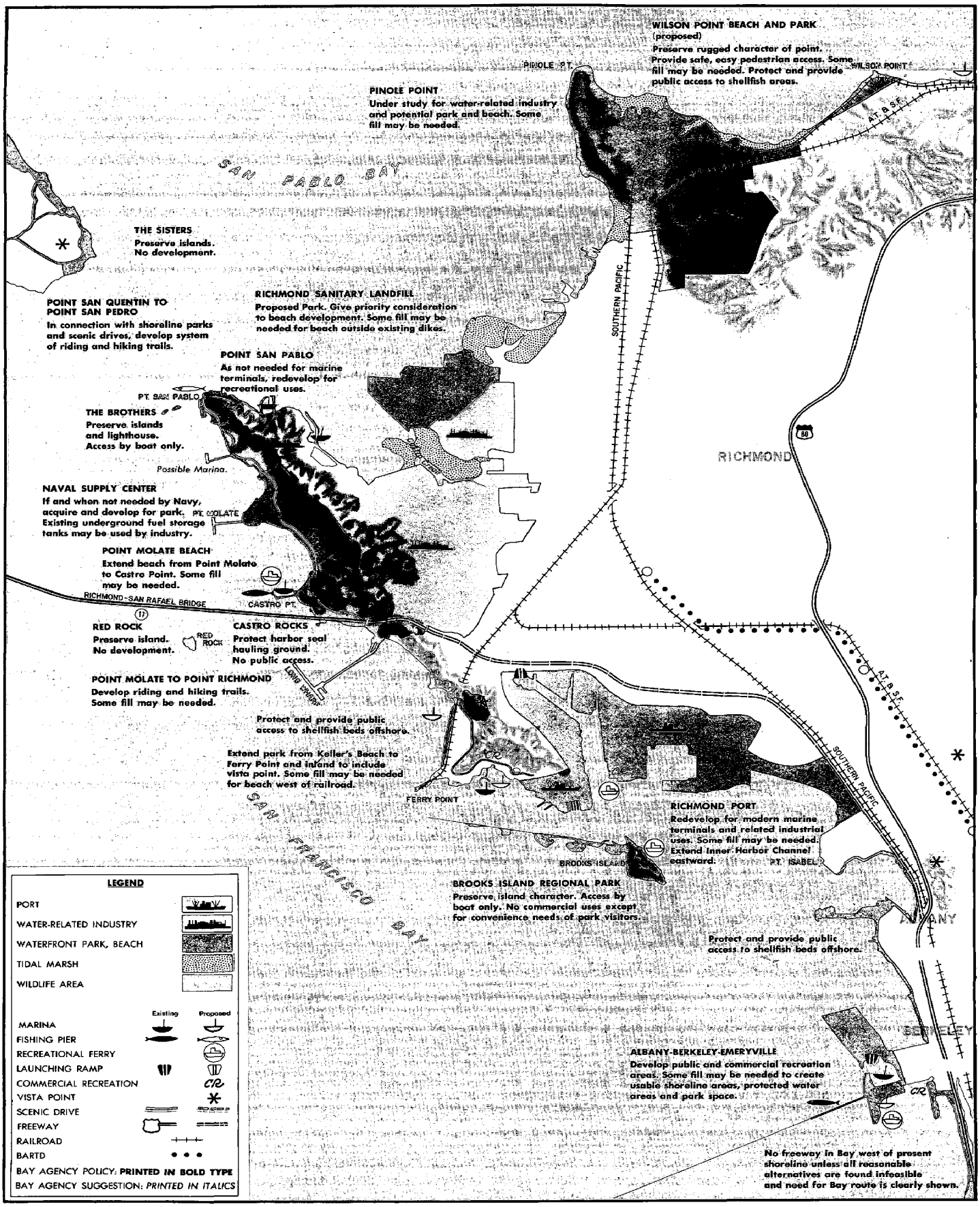
Notes to
Plan Map 3
Richmond to Berkeley

Point Pinole to Wildcat Creek. Public access to the Bay for recreation is needed in this area, although existing shoreline conditions make this difficult. All development in this area should include provision for substantial public access.

Naval Supply Center, Point Molate. Plan maps indicate recommended use for Bayfront military installations if one or more of these bases is ever declared surplus by the military. The Bay Plan does not advocate the closing of any military installation.

Point Richmond Park. The proposed park will surround some flat land remaining in private use. Use and landscaping of the remaining private lands should be coordinated by owners and city for compatibility with park.

Richmond Port Area. Nearness to deep water offers opportunities for expansion of Richmond port operations. New port development should provide for public access to the Bay, and for waterfront recreation, to the maximum extent feasible. The eastern boundary of the port area should be determined on the basis of a detailed planning study for marine terminals and industrial development. If feasible, this boundary should be far enough west to permit commercial-recreation uses adjacent to Point Isabel.



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Plan Map 3

RICHMOND TO BERKELEY

Plan Map 3
Richmond to Berkeley

Plan Map 4

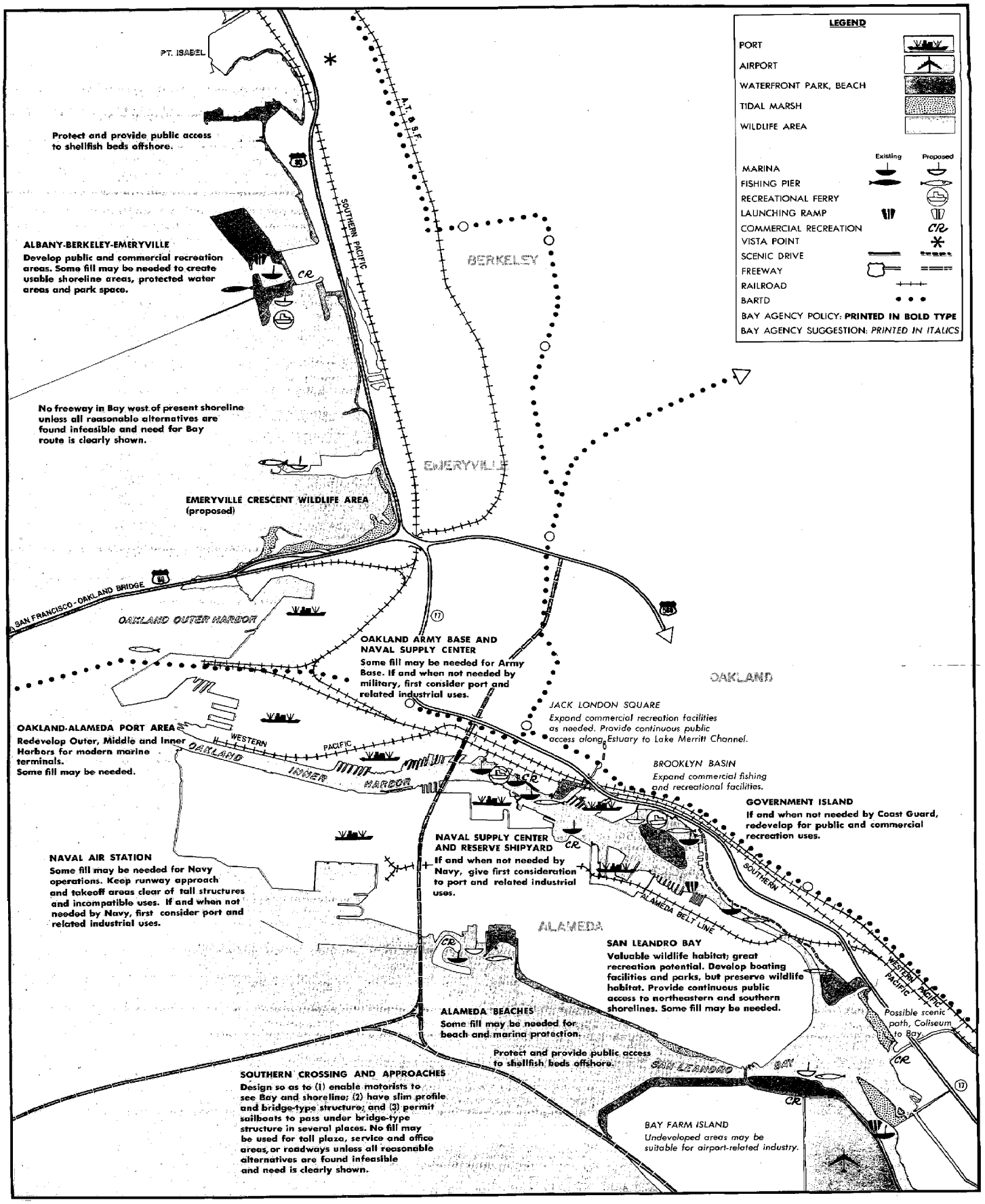
Notes to
Plan Map 4
Berkeley to Oakland

Oakland North Harbor Area. The proposed Oakland North Harbor fill is not included in the Bay Plan because need for it has not been substantiated. However, the Port of Oakland proposal should receive continued consideration in the light of changes in shipping technology and regional port facility needs.

Oakland Army Base, Naval Supply Centers, Alameda Naval Air Station and Reserve Shipyard. Plan maps indicate recommended use for Bayfront military installations *if* one or more of these bases is ever declared surplus by the military. The Bay Plan does not advocate the closing of any military installation.

San Leandro Bay. Bay Plan includes Alternative A, one of four proposals for San Leandro Bay in report to Port of Oakland by consultants Wilsey and Ham, but without a 66th Avenue roadway crossing the Bay. Alternative A emphasizes maintaining ecology and increasing recreation. Some dredging required for boating.

Bay Farm Island. About 1,000 acres, diked and now being filled, are planned for housing. The site is adjacent to Oakland Airport, and may be suitable for airport-oriented industry. Bay Farm Island development should not interfere with aircraft operations at Oakland Airport.



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Plan Map 4

BERKELEY TO OAKLAND

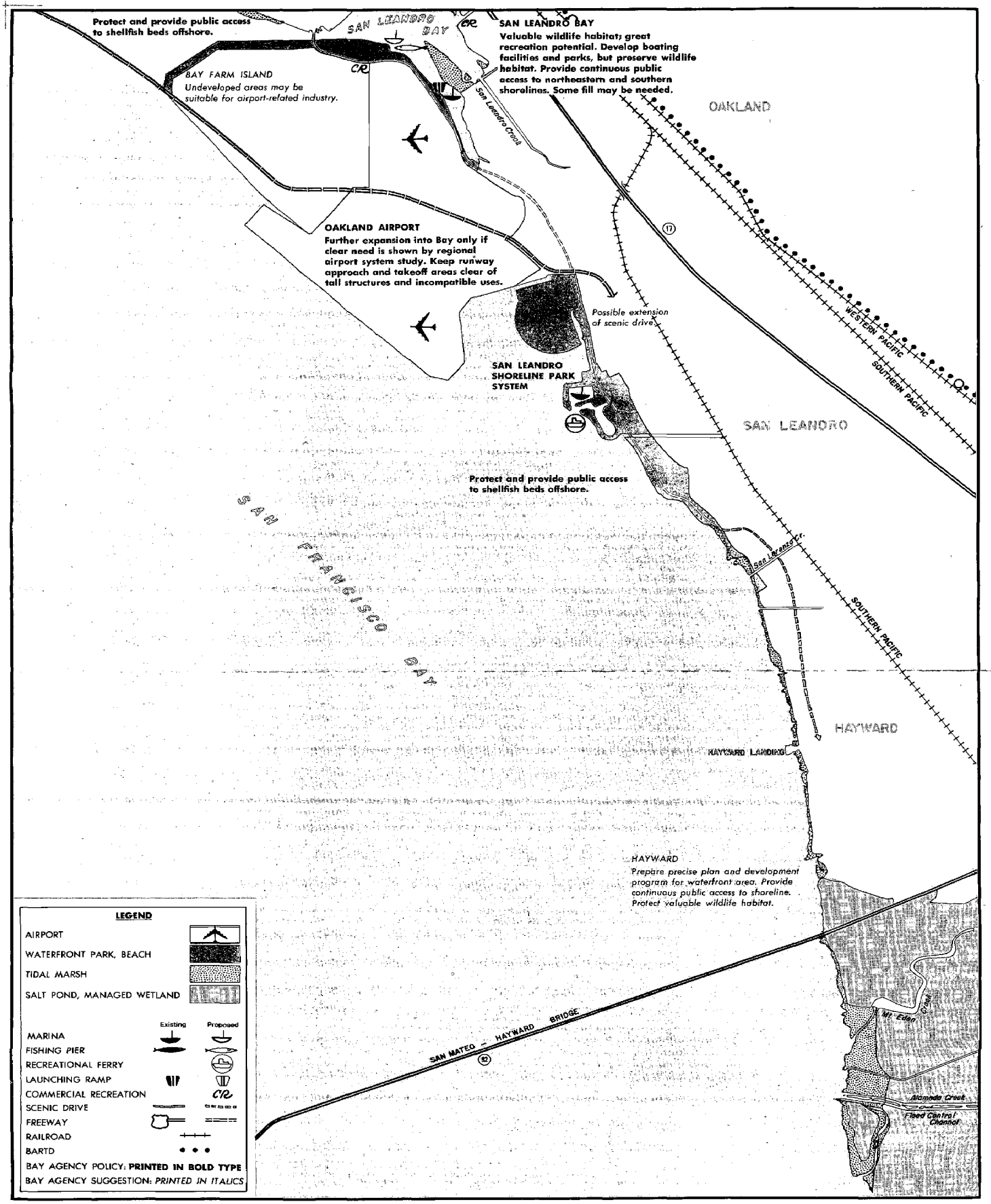
Plan Map 4
Berkeley to Oakland

Plan Map 5

Notes to
Plan Map 5
San Leandro, Hayward

Bay Farm Island. About 1,000 acres, diked and now being filled, are planned for housing. The site is adjacent to Oakland Airport and may be suitable for airport-oriented industry. Bay Farm Island development should not interfere with aircraft operations at Oakland Airport.

Hayward Waterfront. Presently undeveloped. Detailed planning is needed to determine most desirable waterfront design.



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Plan Map 5

SAN LEANDRO, HAYWARD

Plan Map 5
San Leandro, Hayward

Plan Map 6

Notes to
Plan Map 6
Santa Clara and Southern Alameda Counties

Dumbarton Bridge Approach. If salt ponds north and south of bridge approach are ever removed from salt production, dikes could be breached and ponds opened to tidal action; water circulation might thus be improved. (This would involve public purchase or required opening of dike as part of plan to urbanize other pond areas.) This possibility should be considered in the design of new Dumbarton Bridge and Freeway; present causeway on earth fill might be replaced by structure on pilings.

Toll Plaza. Best site for toll plaza for new Dumbarton Bridge is difficult to determine: toll plaza on east shore should avoid cutting into Coyote Hills, should avoid filling of Bay or salt ponds, and should be satisfactory distance from interchange with proposed Freeway Route 61. Similar location problems exist on west shore. Further study required, including consideration of collecting tolls in manner not necessitating toll plaza.

Plummer Creek. Plummer Creek to the eastern limit of the salt pond area is a vital part of the ecological system of the Bay and is included within the proposed jurisdiction of the Bay agency (for purposes of filling and dredging control only).

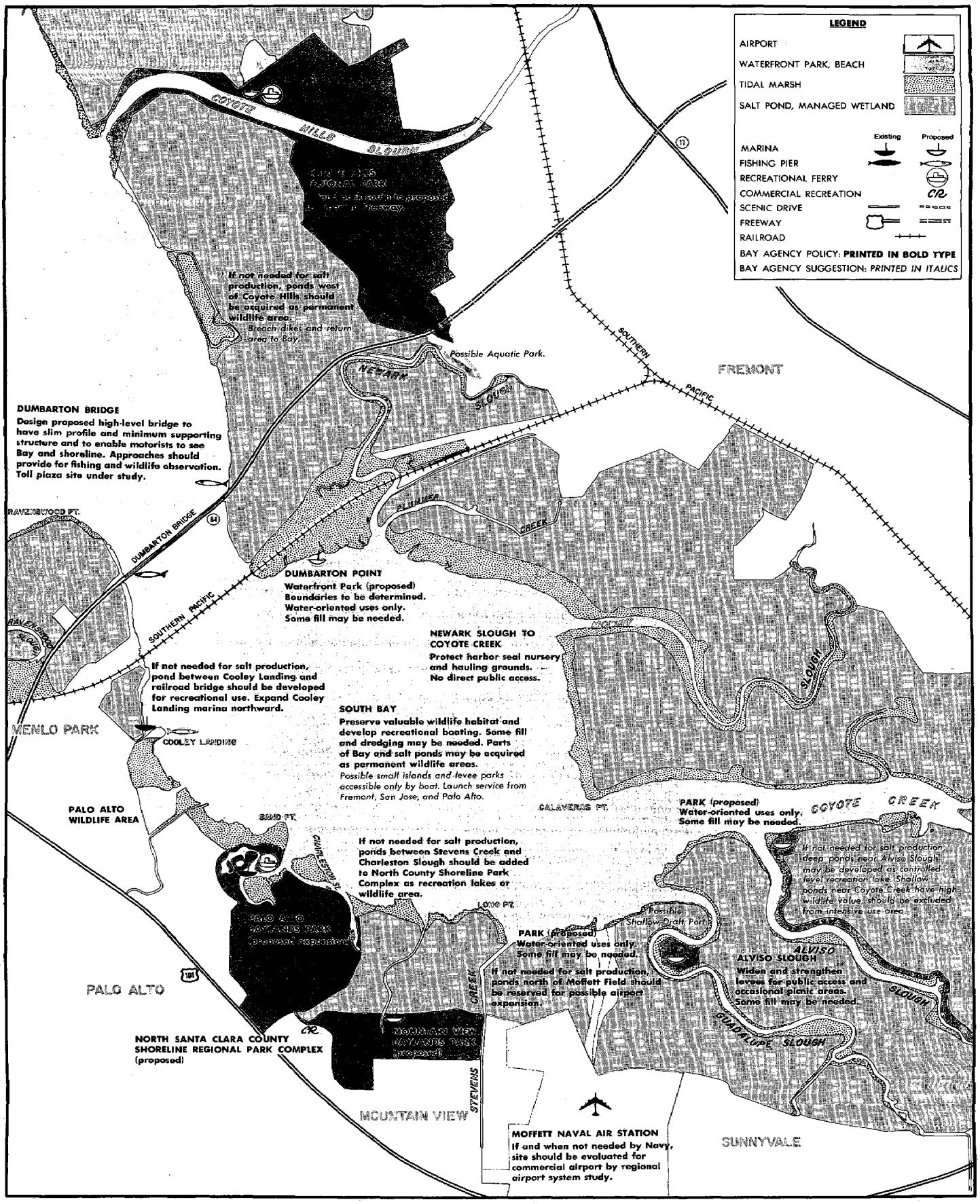
Access to Parks and Marinas Outside Salt Ponds. Some parks and marinas are proposed Bayward of salt ponds. Access to these facilities would require cooperation of the salt company. Parking would not be provided near the facilities because this would require substantial fill and because salt pond dikes would not accommodate heavy vehicles. Access might be provided by lightweight shuttle vehicles atop dikes, with parking confined to areas ashore.

Water Quality. Water at extreme south end of Bay is often polluted so as to discourage recreational use of sloughs and Bay. Greater recreational use will require improved water quality. Some improvements in the quality of water in the South Bay are now being made pursuant to requirements of the Regional Water Quality Control Board, and studies underway by waste dischargers will lead to further improvements. Recommendations for long-range improvements to water quality will be part of the 1969 plan of the Bay-Delta Water Quality Control Program.

Subsidence. Area subject to subsidence. Construction in or near Bay should be carefully planned, taking into account effects of future subsidence.

Moffett Naval Air Station. Plan maps indicate recommended use for Bayfront military installations *if* one or more of these bases is ever declared surplus by the military. The Bay Plan does not advocate the closing of any military installation.

National Wildlife Refuge. Two areas on Map 6 are being considered by the U. S. Department of the Interior for acquisition as a Federal Wildlife Refuge. The inclusion of either or both areas—the salt ponds and marshes in Alameda County south of Coyote Hills Slough, and those between Coyote Creek and Alviso Slough in Santa Clara County—would be consistent with Bay Plan policies. The terms of the acquisition should permit the salt ponds to continue in operation as long as desired by the owner of the ponds.



Plan Map 6

SANTA CLARA AND SOUTHERN ALAMEDA COS.

Plan Map 6
Santa Clara and Southern Alameda Counties

Plan Map 7

Notes to Plan Map 7 Coyote Creek

Coyote Creek. Coyote Creek to the easternmost point of Newby Island, and also the branch of the creek on the south side of the island, are vital parts of the ecological system of the Bay and are included within the proposed jurisdiction of the Bay agency (for purposes of filling and dredging control only).

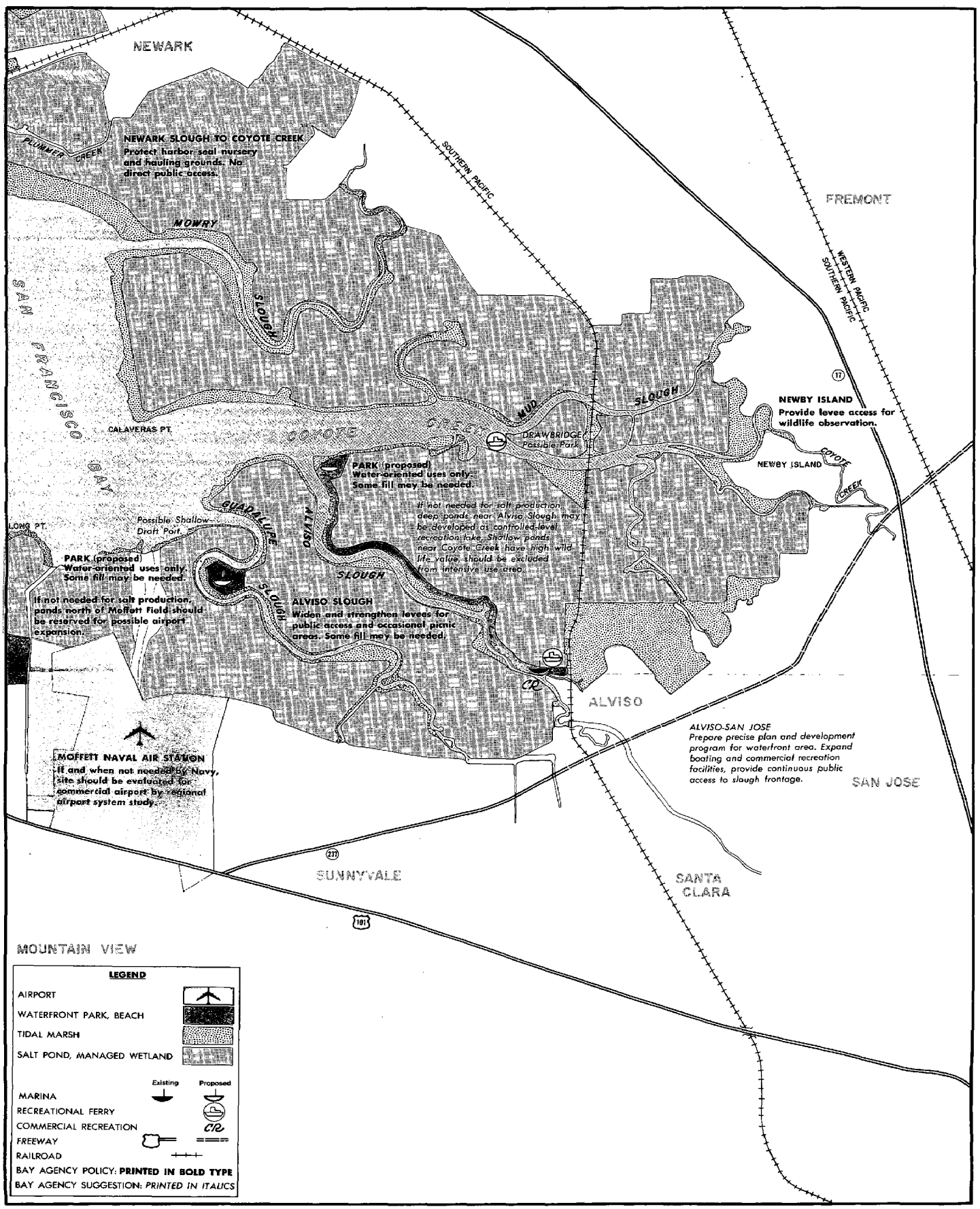
National Wildlife Refuge. The salt ponds and marshes between Coyote Creek and Alviso Slough are being considered by the U. S. Department of the Interior for acquisition as a Federal Wildlife Refuge. This proposal would be consistent with Bay Plan policies. The terms of the acquisition should permit the salt ponds to continue in operation as long as desired by the owner of the ponds.

Alviso-San Jose Waterfront. Detailed planning is needed to determine most desirable waterfront design and to overcome subsidence problems. Proposals should emphasize the great recreation potential of this area.

Access to Parks and Marinas Outside Salt Ponds. Some parks and marinas are proposed Bayward of salt ponds. Access to these facilities would require cooperation of the salt company. Parking would not be provided near the facilities because this would require substantial fill and because salt pond dikes would not accommodate heavy vehicles. Access might be provided by lightweight shuttle vehicles atop dikes, with parking confined to areas ashore.

Water Quality. Water at extreme south end of Bay is often polluted so as to discourage recreational use of sloughs and Bay. Greater recreational use will require improved water quality. Some improvements in the quality of water in the South Bay are now being made pursuant to requirements of the Regional Water Quality Control Board, and studies underway by waste dischargers will lead to further improvements. Recommendations for long-range improvement to water quality will be part of the 1969 plan of the Bay-Delta Water Quality Control Program.

Moffett Naval Air Station. Plan maps indicate recommended use for Bayfront military installations if one or more of these bases is ever declared surplus by the military. The Bay Plan does not advocate the closing of any military installation.



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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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Plan Map 7

COYOTE CREEK

Plan Map 7
Coyote Creek

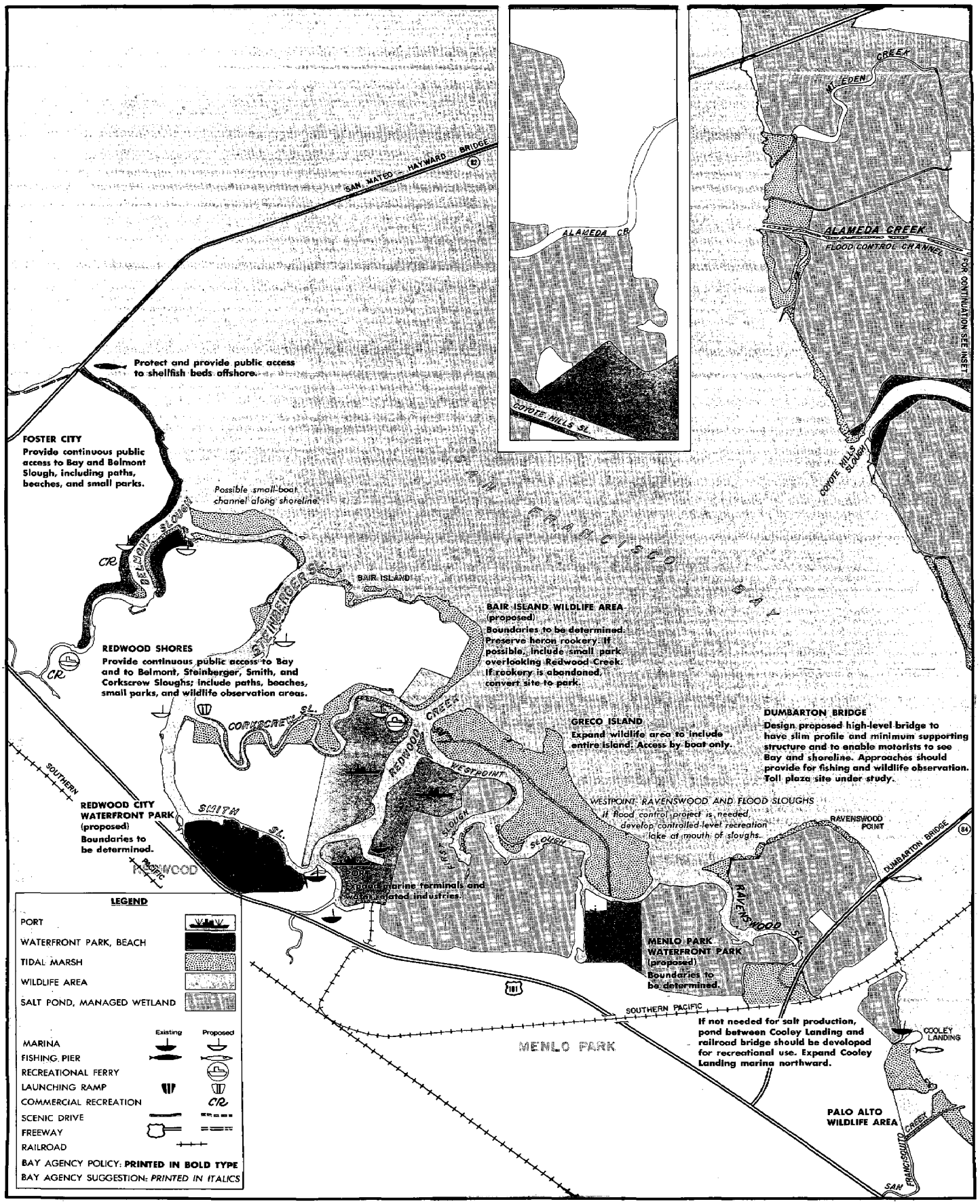
Plan Map 8

Notes to
Plan Map 8
Southern San Mateo County

Redwood Creek. Redwood Creek, Bayward of Smith Slough, is an integral part of the slough system and therefore part of the Bay.

Greco Island. Largest remaining marsh in South Bay. Marsh and adjacent mudflats are important feeding area for birds. Area used by California Clapper Rail, rare species of bird endangered by loss of habitat.

National Wildlife Refuge. Greco Island and a portion of Bair Island are being considered by the U. S. Department of the Interior for acquisition as a Federal Wildlife Refuge. This proposal would be consistent with Bay Plan policies provided that it did not interfere with commercial shipping and recreational boating in Redwood Creek.



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Plan Map 8

SOUTHERN SAN MATEO COUNTY

Plan Map 8
Southern San Mateo County

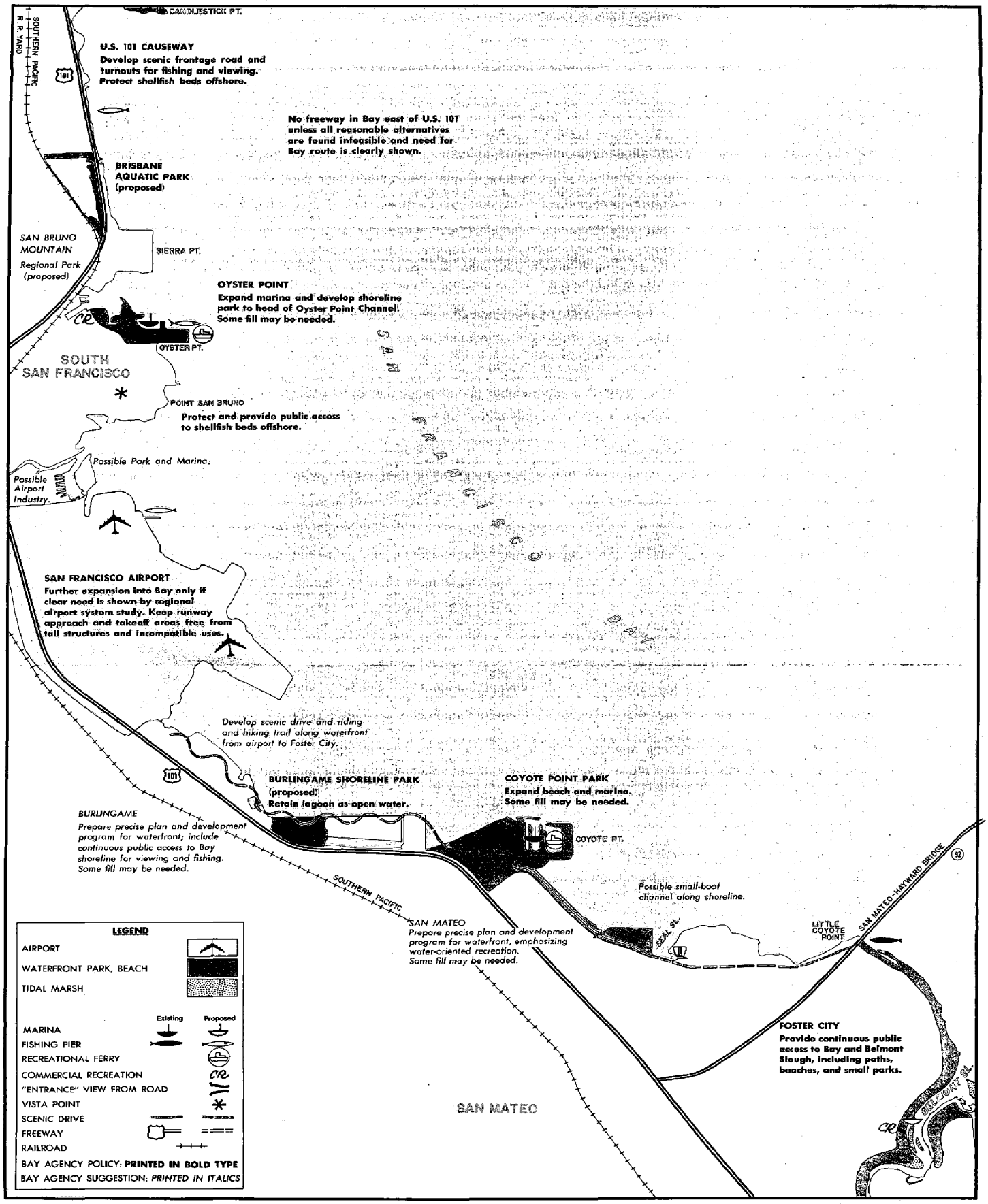
Plan Map 9

Notes to
Plan Map 9
Northern San Mateo County

Burlingame Waterfront. Presently undeveloped. Detailed planning needed to determine most desirable waterfront design emphasizing recreation with minimum of Bay filling.

San Mateo (City) Waterfront. Presently undeveloped. Detailed planning needed to determine most desirable waterfront design emphasizing recreation with minimum of Bay filling.

Possible Shoreline Channel. Dredging shallow-draft channel parallel to shore would greatly increase recreational opportunities for small boats and recreational ferries. This could be done so as to separate valuable marshes and mudflats from the shoreline, without damage to ecology. Dredged mud could be carefully placed to create new marsh, but dredging might be costly.



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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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Plan Map 9

NORTHERN SAN MATEO COUNTY

Plan Map 9
Northern San Mateo County

Plan Map 10

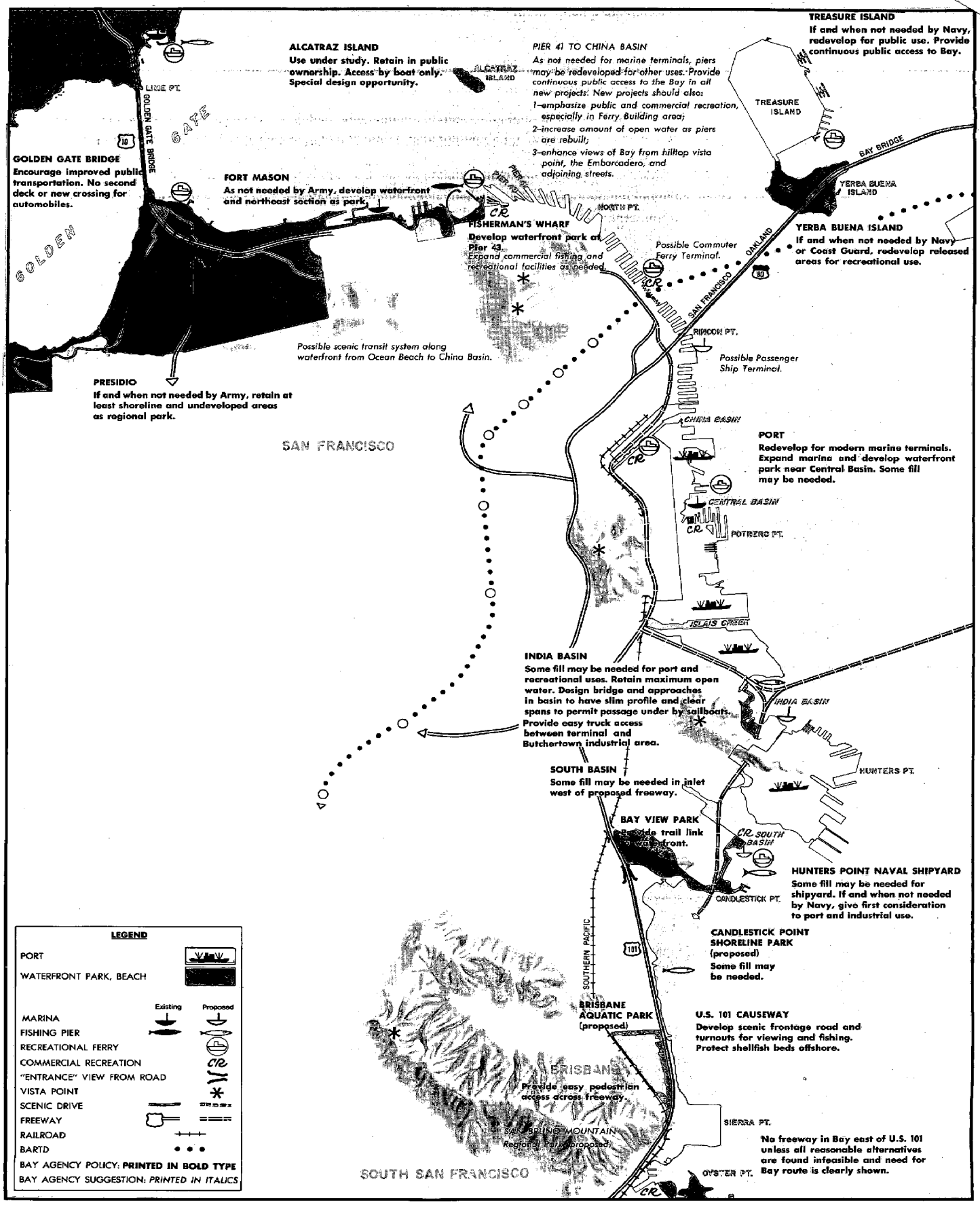
Notes to
Plan Map 10
San Francisco and Brisbane

San Francisco-Marin Crossing. The Central Bay is the most widely enjoyed part of the entire Bay and this attractive setting should be protected. Transportation agencies have reached general agreement that traffic congestion problems can best be solved by establishing fast, modern complete bus system. Therefore, Plan makes no provision for second deck on Golden Gate Bridge, or for any additional vehicular crossing. Increased auto capacity on Golden Gate Bridge, or a new vehicular crossing, could require new or enlarged toll plazas, service areas, access ramps, and freeways on both the San Francisco and Marin sides, with possible disruption of scenic areas on both sides of the Bay.

San Francisco Waterfront. Suggested scenic transit system (special bus, elephant train, cog railway, etc.) could be major waterfront attraction, could eventually operate entire distance from Golden Gate Bridge (or even Ocean Beach) to Ferry Building (or south to China Basin).

Hunters Point Naval Shipyard. Plan maps indicate recommended use for Bayfront military installations if one or more of these bases is ever declared surplus by the military. The Plan does not advocate the closing of any military installation.

Hunters Point Freeway at Candlestick Point. Connection to U. S. 101 south of Candlestick Point requires further study. If connection is close to Candlestick Cove, large overpass structure will be required, marring present spectacular views of Bay for motorists heading south on Bayshore Freeway at Bayview Hill. If connection is farther south, in Brisbane, long structure in Bay will be required. Other considerations include effects upon future development on shoreline of Candlestick Cove, and future U. S. 101 connections to proposed Geneva Avenue and Guadalupe Parkway extensions.



Plan Map 10

SAN FRANCISCO AND BRISBANE

Plan Map 10
San Francisco and Brisbane

Plan Map 11

Notes to
Plan Map 11
Southern Marin County

Point San Quentin—Possible Commuter Ferry Terminal. No fill for parking beyond existing dikes.

Shoreline Parks. Shoreline parks could be built in several areas between existing or proposed shoreline roads and the shore from Tiburon Peninsula to Point San Pedro. Further study needed.

Tiburon—Possible Commuter Ferry Terminal. To minimize traffic and parking problem, should be served by mass transit, or else designed to serve southern Marin only with another terminal built to serve northern Marin.

Tiburon Boulevard Widening. Minimize fill by using existing roadbed (or perhaps railroad right-of-way) as part of new right-of-way. Preserve hilltop vista point.

Richardson Bay. Under study. Problems: (1) substantial dredging required because of siltation, (2) access needed to upper reaches west of U. S. 101 Freeway for potential marinas, (3) complex ownership pattern. Objectives of current study: to provide suitable private development, a shoreline park, and a scenic drive with minimum Bay filling.

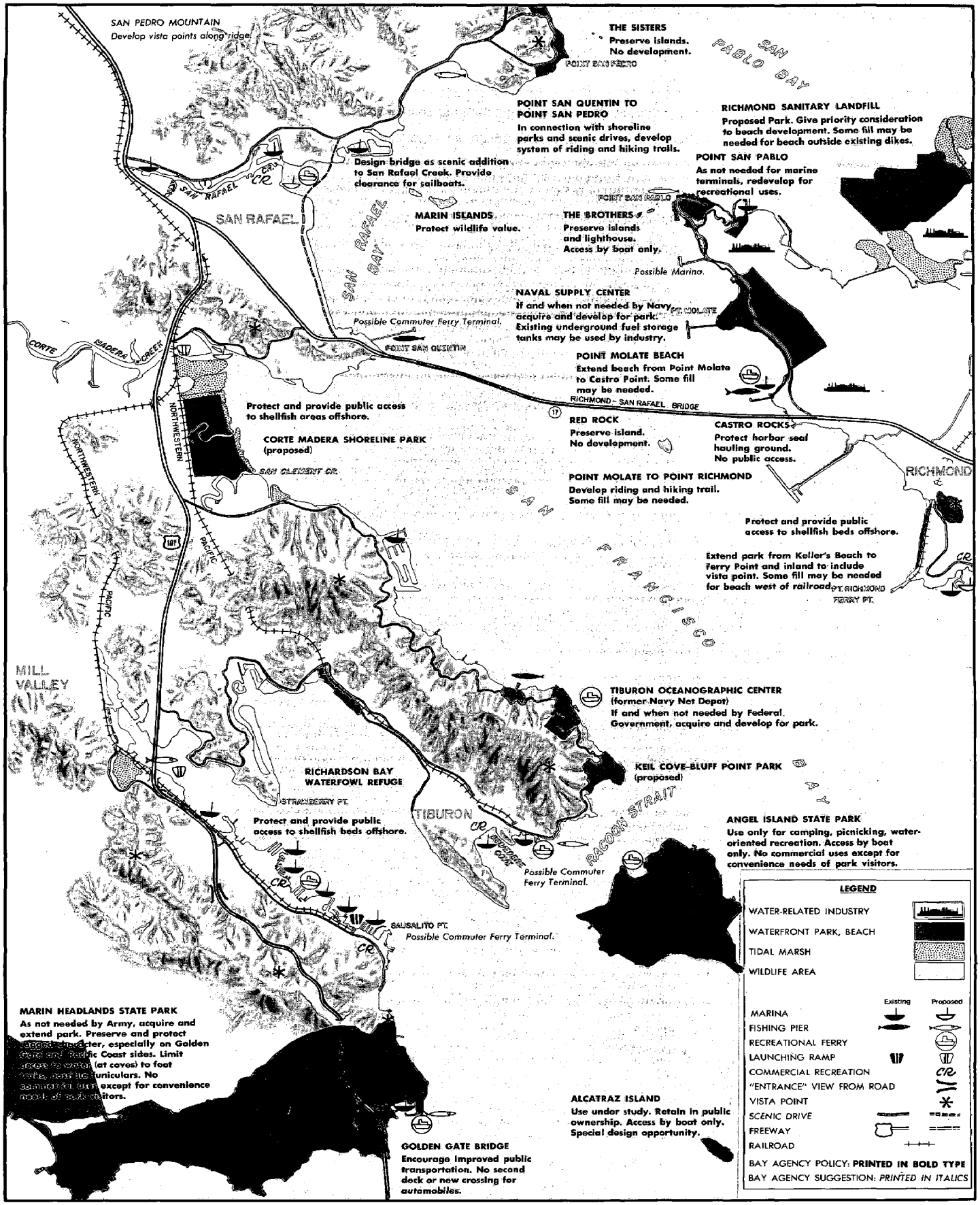
Sausalito Recreational Ferry. Ferry terminal could be connected to central area by "elephant train" along waterfront or Bridgeway. Or terminal could be placed in central area if parking can be provided.

Sausalito—Possible Commuter Ferry Terminal. To minimize traffic and parking problem, should be served by mass transit or else designed to serve Sausalito and Mill Valley only with other terminals serving rest of Marin.

Appearance and Design. Housing density in hills of Sausalito, Tiburon, and Belvedere should respect the topography; cluster development appropriate in some areas.

Forts Baker, Barry, and Cronkite. Surplus Army land now being acquired for State Park system.

San Francisco-Marin Crossing. The Central Bay is the most widely enjoyed part of the entire Bay and this attractive setting should be protected. Transportation agencies have reached general agreement that traffic congestion problems can best be solved by establishing fast, modern complete bus system. Therefore, Plan makes no provision for second deck on Golden Gate Bridge, or for any additional vehicular crossing. Increased auto capacity on the Golden Gate Bridge, or a new vehicular crossing, could require new or enlarged toll plazas, service areas, access ramps, and freeways on both the San Francisco and Marin sides, with possible disruption of scenic areas on both sides of the Bay.



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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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Plan Map 11

SOUTHERN MARIN COUNTY

Plan Map 11
Southern Marin County

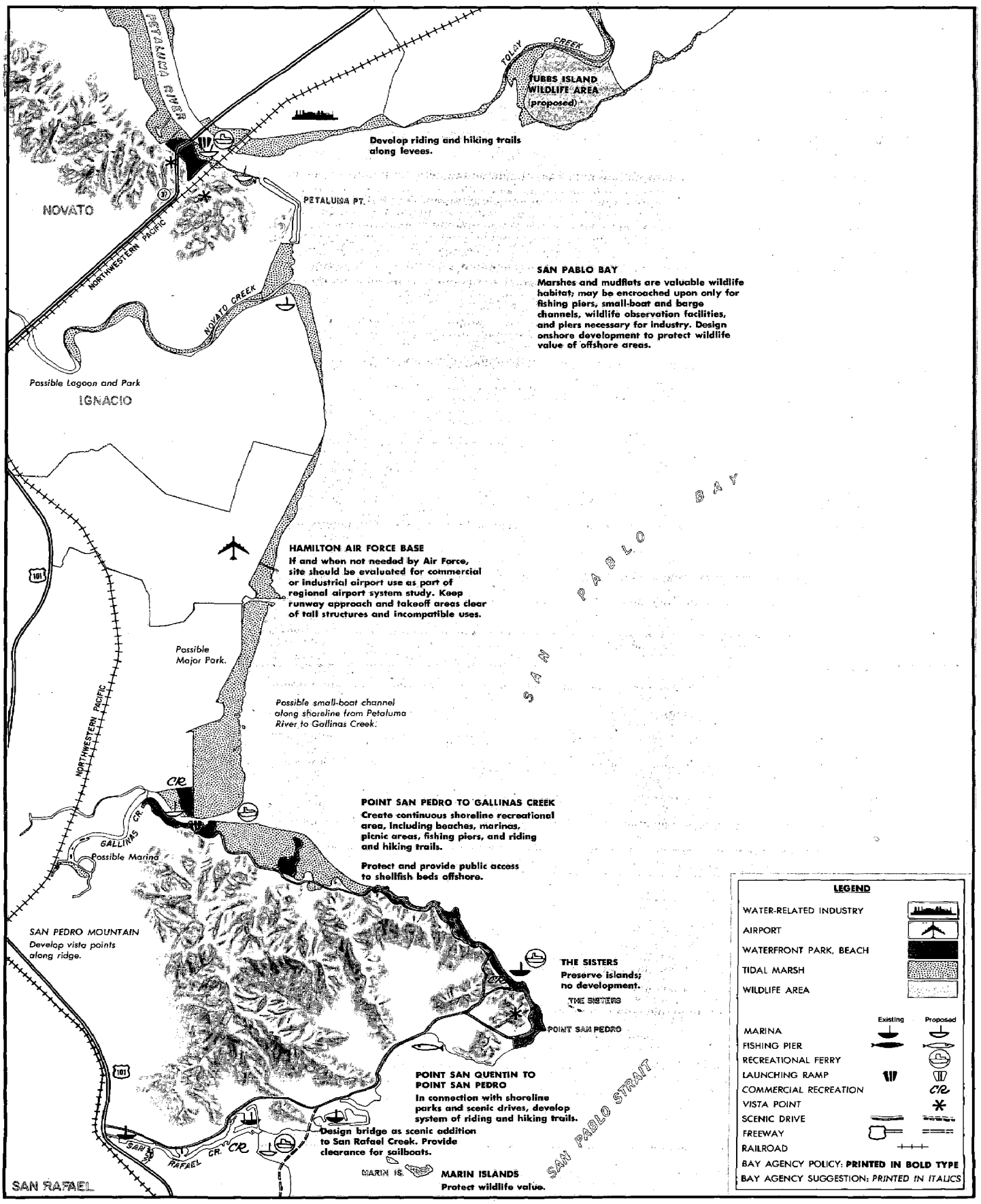
Plan Map 12

Notes to
Plan Map 12
Western San Pablo Bay

Hamilton Air Force Base. Plan maps indicate recommended use for Bayfront military installations *if* one or more of these bases is ever declared surplus by the military. The Bay Plan does not advocate the closing of *any military installation.*

Park Proposal for Area South of Hamilton AFB. Large, undeveloped area between Hamilton AFB and Gallinas Creek is possible site for *major county park. Due to extensive* offshore mudflats, would not be suitable for water-oriented recreation.

Possible Shoreline Channel. Dredging shallow-draft channel parallel *to shore would greatly increase* recreational opportunities for small boats and recreational ferries. This could be done so as to separate valuable marshes and mudflats from shoreline without damage to ecology. Dredged *mud could be carefully placed* to create new marsh, but dredging might be costly.



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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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Plan Map 12

WESTERN SAN PABLO BAY

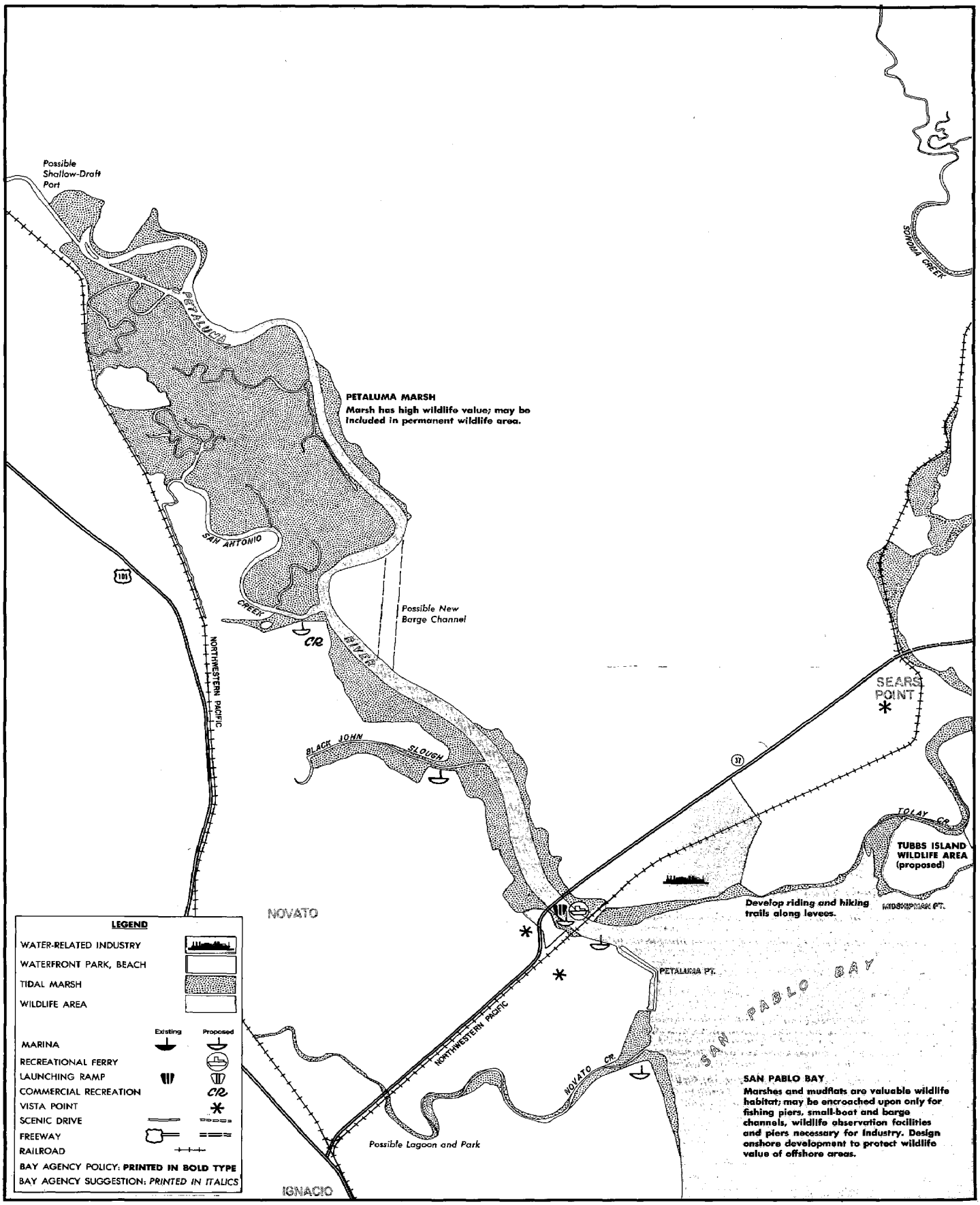
Plan Map 12
Western San Pablo Bay

Plan Map 13

Notes to
Plan Map 13
Petaluma River

Tolay Creek. Tolay Creek to Sears Point is a vital part of the ecological system of the Bay and is included within the proposed jurisdiction of the Bay agency (for purposes of filling and dredging control only).

Petaluma River and San Antonio Creek. Petaluma River to the north side of the Petaluma marsh, and San Antonio Creek within marsh area, are vital parts of the ecological system of the Bay and are included within the proposed jurisdiction of the Bay agency (for purposes of filling and dredging control only).



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Plan Map 13

PETALUMA RIVER

Plan Map 13
Petaluma River

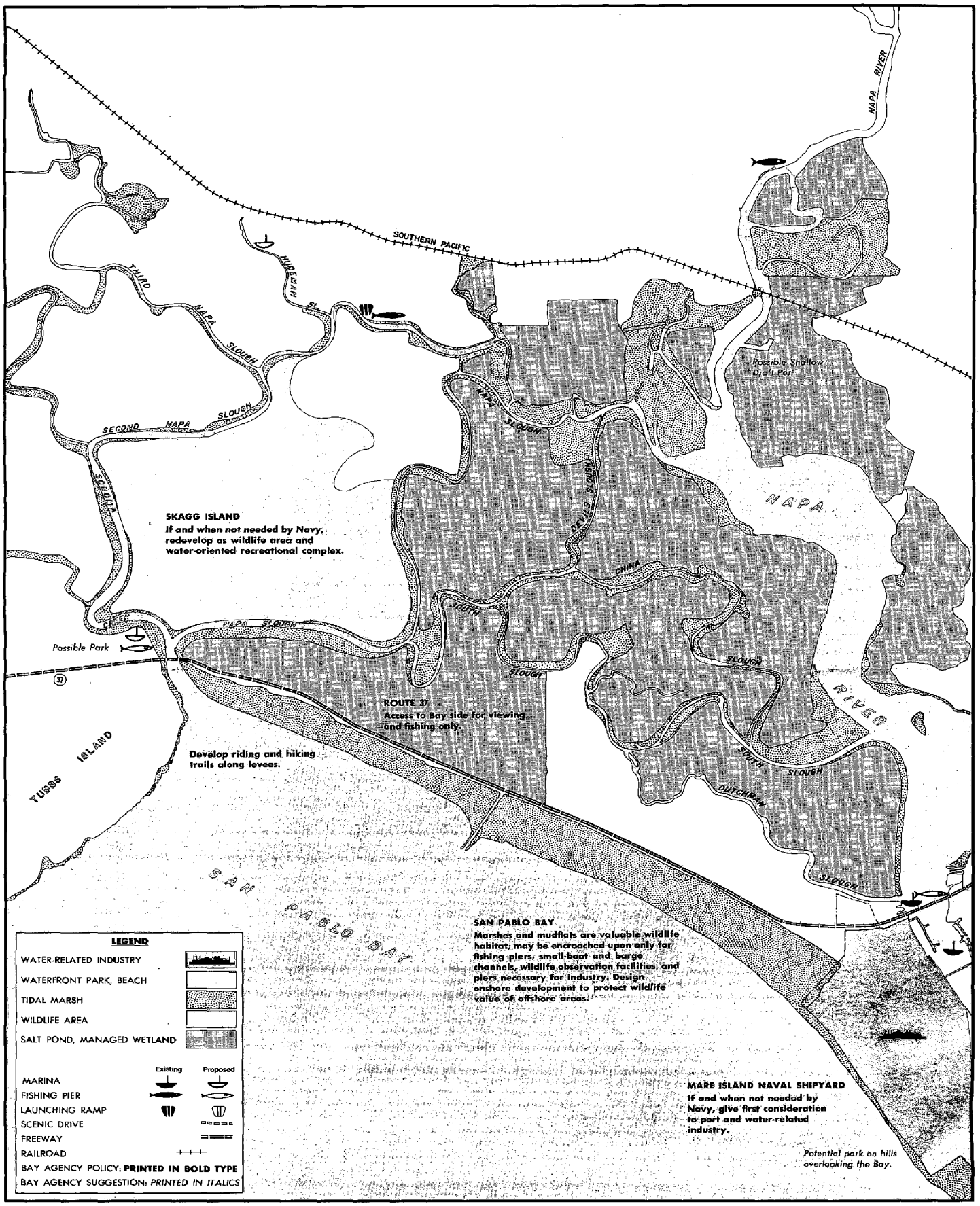
Plan Map 14

Notes to
Plan Map 14
Napa Marshes

Sonoma Creek and Napa River. Sonoma Creek to Second Napa Slough, and Napa River to the north side of Bull Island are vital parts of the ecological system of the Bay and are included within the proposed jurisdiction of the Bay agency (for purposes of filling and dredging control only).

Salt Ponds and Other Managed Wetlands. Large area, high-value wildlife habitat.

Skagg Island Security Group Activity (U. S. Navy). Plan maps indicate recommended use for Bayfront military installations *if* one or more of these bases is ever declared surplus by the military. The Bay Plan does not advocate the closing of any military installation.



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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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Plan Map 14

NAPA MARSHES

Plan Map 14
Napa Marshes

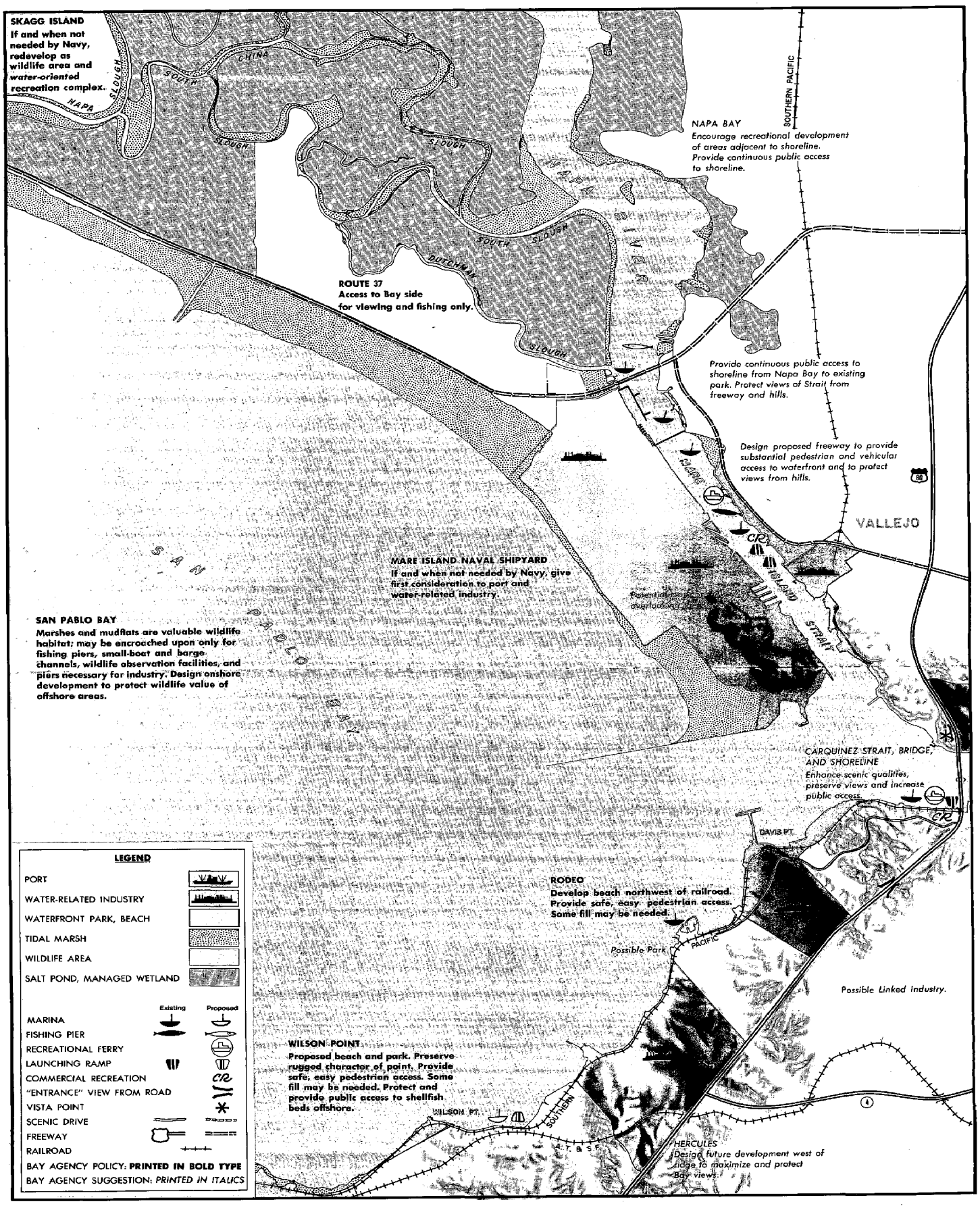
Plan Map 15

Notes to
Plan Map 15
Eastern San Pablo Bay

Salt Ponds and Other Managed Wetlands. Large area, high-value wildlife habitat.

Napa River. Napa River to the north side of Bull Island is a vital part of the ecological system of the Bay and is included within the proposed jurisdiction of the Bay agency (for purposes of filling and dredging control only).

Mare Island Naval Shipyard. Plan maps indicate recommended use for Bayfront military installations *if* one or more of these bases is ever declared surplus by the military. The Bay Plan does not advocate the closing of any military installation.



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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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Plan Map 15

EASTERN SAN PABLO BAY

Plan Map 15
Eastern San Pablo Bay

Plan Map 16

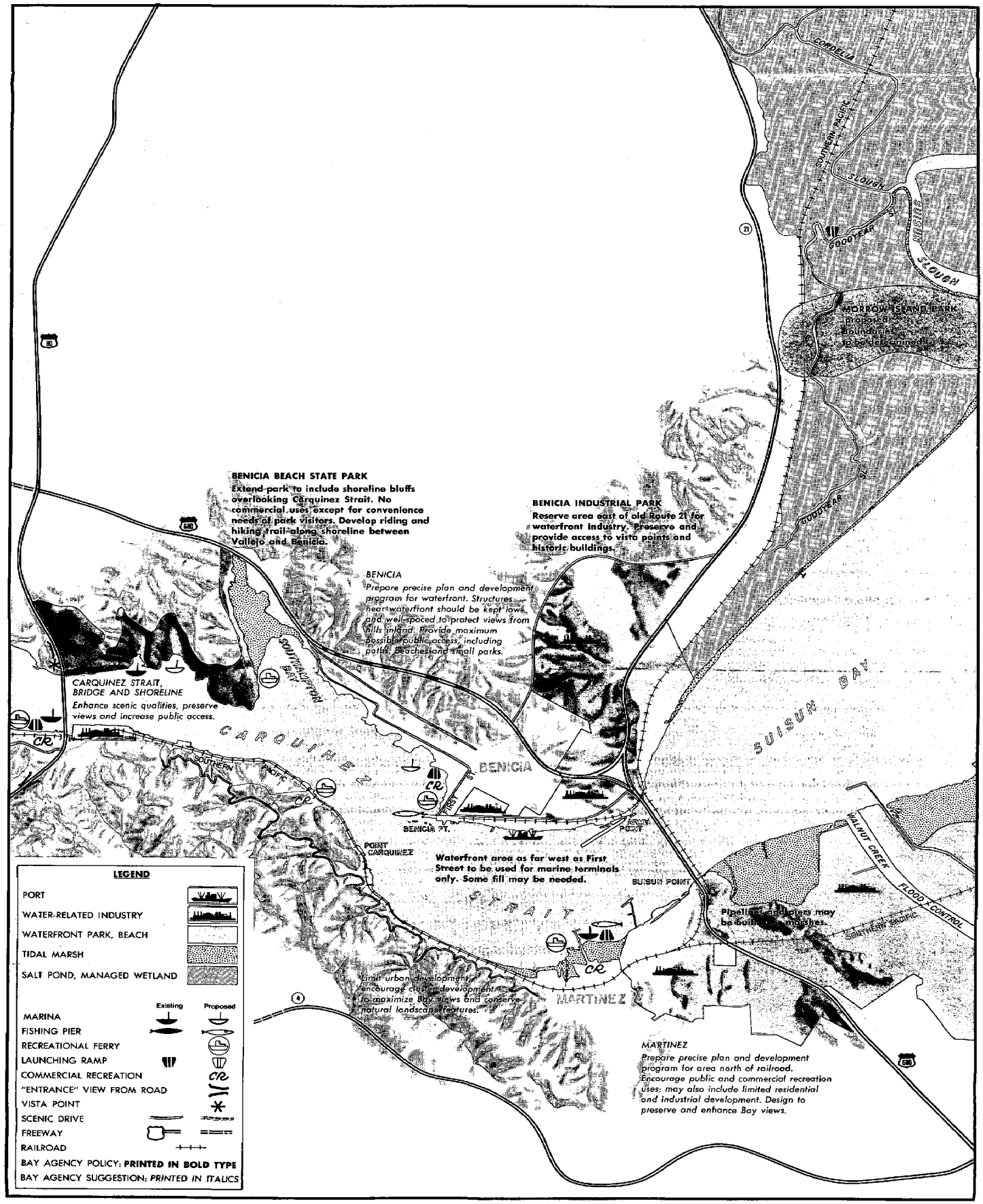
Notes to
Plan Map 16
Carquinez Strait

Benicia Beach State Park. Proposed park expansion should encompass principal overlooks and ridges on north side of strait, to preserve rugged and scenic character of hills, presently undeveloped.

Scenic Area South Side of Carquinez Strait. The scenic area includes principal overlook ridges and scenic road between Crockett and Martinez. To preserve presently undeveloped rugged and scenic hills, zoning should provide for extremely sparse development with control over tree removal and location of all structures; scenic easements should be acquired by East Bay Regional Park District, county, or other public body as necessary to guarantee permanent protection. Some park development may be appropriate in valleys leading to Bay.

Benicia Waterfront. Detailed planning is needed to determine most desirable waterfront design, emphasizing "urban" recreation uses with a minimum of Bay filling (and housing on existing private land). Special care needed to insure compatibility between recreational uses and proposed port facility.

Martinez Waterfront. Largely undeveloped at present. Detailed planning is needed to determine most desirable waterfront design. Recreational uses should be emphasized, but a wide variety of activities could be accommodated with a minimum of Bay fill.



Plan Map 16

CARQUINEZ STRAIT

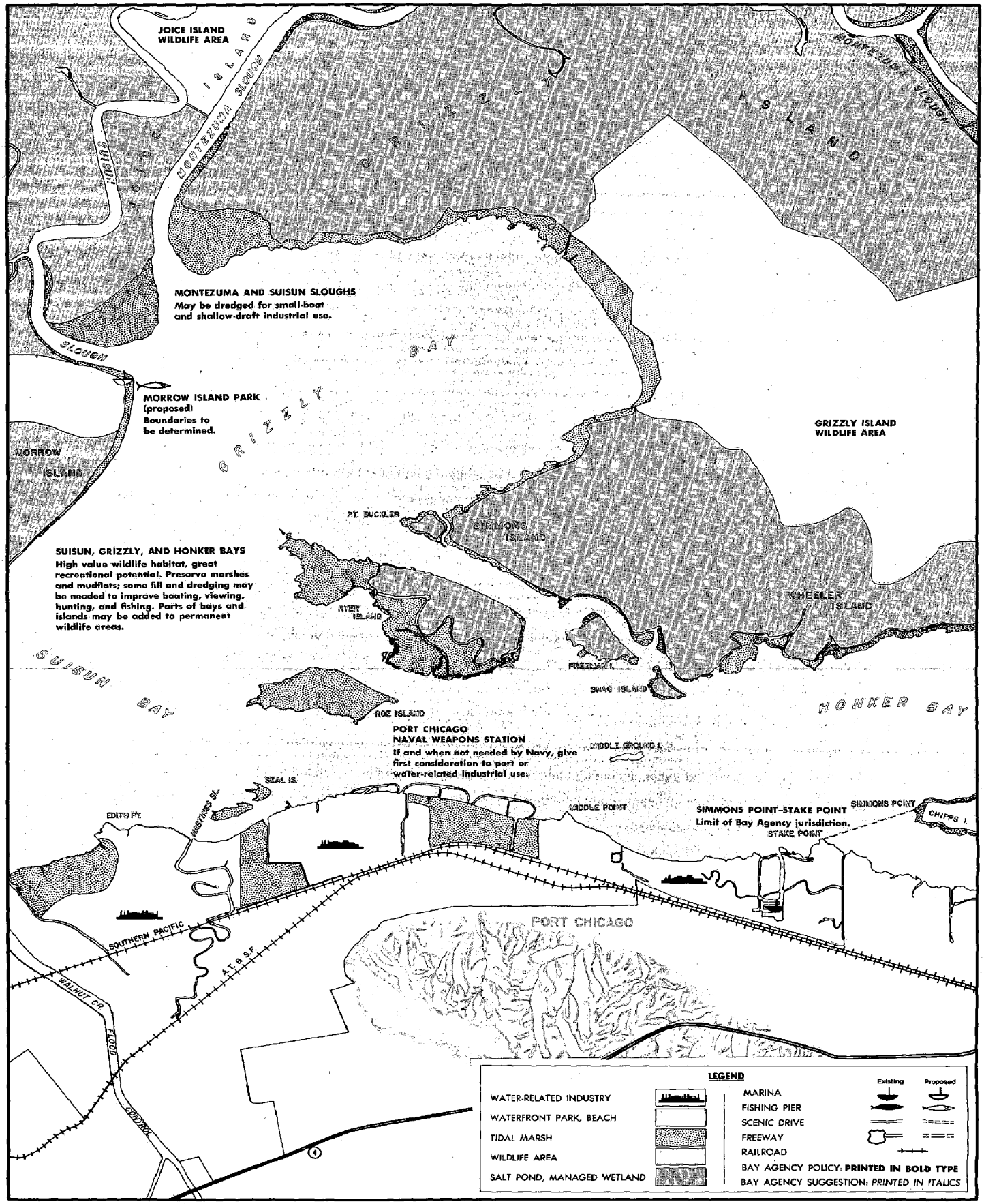
Plan Map 16
Carquinez Strait

Plan Map 17

Notes to
Plan Map 17
Suisun Bay

Suisun Marsh. Thousands of acres of controlled marshes are maintained by duck-hunting clubs as wildfowl habitat. Areas are diked, but dikes are opened for periodic flooding. Suisun Soil Conservation District protects and enhances marshland areas.

Port Chicago Naval Weapons Station. Plan maps indicate recommended use for Bayfront military installations *if* one or more of these bases is ever declared surplus by the military. The Bay Plan does not advocate the closing of any military installation.



Plan Map 17

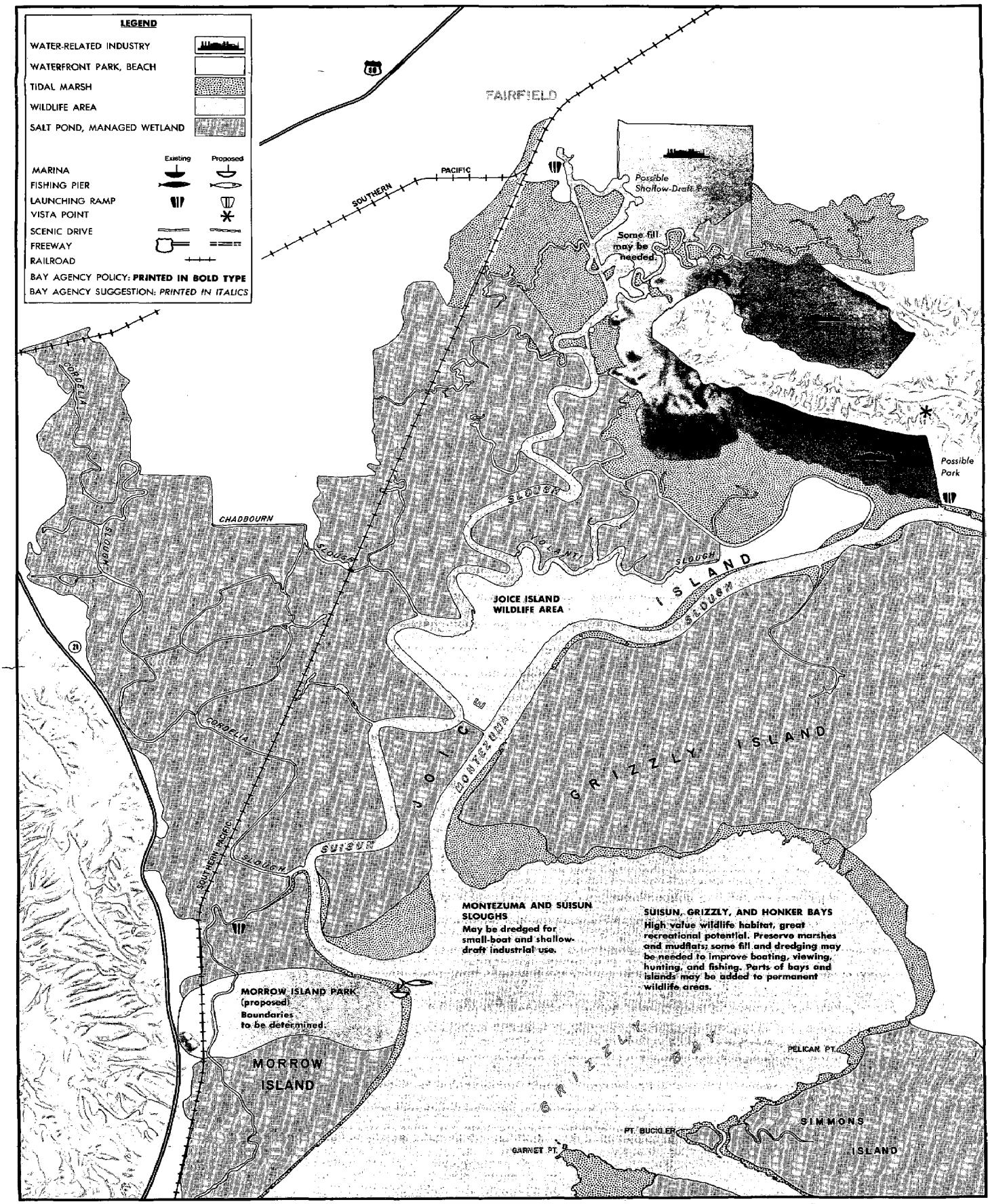
SUISUN BAY

Plan Map 17
Suisun Bay

Plan Map 18

Notes to
Plan Map 18
Grizzly Bay

Suisun Marsh. Thousands of acres of controlled marshes are maintained by duck-hunting clubs as wildfowl habitat. Areas are diked, but dikes are opened for periodic flooding. Suisun Soil Conservation District protects and enhances marshland areas.



Plan Map 18

GRIZZLY BAY

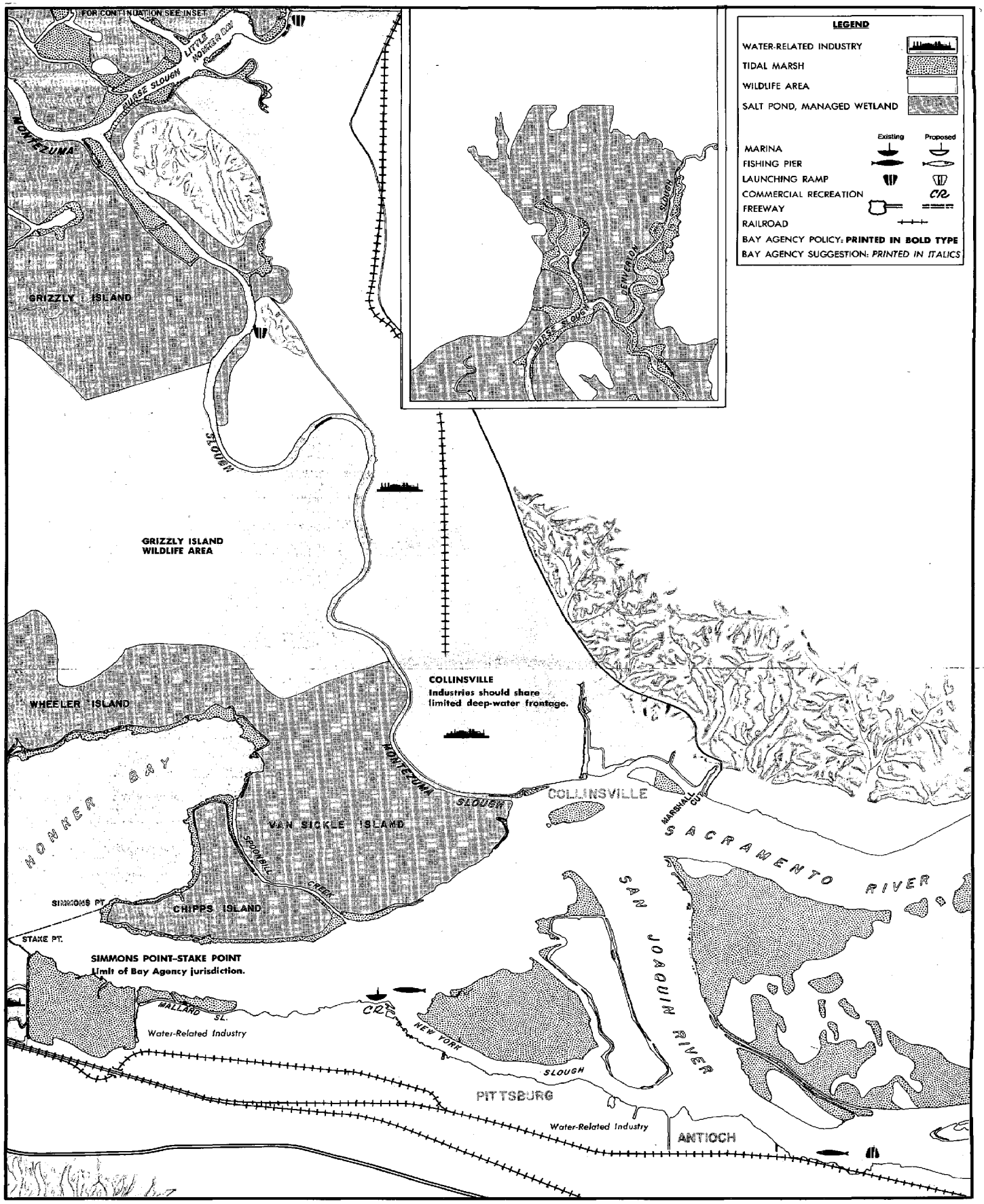
Plan Map 18
Grizzly Bay

Plan Map 19

Notes to
Plan Map 19
Honker Bay to Collinsville

Recreational Potential. Extensive, valuable recreational potential in river and island areas (e.g., Sherman Island—"Sherman Lake" area popular for boating, fishing). Recreational use should be encouraged.

Collinsville Area. The Collinsville-Montezuma Slough area is adjacent to the deep-water shipping channel, has rail service, and consists of flat land. It is one of the largest available sites anywhere in the Bay Area for water-related industry. The shoreline fronting on the main shipping channel is limited, however, and this relatively small frontage should be carefully planned and shared for maximum industrial development. The northern portion of the site has development potential for water-oriented industries that could be serviced by shallow-draft vessels using Montezuma Slough (an example of the growing interest in shallow-draft ports is the lighter-aboard-ship (LASH) concept of ocean shipping that has recently been inaugurated).



0 2000 4000 6000 8000 10000 FEET

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

N

Plan Map 19

HONKER BAY TO COLLINSVILLE

Plan Map 19
Honker Bay to Collinsville

GENERAL DEVELOPMENT GUIDE

shoreline

outward — **a** LAND PROJECTING INTO THE BAY PROVIDES RADIAL WATER VIEWS, CUL-DE-SAC CIRCULATION, AND, IN STEEPER SLOPES, DEVELOPS OVERLOOKS AND THE SENSATION OF BEING THRUST INTO SPACE. DEVELOPMENT SHOULD PROTECT AND ENHANCE THESE QUALITIES.

inward — **b** INWARDLY FOCUSED, THIS PLAN FORM PROVIDES A SECONDARY OR TRANSITIONAL WATER BODY AS A FOREGROUND TO THE BAY. IT PROVIDES USEFUL WIND AND CURRENT PROTECTION IN CERTAIN LOCATIONS. RIDGE LINES OF THE ENCLOSING LAND OFTEN CREATE A BOWL, HENCE AN IDENTIFIABLE GEOGRAPHIC AND DESIGN ENTITY (MARTINEZ; HURRICANE GULCH, SAUSALITO; HOSPITAL COVE, ANGEL ISLAND; PEACOCK GAP, MARIN). AT A COMMUNITY SCALE, THE FORM SUGGESTS A FOCUS FOR COMMUNITY LIFE AT THE BAY'S EDGE WITH CIRCULATION, DEVELOPMENT AND SIGHT LINES DIRECTED TO THE VISUAL CENTER OF THE SPACE.

straight — **c** CLEAR, DIRECTIONAL RELATION TO THE BAY, ESPECIALLY WITH STEEP SLOPES, DIRECTS VIEWS PARALLEL WITH THE WATER'S EDGE. UNLIKE PLAN FORMS "a" AND "b", THE OVERALL EVENNESS OF THE WATER'S EDGE REQUIRES THE INTRODUCTION OF ADDITIONAL ELEMENTS TO ESTABLISH A SENSE OF PLACE, ORIENTATION AND VISUAL FOCUS. PIERS, A YACHT BASIN, A NEARBY ISLAND, ARE TYPICAL FOCUSING ELEMENTS OFFERING THIS SENSE OF POSITION ON THE OTHERWISE UNBROKEN COASTAL FACE. CARE MUST BE TAKEN THAT DEVELOPMENT DOES NOT CREATE BREAKS AT VISUALLY DISTURBING POINTS, OR AT NEW POINTS COMPETITIVE WITH NATURAL BREAKS.

slope

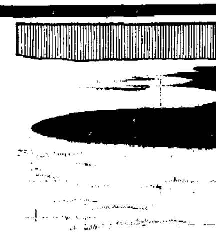
1 — flat

PHYSICAL QUALITIES: THIS LAND USUALLY HAS RELATIVELY NON-SUPPORTIVE SOILS, IS SUBJECT TO FLOODING, POOR DRAINAGE, AND OFFERS POOR ORIENTATION. IT HAS LOW ANGLE BAY VIEWS AND INLAND VIEWS ARE EASILY BLOCKED BY LOW CONSTRUCTION. EDGES ARE USUALLY WILD LIFE AREAS.

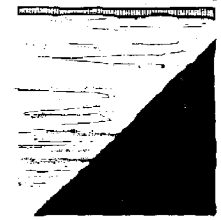
POTENTIALS: THE EDGE IS EASY TO SHAPE, CANALS AND LAGOONS ARE POSSIBLE. TALL LANDMARK STRUCTURES AT THE EDGE WOULD LOCATE AND SYMBOLIZE THE BAY'S PRESENCE FROM INLAND VIEWING POINTS. SLOUGHS, STREAMS AND WATERSHEDS COULD BE DEVELOPED FOR RECREATION TO FURTHER EMPHASIZE THE WATER THEME, INCREASE LAND VALUES AND STRENGTHEN ORIENTATION. ECOLOGICALLY SENSITIVE RESTORATION IS POSSIBLE IN MARSHLAND.

1a

PROJECTION INTO THE BAY HAS LESS SIGNIFICANCE HERE THAN IN STEEPER SLOPES, SINCE LOW VISUAL ANGLES FROM THE FLATLANDS RENDER ALL SHORELINES ALMOST ALIKE. PROTRUDING POSITION OFFERS WIDEST WATER VIEWS AND SHOULD BE DESIGNED FOR MAXIMUM ENJOYMENT. AN ELEVATED POSITION AT THE REAR CENTER OF THIS LAND FORM ALLOWS A SENSE OF THE PENINSULA AS A UNIT AND, IF SMALL IN AREA, PROVIDES FOREGROUND CONTRAST TO THE BAY. CUL DE SAC CIRCULATION IS IMPLIED BY PENINSULA FORM AND IS MORE EASILY CONTROLLED.

1b 

DUE TO PREVAILING WESTERLIES, THIS LAND FORM CAN OFFER NATURAL ANCHORAGE ON THE WEST AND NORTH SIDES OF THE BAY. HOWEVER, SHALLOW WATER USUALLY ADJACENT TO THIS LAND TYPE MAKES DREDGING NECESSARY BEFORE MOST BOATING IS POSSIBLE. THIS PRODUCES A SCARCITY OF BOAT HARBORS, ESPECIALLY IN THE SOUTH BAY WHERE POPULATION PRESSURE AND NEED FOR BOATING FACILITIES IS GREAT. WHERE CONSERVATION IS NOT OF PRIME IMPORTANCE, DEVELOPMENT OF THIS FORM TYPE, IN MARINE HOUSING AND RECREATION, OR EVEN IN CIVIC USES SHOULD BE STUDIED.

1c 

ONE OF THE LEAST PHYSICALLY INTERESTING SHORELINE CONDITIONS - DEVELOPMENT CAN PROVIDE FOCI AND VISUAL STIMULATION; ELEVATED VIEWING POSITIONS AND LANDMARKS COULD AID ORIENTATION. CLUSTER DEVELOPMENT WOULD RETAIN BAY VIEWS FROM INLAND AREAS AND MARSHLAND PRESERVATION WILL HELP MAINTAIN BIOLOGICAL BALANCE. WHEN DIKING IS REQUIRED PROVISION SHOULD BE MADE FOR PEDESTRIAN OVERLOOKS SO THAT THE BAY IS NOT HIDDEN BEHIND DIKES. IN NO OTHER LAND CONDITION ARE HIGH VOLTAGE DISTRIBUTION ROUTES MORE VISUALLY DISTURBING (WEST AND EAST SIDES OF THE SOUTH BAY) DUE TO THE ABSENCE OF OTHER CONSTRUCTION. ALTERNATE ROUTES FOR THESE LINES GROUPED WITH TRANSPORTATION EASEMENTS SHOULD BE CONSIDERED.

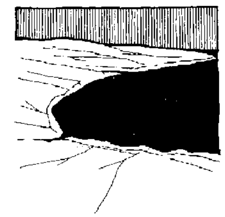
2 — 0–5%

PHYSICAL QUALITIES: CHARACTERIZED BY GENTLE SLOPES, GOOD DRAINAGE, EASILY DEVELOPABLE. LOW BAY VIEW ANGLES EASILY BLOCKED BY BUILDINGS. WHERE DEVELOPED, HIGH DENSITIES ARE USUAL, PRODUCING LOSS OF BAY ORIENTATION, SENSE OF THE BAY AND VIEWS.

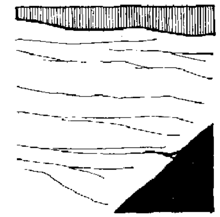
POTENTIALS: LOW SITE DEVELOPMENT COSTS, EASY CIRCULATION; CLUSTER DEVELOPMENT WOULD PRESERVE VIEWS, MAINTAIN SENSE OF BAY AS OPEN SPACE. PUBLIC VISTA POINTS, AND RIGHT-OF-WAY ALIGNMENTS SHOULD BE POSITIONED TO RESTORE VISUAL ACCESS.

2a

THE PROJECTING FORM INCREASES THE WATER EDGE AND BRINGS IT CLOSER TO DEVELOPMENT THAN OTHER PLAN TYPES. SAN FRANCISCO'S DOWNTOWN RADIAL VIEWS ARE EXEMPLARY ALTHOUGH PIERS BLOCK VIEWS ON LAND SLOPES 1 and 2. SWEEPING BAY VIEW POINTS ARE POSSIBLE FOR EXAMPLE ON THE NORTHERN WATERFRONT (FOOT OF FRANKLIN IN FORT MASON), IF PUBLIC ACCESS WERE ALLOWED BEYOND THE PIERS. THIS IS TRUE IN OTHER BAY COMMUNITIES BUILT ON LAND FORM "a".

2b 

THIS IS PERHAPS THE IDEAL SLOPE AND LAND FORM TO PROVIDE A WATER FOCUS FOR DENSE URBAN COMMERCIAL DEVELOPMENT. IT NEEDS ADJOINING LAND AREA BEYOND THE BAY EDGE, AND SUFFICIENT DEPTH FOR SHIPPING. NO SINGLE LOCATION IN THE STUDY QUALIFIES AS AN EXAMPLE, ALTHOUGH PERHAPS MARTINEZ COMES CLOSEST. THERE ARE SMALLER SCALE EXAMPLES ON STEEPER LAND IN 2c BELOW.

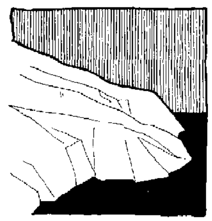
2c 

THIS LAND-WATER EDGE RELATIONSHIP IS CHARACTERISTIC OF MANY PORTIONS OF THE SOUTH BAY WHERE HEAVY URBANIZATION CONTINUES. BLOCKAGE OF UPHILL VIEWS BY SHORELINE DEVELOPMENT WILL REDUCE THE ABILITY OF THE BAY TO PROVIDE VISUAL EXTENSION OF SPACE. CLUSTER DEVELOPMENT COULD MAINTAIN THIS BAY FUNCTION.

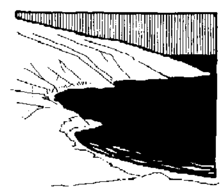
3 — 5%–30%

PHYSICAL QUALITIES: SLOPES ARE LESS SUITABLE FOR INDUSTRIAL AND AGRICULTURAL USES UNLESS TERRACED, AND INHIBIT WALKING AND BULK HAULING. WHERE DEVELOPED, STEPPED HOUSING AND UNIFORM BUILDING HEIGHTS HAVE RETAINED VIEWS. UPPER SLOPES PROVIDE GOOD COMPREHENSION OF BAY FORM AND VIEWS TO OPPOSITE SHORE.

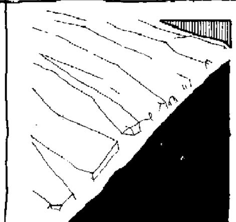
POTENTIALS: GOOD FOR RESIDENTIAL, LIGHT COMMERCIAL AND RECREATIONAL USES; HIGHER BUILDINGS ON HIGHER SLOPES INCREASE VIEWER POTENTIAL AND EMPHASIZE SLOPE; HIGH VISTA POINTS SHOULD BE PROVIDED PARTICULARLY ALONG ROADS PARALLEL TO THE CONTOURS. ROUTES AT RIGHT ANGLES TO CONTOURS WOULD PROVIDE FRAMED VIEWS AS IN SAN FRANCISCO.

3a 

RESIDENTIAL COMMUNITIES, LIKE BRISBANE, BERKELEY, OR SAUSALITO, DEMONSTRATE THE CAPACITY OF THIS LAND TO STACK LOW DENSITY, RESIDENTIAL DEVELOPMENT, WHILE MAINTAINING VIEWS AND A STRONG SENSE OF THE BAY'S PRESENCE. URBAN DENSITIES SUCH AS TELEGRAPH OR POTRERO HILL ARE EQUALLY POSSIBLE, IF HEIGHTS ARE CONTROLLED, ALTHOUGH SPECIALIZED TRANSPORTATION IN THE STEEPER SLOPES IS NEEDED. ALBANY HILL AND THE COYOTE HILLS PRESENT SIMILAR OPPORTUNITIES, ALTHOUGH THEY MAY BE MORE IMPORTANT AS PUBLIC OPEN SPACE.

3b 

EASY VISIBILITY OF RIDGE LINES AND WATER IN THIS SLOPE RANGE STRENGTHENS THE SENSE OF A COMMUNITY WHEN DEVELOPED. WATER ACTIVITY PROVIDES A SPECTACLE AS IN AN AMPHITHEATER. BAY EDGE FORM ENCLOSING THE FOREGROUND VIEW IS HIGHLY VISIBLE FROM MOST POSITIONS UNLESS LOCAL TOPOGRAPHY IS VERY IRREGULAR. DUE TO THE FOCUS ON THE COVE FORMED, CIRCULATION ALONG THE WATER'S EDGE MUST NOT BECOME A BARRIER BETWEEN LAND AND WATER. HIGH SPEED TRANSPORTATION SHOULD BE FROM ABOVE AND BEHIND TO PRESERVE SMALL SCALE EDGE RELATIONSHIPS.

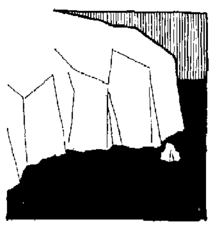
3c 

COMMENTS IN 2c ABOVE APPLY IN THIS CATEGORY UP TO 10% SLOPES. SEE ALSO GENERAL NOTES IN "c" ABOVE.

4 — over 30%

PHYSICAL QUALITIES: VEHICULAR ACCESS DIFFICULT, DEVELOPMENT COSTS HIGH. MANY OF MOST DRAMATIC VIEWS ARE FROM THESE AREAS, ESPECIALLY WHERE ANGLE APPROACHES 90 DEGREES (GOLDEN GATE, POINT RICHMOND, CARQUINEZ STRAITS). LARGE WATER AREA ENCOMPASSED BY VIEW EMPHASIZE BAY FORM.

POTENTIALS: PARTICULARLY SUITABLE FOR CONSERVATION AND PUBLIC VIEWING POINTS ESPECIALLY IN PLAN FORM "a". (SEE MAP "PLEASURE DRIVES AND REGIONAL OVERLOOKS WITH SIGNIFICANT BAY VIEWS"). USE OF FUNICULARS, AERIAL TRAMWAYS, ETC., RESIDENTIAL ACTIVITY AND SELECTED COMMERCIAL USES MAY BE POSSIBLE.

4a 

DRAMATIC RELATIONSHIPS WITH THE BAY AND DISTANT SHORE, AND SUBSTANTIALLY BROADER VIEWS THAN ANY OTHER LAND TYPE, TEND TO MAKE THIS TYPE OF SITUATION A PHYSICAL AND PSYCHOLOGICAL PART OF THE WHOLE REGION. VIEW PROMONTORIES SUCH AS WOLFBACK RIDGE, PORTIONS OF POINT RICHMOND, MTS. DIABLO AND TAMALPAIS ARE TYPICAL, AND SHOULD BE PERMANENTLY AVAILABLE TO THE PUBLIC. OFTEN WINDY AND EXPOSED WHERE DEVELOPMENT HAS OCCURED, IT MAY BE INCONSEQUENTIAL IN SCALE OR PRODUCE DISTURBING FORMS ON THE SKYLINE (RADAR DOMES ON GOLDEN GATE HEADLANDS, TRANSMISSION LINES ON SAN BRUNO MOUNTAIN).

4b

COVE FORM DEVELOPED IN THIS SLOPE CATEGORY IS LESS LIKELY TO PRODUCE BAY VIEW DEVELOPMENT DUE TO THE PRECIPITOUS SLOPE TO THE WATER AND EXPENSIVE SERVICE AND ACCESS PROBLEMS. CONTINUOUS URBAN DEVELOPMENT ALONG THE RIDGE CAN BLOCK ACCESS TO VIEWS FOR LAND BEHIND (AS IN FLATLAND TYPES) DEVELOPS WIND AND CURRENT PROTECTION (AS IN THE EAST SIDE OF PT. BONITA) AND IS USUALLY ACCOMPANIED BY DEEP WATER.

4c

THIS FORM OCCURS RARELY IN THE BAY REGION BUT, WHERE THE BAY PASSES THROUGH THE COASTAL RIDGE LINES (GOLDEN GATE AND CARQUINEZ STRAIGHTS), PARALLEL CLIFFS ACCELERATE CURRENTS AND PRODUCE WIND AND WEATHER EXTREMES. THE STRONGLY-FORMED SPACE PROVIDES WALLS AGAINST WHICH THE APPARENT MOTION OF SHIPS IS HEIGHTENED. THIS LAND IS THEREFORE ASSOCIATED WITH THE MOST DRAMATIC AND DYNAMIC PORTIONS OF THE BAY REGION GEOGRAPHY, AND NEEDS PROTECTION BY WELL PLANNED CONSERVATION PROGRAMS.

Example: Development guides for sites along a cove, having a 0-5% slope, are found at the intersection of **slope** band **2** and **shoreline** band **b**

Appendix A

General Development Guide

(a part of the Policy on Appearance and Design)

Appendix A
General Development Guide

Copies of the San Francisco Bay Plan
may be purchased from:
Documents and Publications Branch
P.O. Box 20191
Sacramento, California 95820
Price: $2.00

Also available:
San Francisco Bay Plan Supplement
Price: $3.00

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printed in CALIFORNIA OFFICE OF STATE PRINTING
△77587-883 9-68 10M

AMENDMENTS NO. 1 AND NO. 2

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
30 Van Ness Ave., San Francisco 94102 557-3686

SAN FRANCISCO BAY PLAN
POLICY AMENDMENT #1-71
(Adopted June 3, 1971)

[The amendment involves Page 36 of the San Francisco Bay Plan, printed January 1969, paragraph "a. Fills in Accord with Bay Plan." Striking out indicates deletions, and underlining indicates additions in sections (1), (2), (3), and (4); all of section (5) is new, including all its subparagraphs.]

Bay Plan, Page 36

a. FILLS IN ACCORD WITH BAY PLAN. A proposed project should be approved if the filling is the minimum necessary to achieve its purpose, and if it meets one of the following ~~four~~ five conditions:

(1) The filling is in accord with the Bay Plan policies as to the Bay-related purposes for which filling may be needed (i.e., ports, water-related industry, and water-related recreation) and is shown on the Bay Plan maps as likely to be needed; or

(2) The filling is in accord with Bay Plan policies as to purposes for which some fill may be needed if there is no other alternative (i.e., airports, roads, and utility routes); or

(3) The filling is in accord with the Bay Plan policies as to minor fills for improving shoreline appearance or public access; or

(4) The filling would provide on privately-owned property for new public access to the Bay and for improvement of shoreline appearance--in addition to what would be provided by the other Bay Plan policies--and the filling would be for Bay-oriented commercial recreation and Bay-oriented public assembly purposes, with a substantial part of the project built on existing land. The Bay agency should issue permits under this criterion provided:

(a) The proposed project would limit the use of ~~land~~ area to be filled to: (i) public recreation (beaches, parks, etc.), and (ii) Bay-oriented commercial recreation and Bay-oriented public assembly, defined as facilities specifically designed to attract large numbers of people to enjoy the Bay and its shoreline, such as restaurants, specialty shops, and hotels.

(b) The proposed project would be designed so as to take advantage of its nearness to the Bay, and would provide opportunities for enjoyment of the Bay in such ways as viewing, boating, fishing, etc., by keeping a substantial portion of the development, and a substantial portion of the new shoreline created through filling, open to the public free of charge (though an admission charge could apply to other portions of the project).

(c) The proposed private project would not conflict with the adopted plans of any agency of local, regional, state, or federal government having jurisdiction over the area proposed for filling, and would be in an area where governmental agencies have not planned or budgeted for projects that would provide adequate access to the Bay.

(d) The proposed project would either provide recreational development in accordance with the Bay Plan maps or would provide additional recreational development that would not unnecessarily duplicate nearby facilities.

(e) A substantial portion of the project would be built on existing land, and the project would be planned to minimize the need for filling. (For example, all automobile parking should, wherever possible, be provided on nearby land or in multi-level structures rather than in extensive parking lots.)

(f) The proposed project would result in permanent public rights to use specific areas set aside for public access and recreation; these areas would be improved at least by filling to finished grade and by installation of necessary basic utilities, at little or no cost to the public.

(g) The proposed project would, to the maximum extent feasible, establish a permanent shoreline in a particular area of the Bay, through dedication of lands and other permanent restrictions on all privately-owned and publicly-owned property Bayward of the area approved for filling.

(h) The proposed project would provide to the maximum extent feasible for enhancement of fish and wildlife resources in the area of the development.

(5) The filling would provide on privately-owned or publicly-owned property for new public access to the Bay and for improvement of shoreline appearance--in addition to what would be provided by the other Bay Plan policies--and the filling would be limited to replacement piers for Bay-oriented commercial recreation and Bay-oriented public assembly purposes, covering less of the Bay than was being uncovered. The Bay agency should issue permits under this criterion provided:

(a) The proposed replacement fill in its entirety, including all parts devoted to public recreation, open space, and public access to the Bay, would cover an area of the Bay smaller in size than the area being uncovered by removal of piers (pile-supported platforms), and those parts of the replacement fill devoted to uses other than public recreation, open space, and public access would cover an area of the Bay no larger than 50 per cent of the area being uncovered (or such greater percentage as was previously devoted to such other uses that were destroyed involuntarily, in whole or in part, by fire, earthquake, or other such disaster, and will be devoted to substantially the same uses).

(b) The volume (mass) of structures to be built on the replacement pier (pile-supported platform) would be limited to the minimum necessary to achieve the purposes of the project.

(c) The replacement fill would be limited to piers (pile-supported platforms), rather than earth or other solid material, and, wherever possible, a substantial portion of the replacement project would be built on existing land.

(d) The pier (pile-supported platform--not a bridge) to be removed from the Bay must have:

(i) been destroyed involuntarily, in whole or in part, by fire, earthquake, or other such disaster, or

(ii) become obsolete through physical deterioration, or

(iii) become obsolete because changes in shipping technology make it no longer needed or suitable for maritime use.

If the platform itself, or the structures on it, have become obsolete, but the pilings that support the platform are structurally sound, consideration must be given to using the existing pilings in any replacement project.

(e) The proposed project must be consistent with a comprehensive special area plan for the geographic vicinity of the project, a special area plan that the Commission has determined to be consistent with the policies of the San Francisco Bay Plan, except that this provision would not apply to any project involving replacement of only a pier that had been destroyed involuntarily.

(f) The proposed project would involve replacement fill and removal of material in the same geographic vicinity (as set forth in the applicable special area plan).

(g) The proposed replacement pier would not extend into the Bay any farther than (i) the piers (pile-supported platforms) to be removed from the Bay as part of the project, or (ii) adjacent existing piers.

(h) The proposed project would limit the use of the replacement pier to: (i) public recreation (beaches, parks, etc.), and (ii) Bay-oriented commercial recreation and Bay-oriented public assembly, defined as facilities specifically designed to attract large numbers of people to enjoy the Bay and its shoreline, such as restaurants, specialty shops, and hotels.

(i) The proposed project would be designed so as to take advantage of its nearness to the Bay, and would provide opportunities for enjoyment of the Bay in such ways as viewing, boating, fishing, etc., by keeping a substantial portion of the development, and a substantial portion of the new shoreline created on the replacement pier, open to the public free of charge (though an admission charge could apply to other portions of the project).

(j) The proposed project would not conflict with the adopted plans of any agency of local, regional, state, or federal government having jurisdiction over the area proposed for the replacement piers, and would be in an area where governmental agencies have not planned or budgeted for projects that would provide adequate access to the Bay.

(k) The proposed project would either provide recreational development in accordance with the Bay Plan maps or would provide additional recreational development that would not unnecessarily duplicate nearby facilities.

(l) The project would be planned to minimize the need for filling. (For example, all automobile parking should, wherever possible, be provided on nearby land or in multi-level structures rather than in extensive parking lots.)

(m) The proposed project would result in permanent public rights to use specific areas set aside for public access and recreation; these areas would be improved at least to finished grade and by installation of necessary basic utilities, at little or no cost to the public.

(n) The proposed project would, to the maximum extent feasible, establish a permanent shoreline in a particular area of the Bay, through dedication of lands and other permanent restrictions on all privately-owned and publicly-owned property Bayward of the area approved for piers.

(o) The proposed project would provide to the maximum extent feasible for enhancement of fish and wildlife and other natural resources in the area of the development, and in no event would result in net damage to these values.

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
30 Van Ness Avenue, San Francisco 94102 557-3686

SAN FRANCISCO BAY PLAN
POLICY AMENDMENT #2
(Adopted January 4, 1973)

[This amendment replaces and supersedes all of the Findings and Policies on Fresh Water Inflow on page 12 of the San Francisco Bay Plan, printed January 1969.]

Findings

a. Fresh water flowing into the Bay, most of which is from the Delta, dilutes the salt water of the ocean flowing into the Bay through the Golden Gate. The Bay waters thus provide a gradual change from the salt water of the ocean to the fresh water flows of the Sacramento and San Joaquin Rivers. This delicate relationship between fresh and salt water helps to determine the ability of the Bay to support a variety of marine life and wildfowl in and around the Bay.

b. The gradual change in the salt content of the Bay appears necessary for the survival of anadromous fish such as king salmon, steelhead, striped bass, and American shad, as they progress upstream toward their spawning grounds, and for the survival of their fingerlings as they descend to salt water. An abrupt change in the salt content of Bay water would probably end the anadromous fish runs.

c. The fresh water flow from the Sacramento and San Joaquin Rivers is an important (but not the major) source of the oxygen necessary in the waters of the Bay to support marine life and to abate pollution, and it assists in flushing parts of the Bay system, particularly during peak flows of the spring when the snows melt in the Sierra.

d. Fresh water flow into the Bay during the winter and spring months is of particular importance in maintaining the health of the Suisun Marsh, the largest remaining marsh around the Bay and a wildfowl habitat of nationwide importance.

e. The fresh water flows from the Sacramento and San Joaquin Rivers into the Delta and the Bay have been reduced in the past by diversions of Federal, State, and local governments for agricultural, industrial, and domestic uses. Additional diversions are being sought, and further substantial diversions could change the salt content of Bay water and thereby adversely affect the ability of the Bay to support a great variety of aquatic life.

f. In determining whether to allow new diversions, the State Water Resources Control Board held two years of hearings and concluded that there was insufficient knowledge at present to determine precisely the environmental impact on the Delta of the proposed diversions. Consequently, the Board, in its 1971 Delta Decision (D. 1379), established interim standards designed to protect the Delta (and thus, to some extent, the Bay) during the next few years. Under the Decision, the Board must reopen its consideration of this matter not later than July 1, 1978, and may reopen it sooner if adverse conditions develop. In the meantime, comprehensive environmental studies and monitoring programs are being undertaken by the U. S.

Army Corps of Engineers, the Federal Bureau of Reclamation, the Environmental Protection Agency, the U. S. Geological Survey, the State Department of Water Resources, the State Department of Fish and Game, and the State Water Resources Control Board. The purpose of these studies is to provide the additional information needed to determine levels at which diversions of fresh water inflow would adversely affect the Bay and Delta and to establish more permanent standards.

g. The Delta Decision does not guarantee any specific volume of fresh water inflow into the Bay. However, the Decision is important to the Bay for the following reasons:

(1) The State Board has recognized that a regulatory agency of the State should monitor the effect of diversions of fresh water flow;

(2) The State Board has recognized that the environmental impact of the proposed diversions should be assessed along with other factors; and

(3) Since Bay inflow is Delta outflow, the establishment of interim Delta water quality standards should contribute to the maintenance of adequate fresh water flows into the Bay.

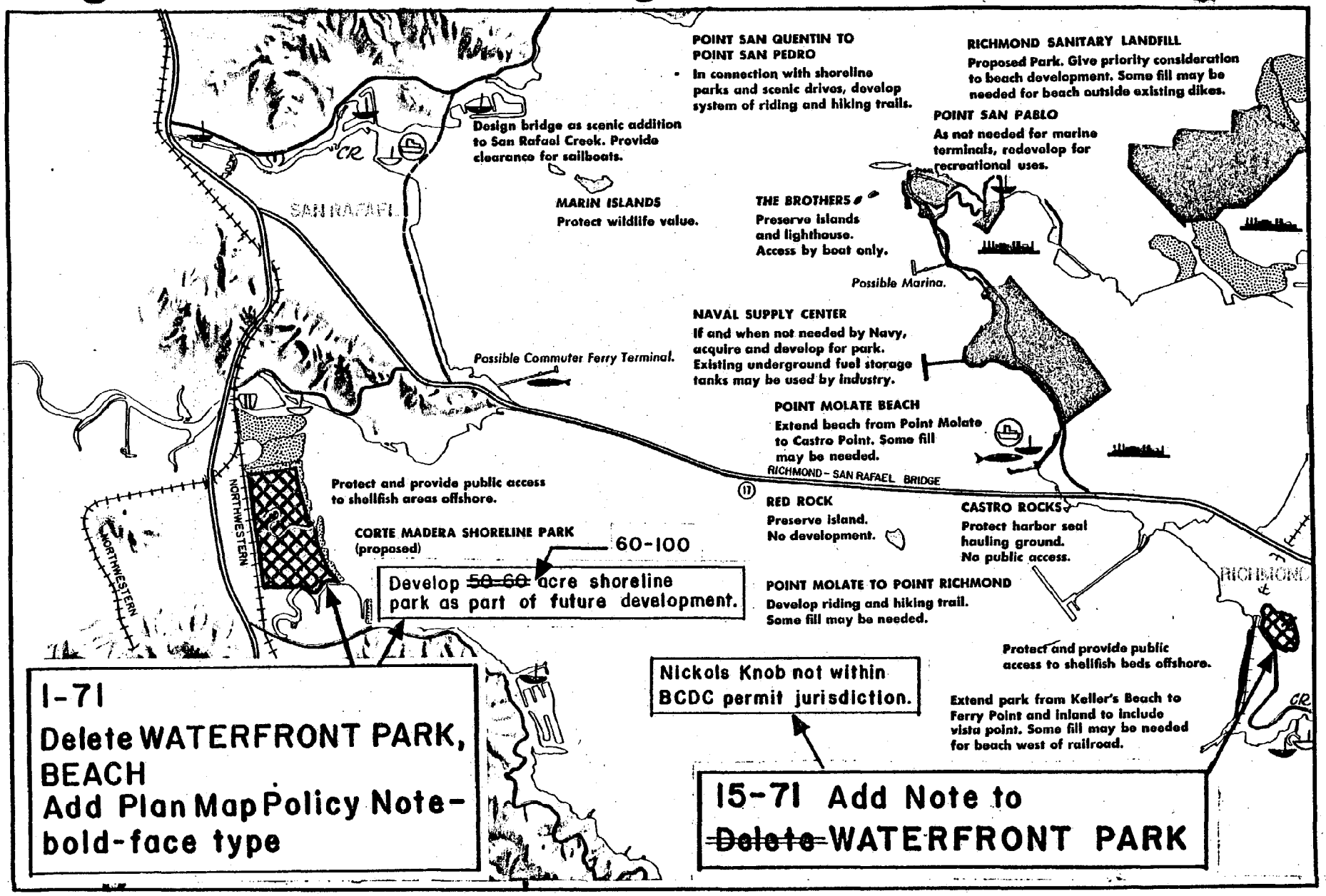
Policies

1. Diversions of fresh water should not reduce the inflow into the Bay to the point of damaging the oxygen content of the Bay, the flushing of the Bay, or the ability of the Bay to support existing wildlife.

2. High priority should be given to the preservation of Suisun Marsh through adequate protective measures including maintenance of fresh water inflows.

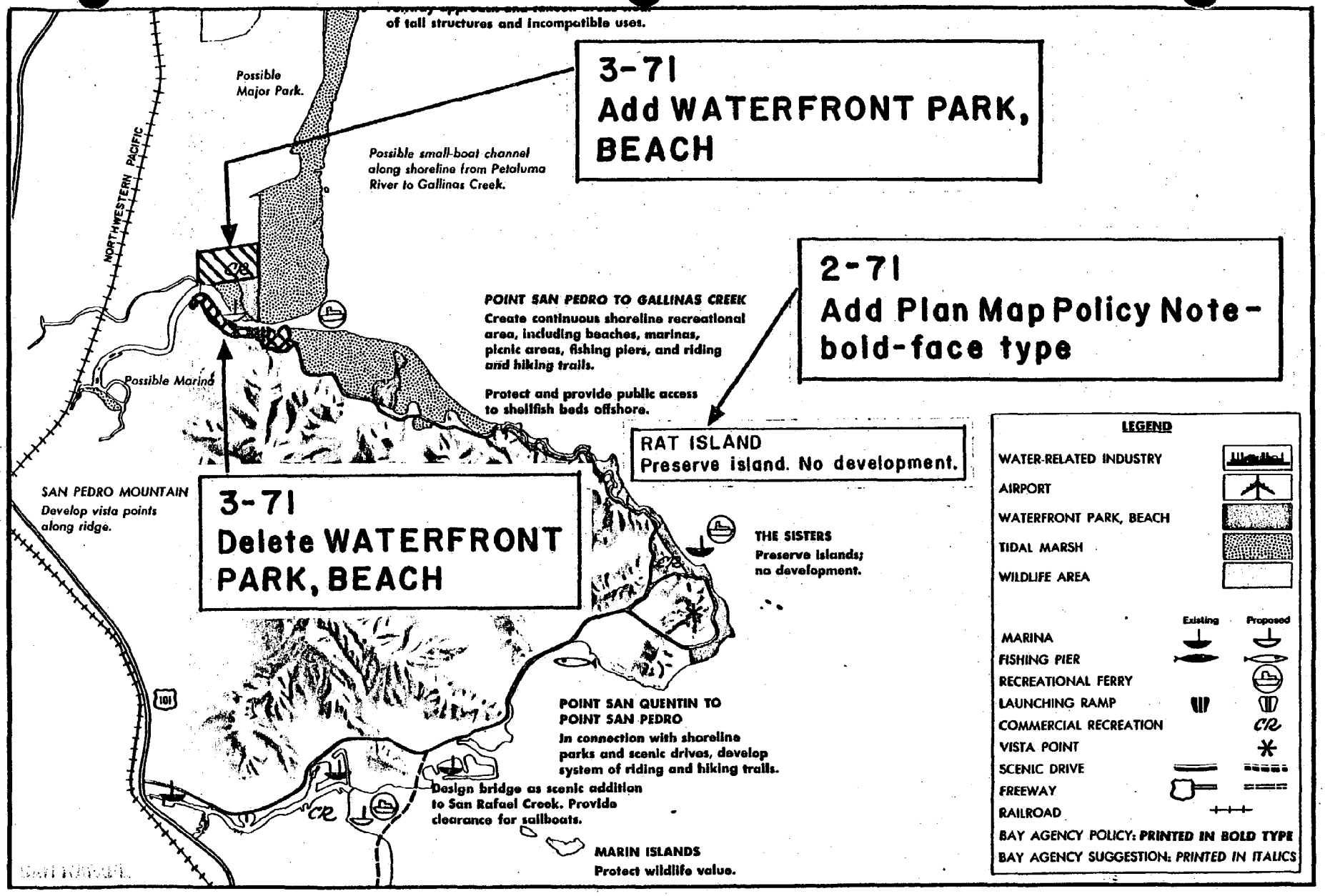
3. The impact of diversions of fresh water inflow into the Bay should be monitored by a State regulatory agency, such as the State Water Resources Control Board, to ensure that no damage occurs. The Bay agency should cooperate with such agencies to ensure that adequate fresh water inflows to protect the Bay are taken into consideration in such monitoring.

MAP AMENDMENTS



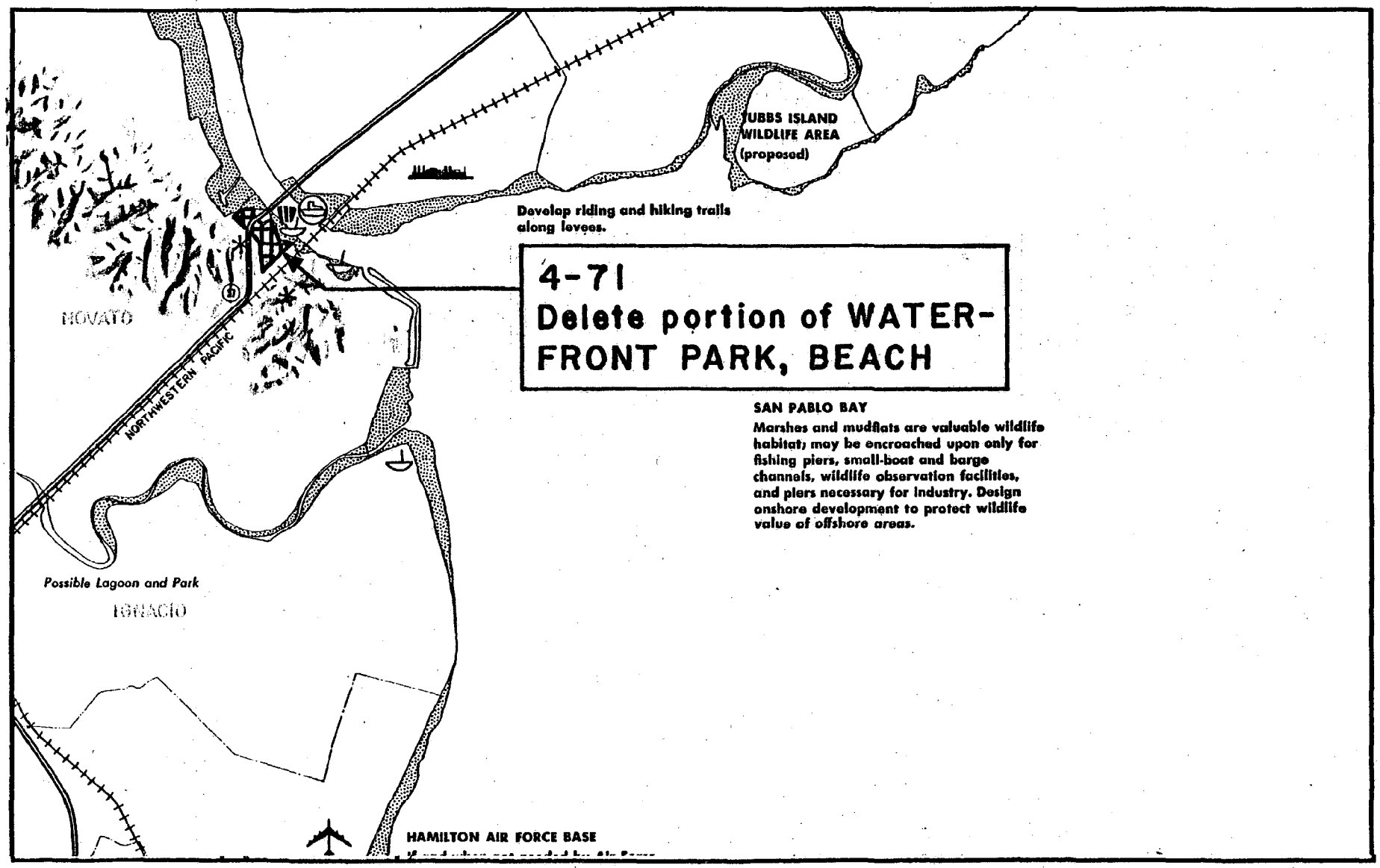
Plan Map 11

SOUTHERN MARIN COUNTY



Plan Map 12

WESTERN SAN PABLO BAY



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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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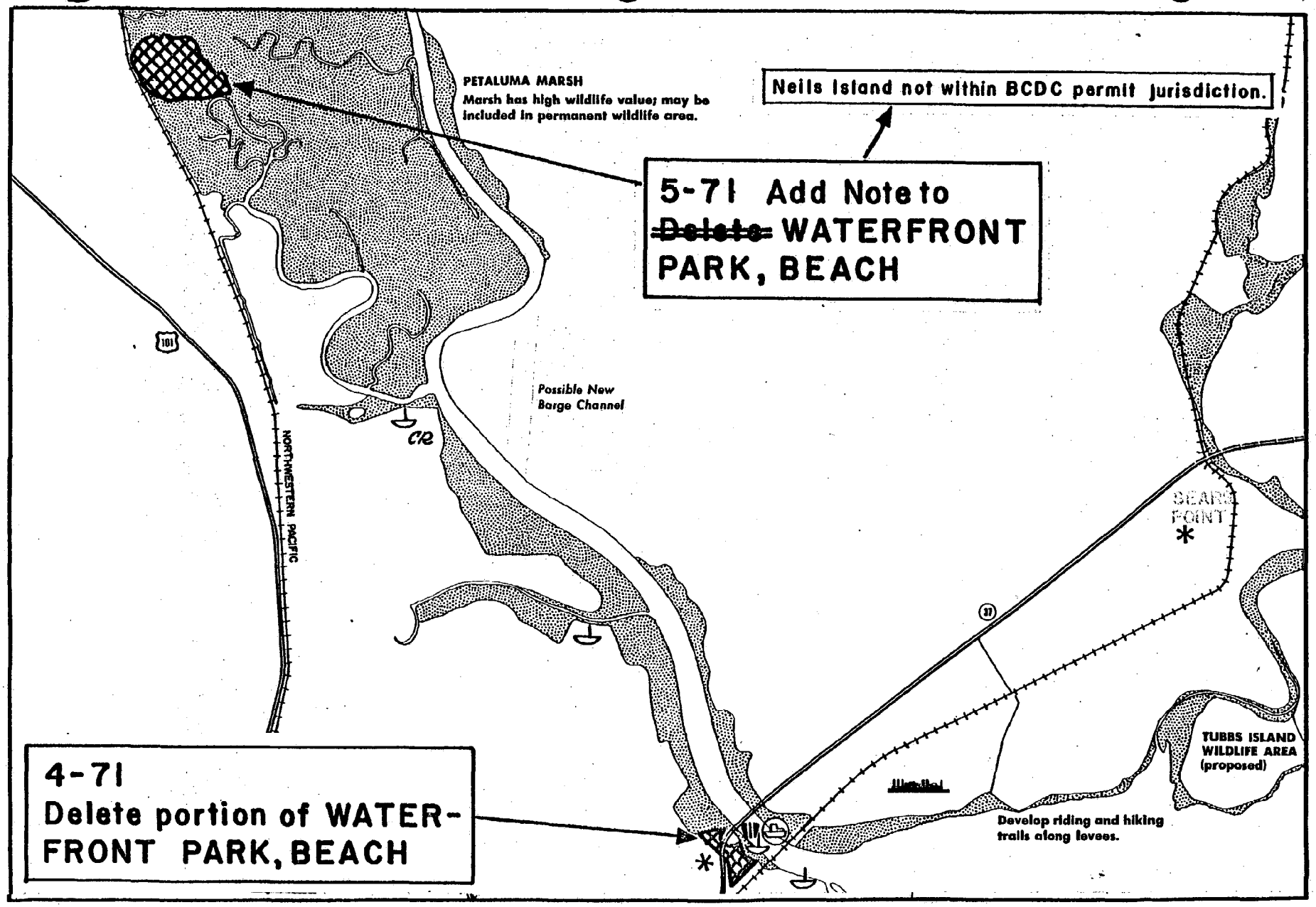
Plan Map 12

WESTERN SAN PABLO BAY



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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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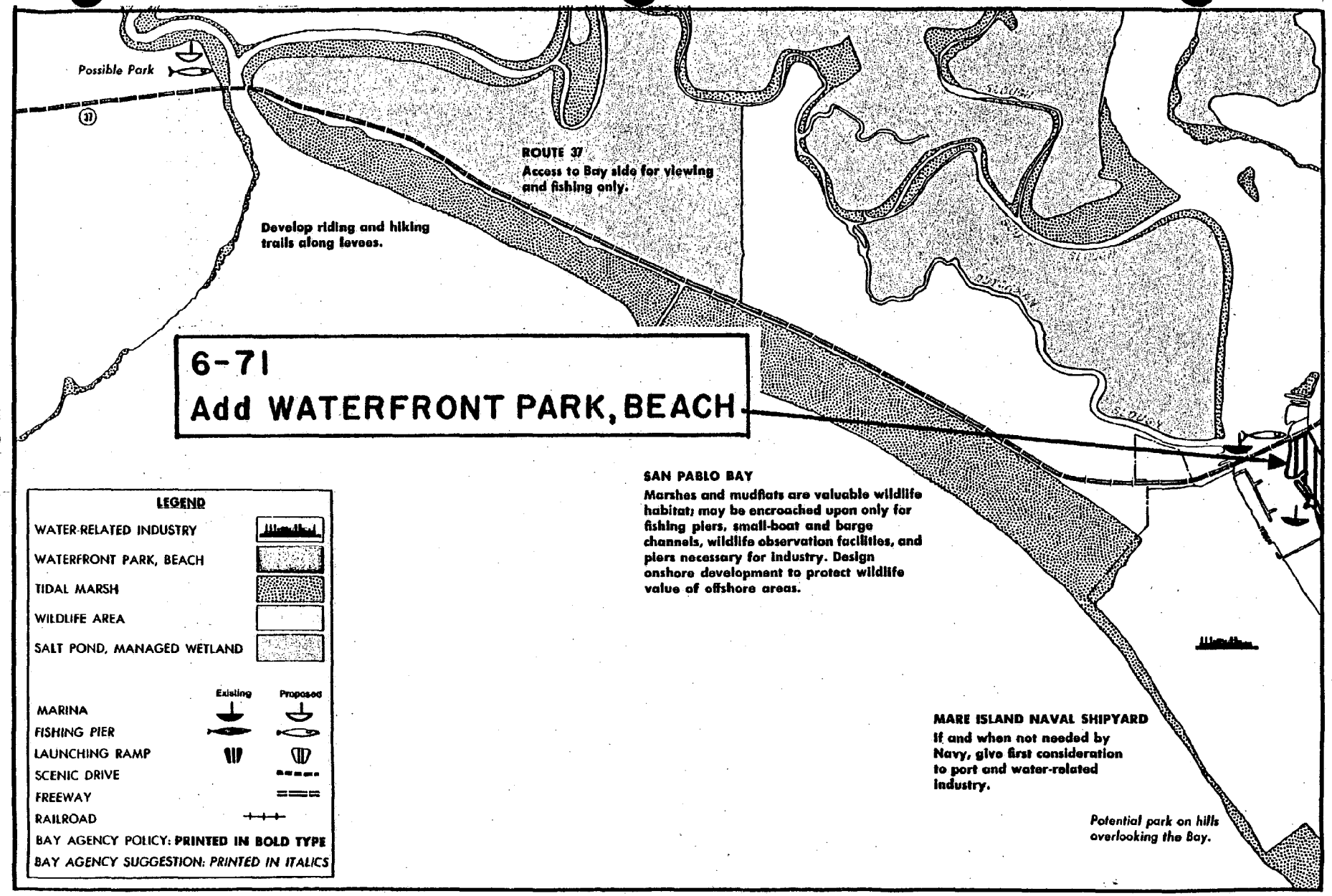
Plan Map 13

PETALUMA RIVER



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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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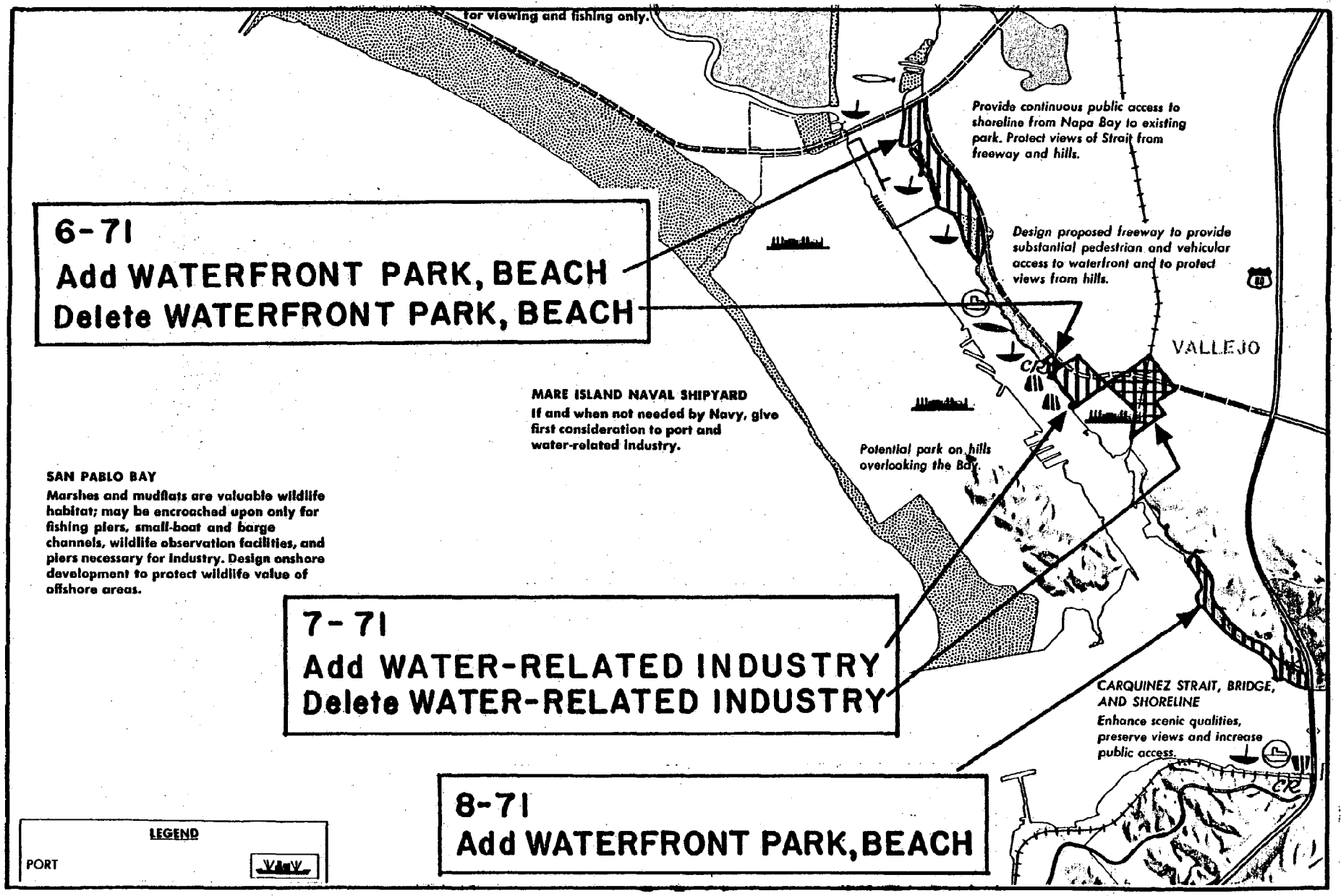
Plan Map 14

NAPA MARSHES



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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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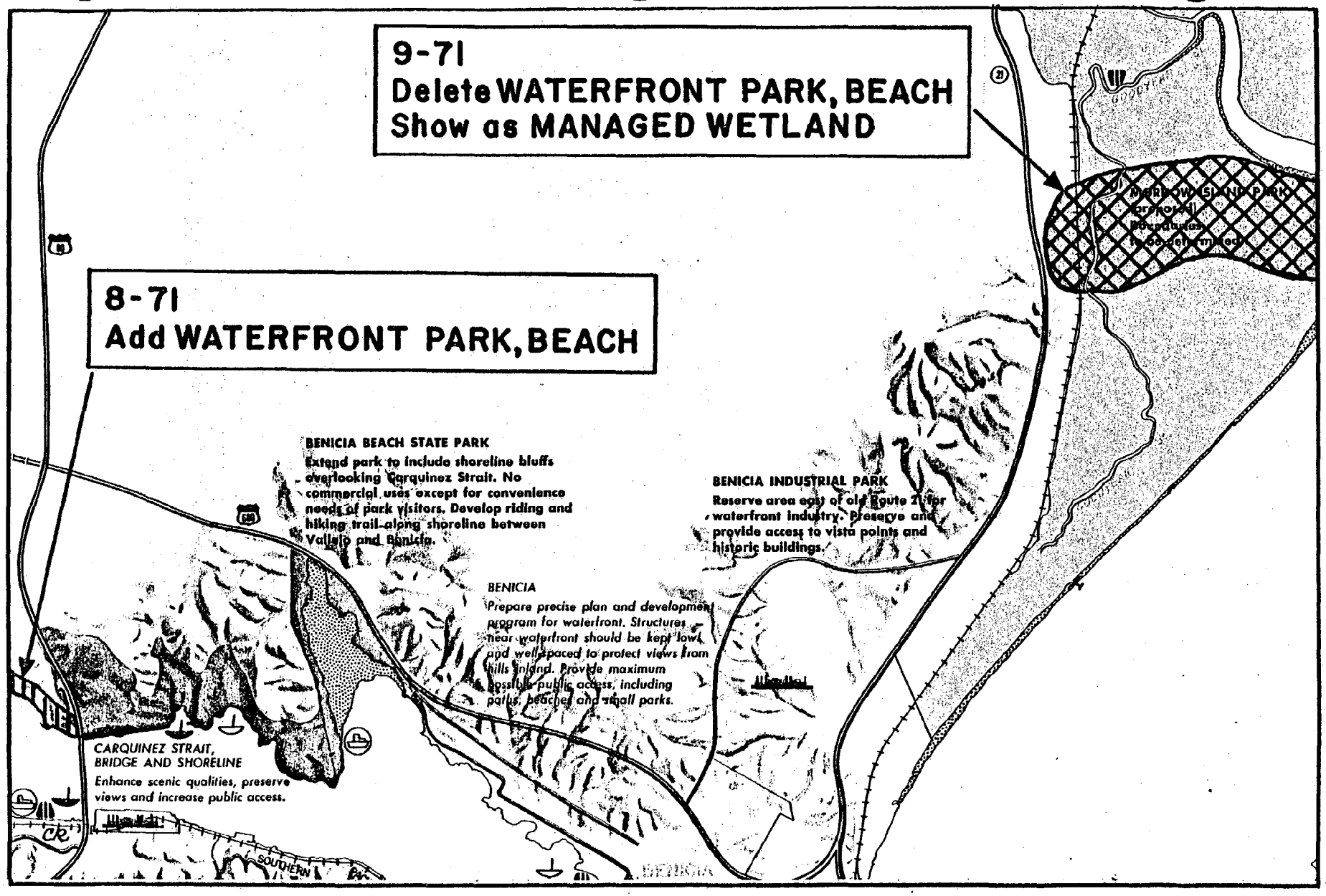
Plan Map 15

EASTERN SAN PABLO BAY



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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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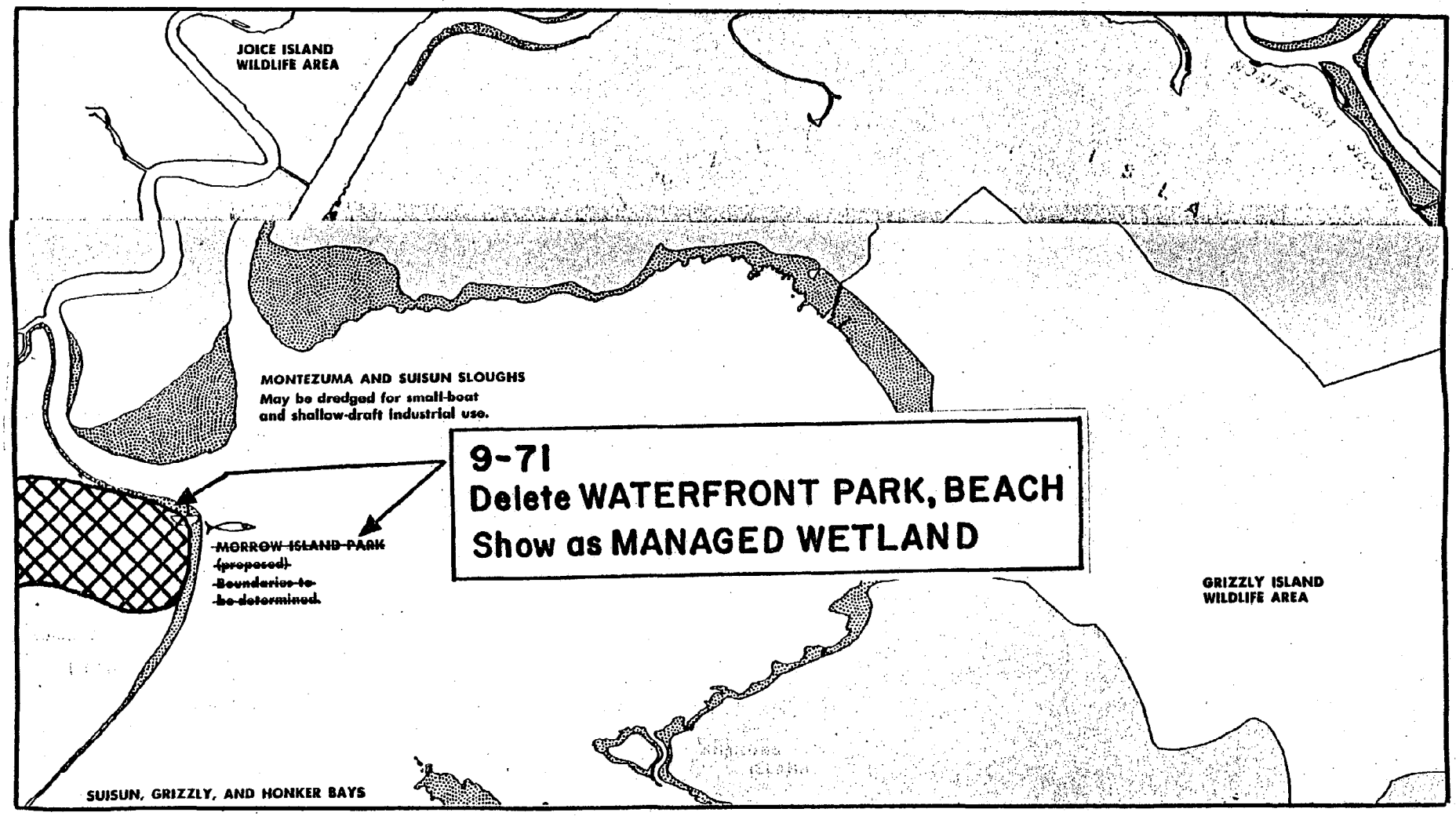
Plan Map 16

CARQUINEZ STRAIT



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SAN FRANCISCO BAY CONSERVATION
AND DEVELOPMENT COMMISSION

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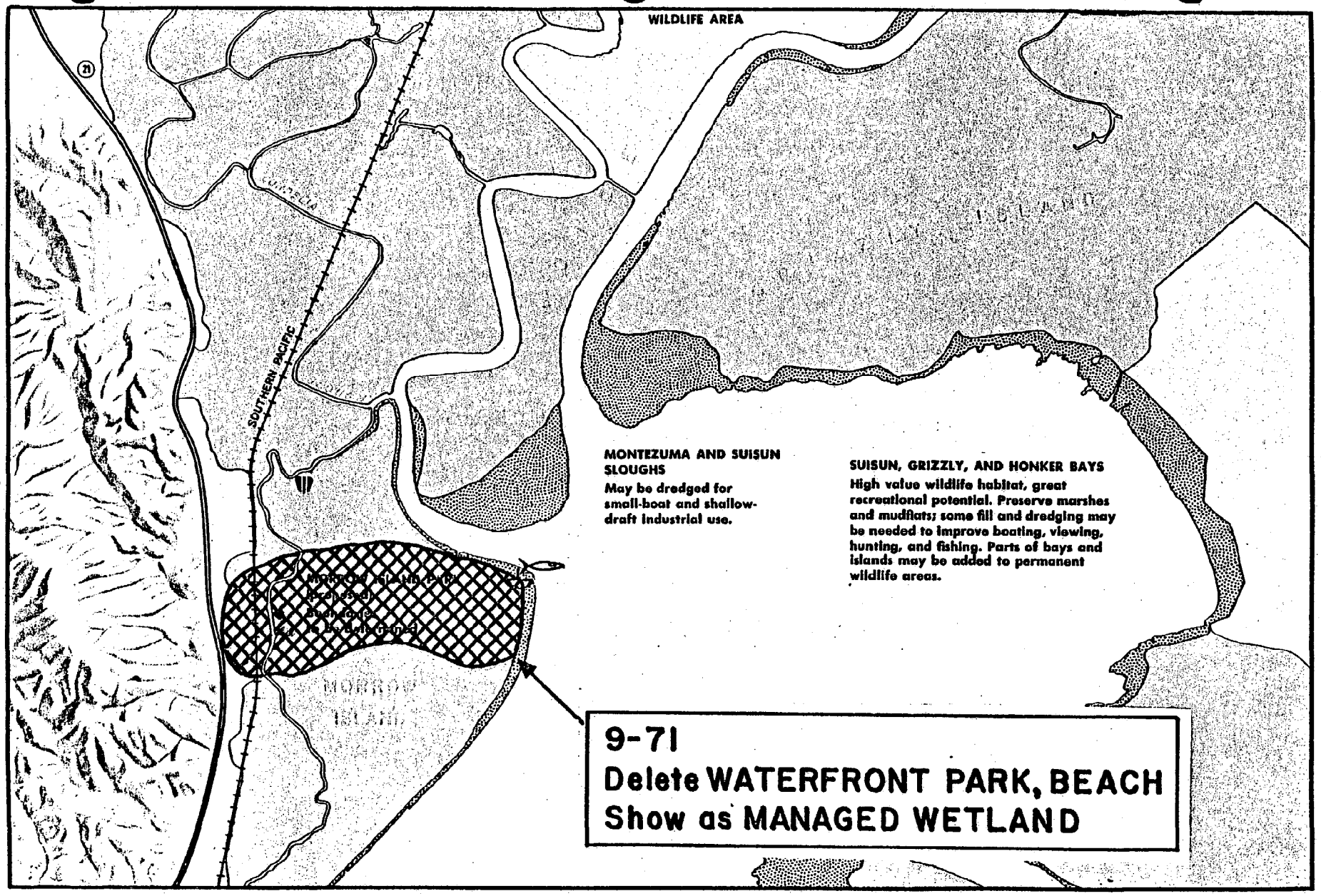
Plan Map 17

SUISUN BAY



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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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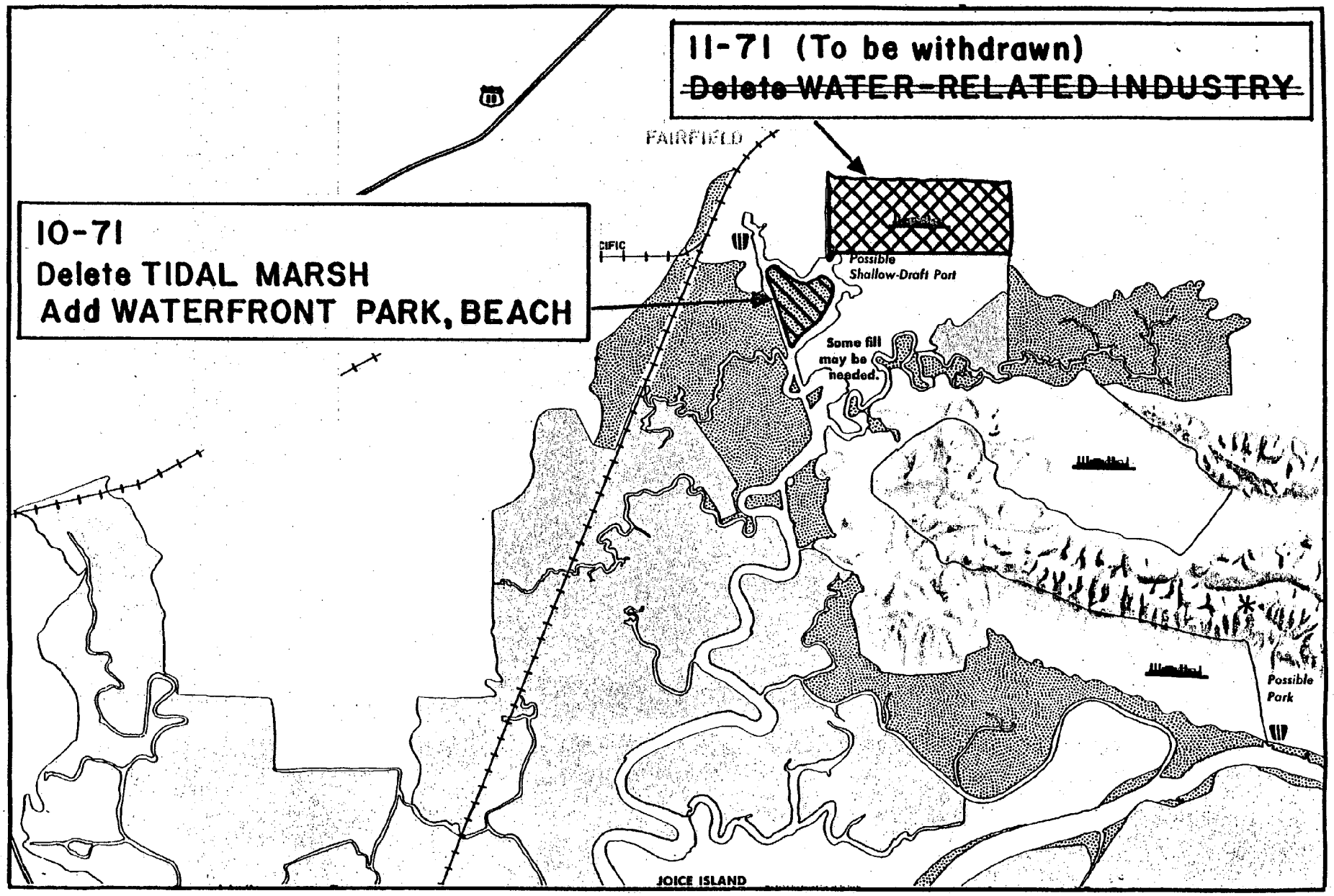
Plan Map 18

GRIZZLY BAY



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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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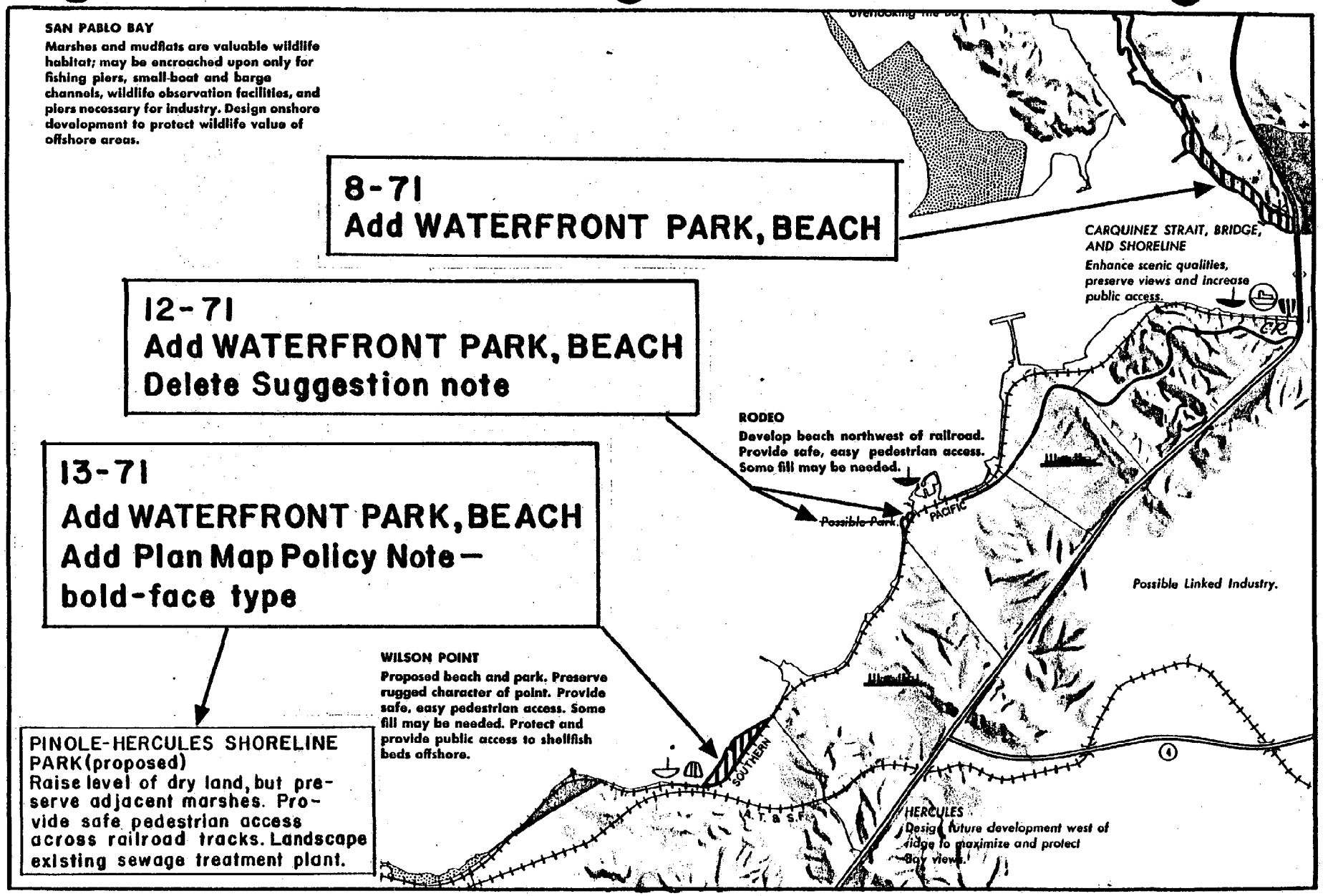
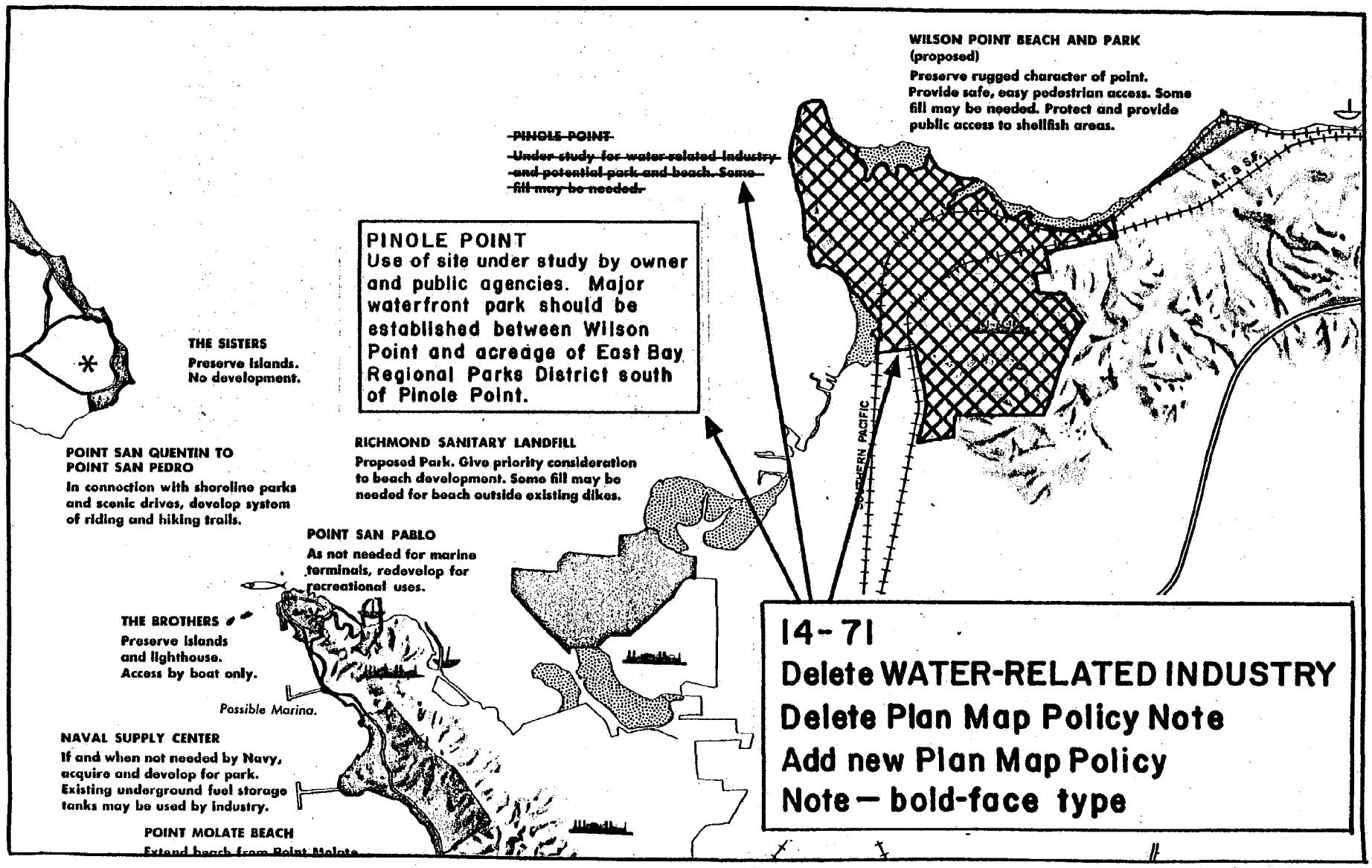
Plan Map 18

GRIZZLY BAY



Plan Map 15

EASTERN SAN PABLO BAY



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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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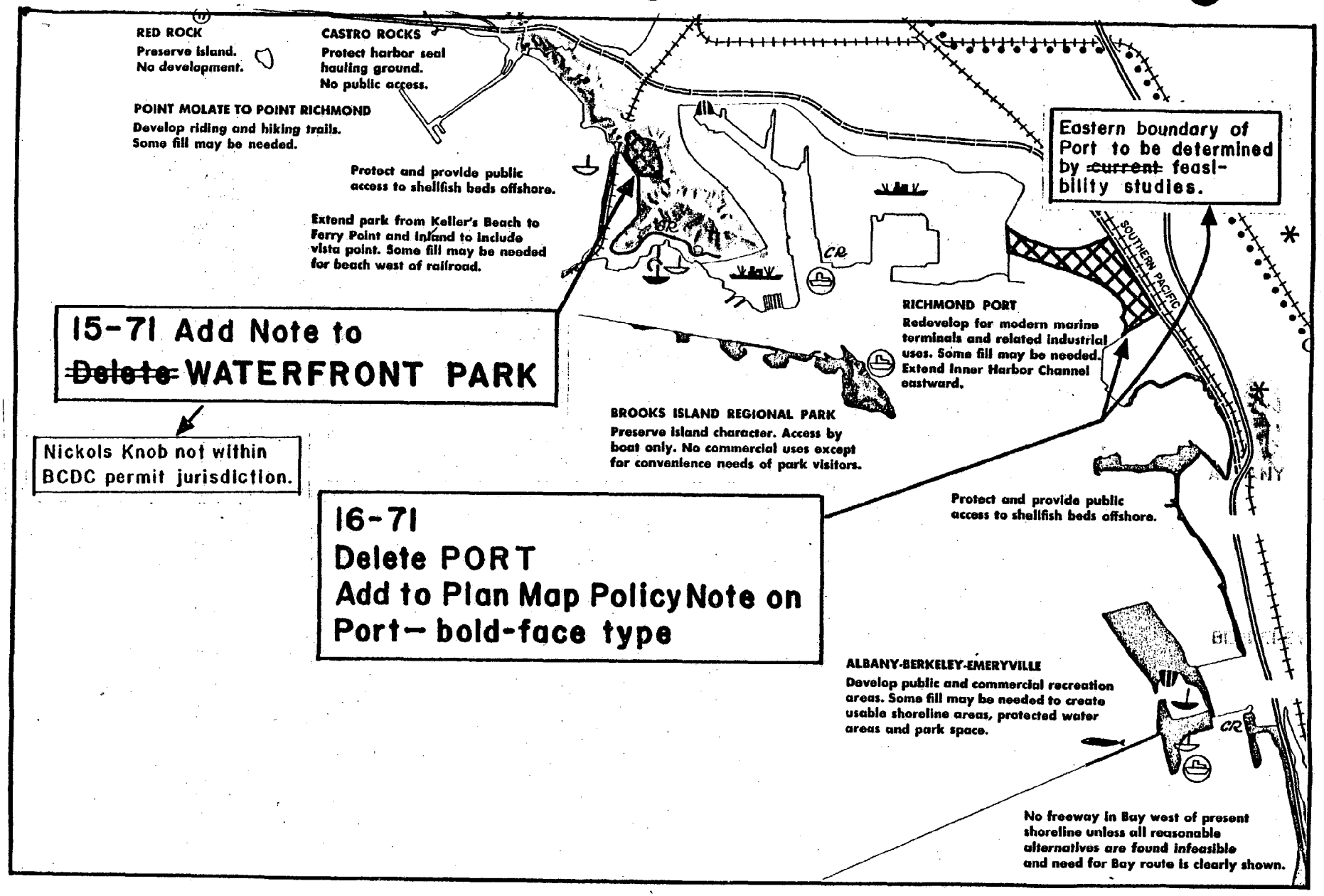
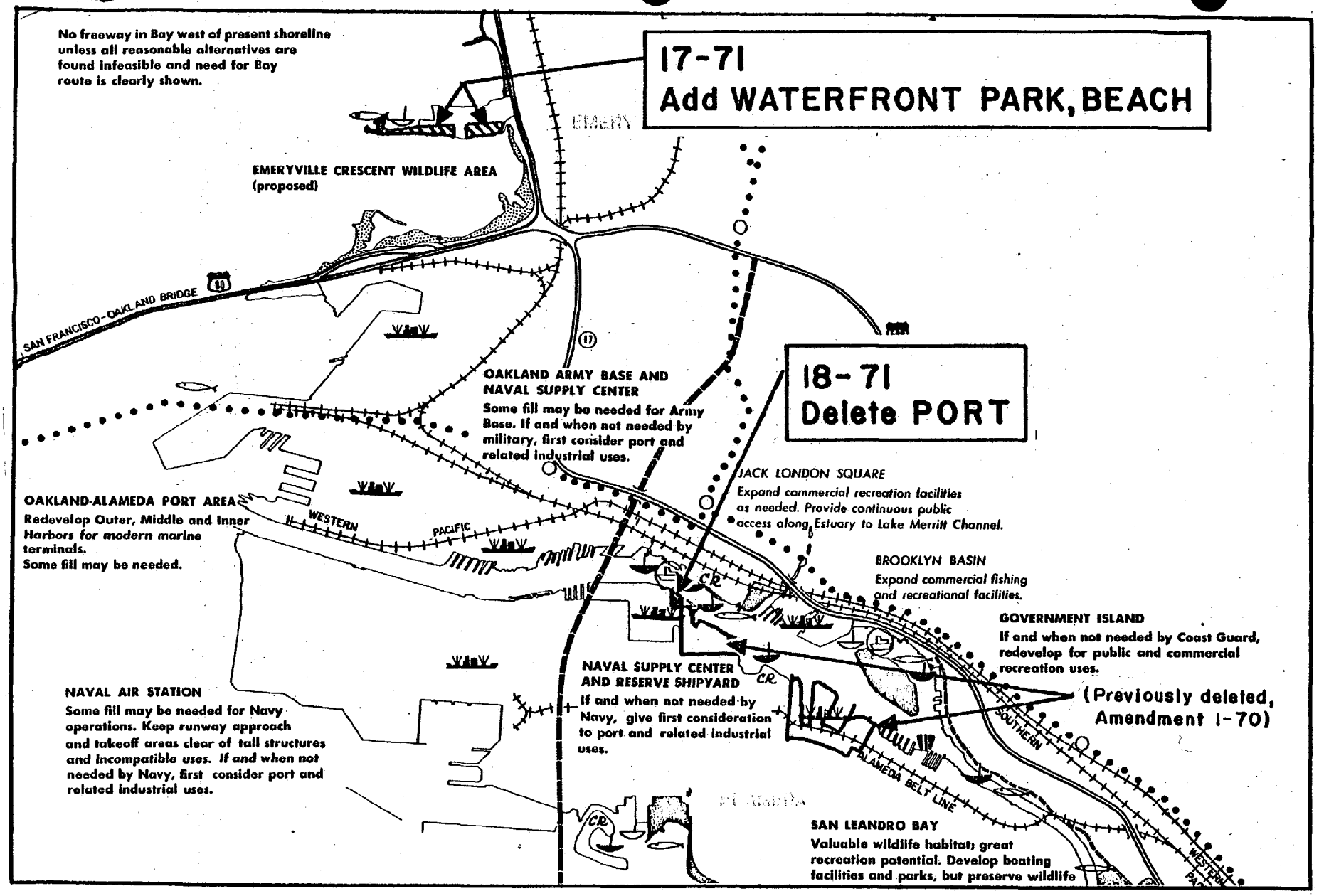
Plan Map 3

RICHMOND TO BERKELEY



Plan Map 3

RICHMOND TO BERKELEY



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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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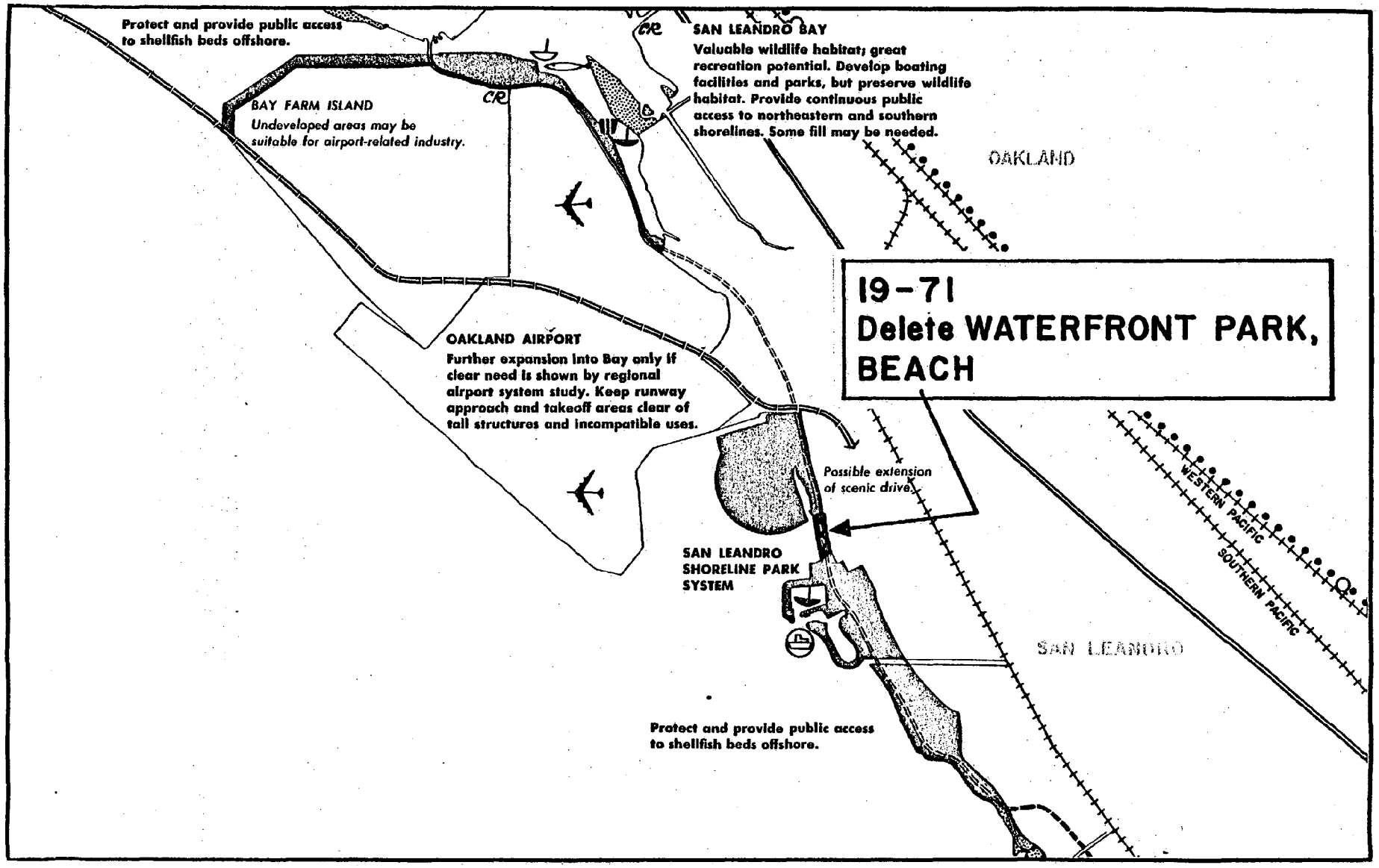
Plan Map 4

BERKELEY TO OAKLAND



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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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Plan Map 5

SAN LEANDRO, HAYWARD

Plan Map 6

Notes to
Plan Map 6
Santa Clara and Southern
Alameda Counties

Dumbarton Bridge Approach. If salt ponds north and south of bridge approach are ever removed from salt production, dikes could be breached and ponds opened to tidal action; water circulation might thus be improved. (This would involve public purchase or required opening of dike as part of plan to urbanize other pond areas.) This possibility should be considered in the design of new Dumbarton Bridge and Freeway; present causeway on earth fill might be replaced by structure on pilings.

Toll Plaza. Best site for toll plaza for new Dumbarton Bridge is difficult to determine; toll plaza on east shore should avoid cutting into Coyote Hills, should avoid filling of Bay or salt ponds, and should be satisfactory distance from interchange with proposed Freeway Route 61. Similar location problems exist on west shore. Further study required, including consideration of collecting tolls in manner not necessitating toll plaza.

Plummer Creek. Plummer Creek to the eastern limit of the salt pond area is a vital part of the ecological system of the Bay and is included within the proposed jurisdiction of the Bay agency (for purposes of filling and dredging control only).

Access to Parks and Marinas Outside Salt Ponds. Some parks and marinas are proposed Bayward of salt ponds. Access to these facilities would require cooperation of the salt company. Parking would not be provided near the facilities because this would require substantial fill and because salt pond dikes would not accommodate heavy vehicles. Access might be provided by lightweight shuttle vehicles atop dikes, with parking confined to areas ashore.

Water Quality. Water at extreme south end of Bay is often polluted so as to discourage recreational use of sloughs and Bay. Greater recreational use will require improved water quality. Some improvements in the quality of water in the South Bay are now being made pursuant to requirements of the Regional Water Quality Control Board, and studies underway by waste dischargers will lead to further improvements. Recommendations for long-range improvements to water quality will be part of the 1969 plan of the Bay-Delta Water Quality Control Program.

Subsidence. Area subject to subsidence. Construction in or near Bay should be carefully planned, taking into account effects of future subsidence.

Moffett Naval Air Station. Plan maps indicate recommended use for Bayfront military installations *if* one or more of these bases is ever declared surplus by the military. The Bay Plan does not advocate the closing of any military installation.

National Wildlife Refuge. Two areas on Map 6 are being considered by the U. S. Department of the Interior for acquisition as a Federal Wildlife Refuge. The inclusion of either or both areas—the salt ponds and marshes in Alameda County south of Coyote Hills Slough, and those between Coyote Creek and Alviso Slough in Santa Clara County—would be consistent with Bay Plan policies. The terms of the acquisition should permit the salt ponds to continue in operation as long as desired by the owner of the ponds.

To be withdrawn

20-71

~~Add to Plan Map Note~~:

~~Acquisition of the National Wildlife Refuge is strongly recommended.~~

Plan Map 7

To be withdrawn

20-71

~~Add to Plan Map Note:~~

~~Acquisition of the National Wildlife Refuge is strongly recommended.~~

Notes to Plan Map 7 Coyote Creek

Coyote Creek. Coyote Creek to the easternmost point of Newby Island, and also the branch of the creek on the south side of the island, are vital parts of the ecological system of the Bay and are included within the proposed jurisdiction of the Bay agency (for purposes of filling and dredging control only).

National Wildlife Refuge. The salt ponds and marshes between Coyote Creek and Alviso Slough are being considered by the U. S. Department of the Interior for acquisition as a Federal Wildlife Refuge. This proposal would be consistent with Bay Plan policies. The terms of the acquisition should permit the salt ponds to continue in operation as long as desired by the owner of the ponds.

Alviso-San Jose Waterfront. Detailed planning is needed to determine most desirable waterfront design and to overcome subsidence problems. Proposals should emphasize the great recreation potential of this area.

Access to Parks and Marinas Outside Salt Ponds. Some parks and marinas are proposed Bayward of salt ponds. Access to these facilities would require cooperation of the salt company. Parking would not be provided near the facilities because this would require substantial fill and because salt pond dikes would not accommodate heavy vehicles. Access might be provided by light-weight shuttle vehicles atop dikes, with parking confined to areas ashore.

Water Quality. Water at extreme south end of Bay is often polluted so as to discourage recreational use of sloughs and Bay. Greater recreational use will require improved water quality. Some improvements in the quality of water in the South Bay are now being made pursuant to requirements of the Regional Water Quality Control Board, and studies underway by waste dischargers will lead to further improvements. Recommendations for long-range improvement to water quality will be part of the 1969 plan of the Bay-Delta Water Quality Control Program.

Moffett Naval Air Station. Plan maps indicate recommended use for Bayfront military installations if one or more of these bases is ever declared surplus by the military. The Bay Plan does not advocate the closing of any military installation.

Plan Map 8

Notes to
Plan Map 8
Southern San Mateo County

Redwood Creek. Redwood Creek, Bayward of Smith Slough, is an integral part of the slough system and therefore part of the Bay.

Greco Island. Largest remaining marsh in South Bay. Marsh and adjacent mudflats are important feeding area for birds. Area used by California Clapper Rail, rare species of bird endangered by loss of habitat.

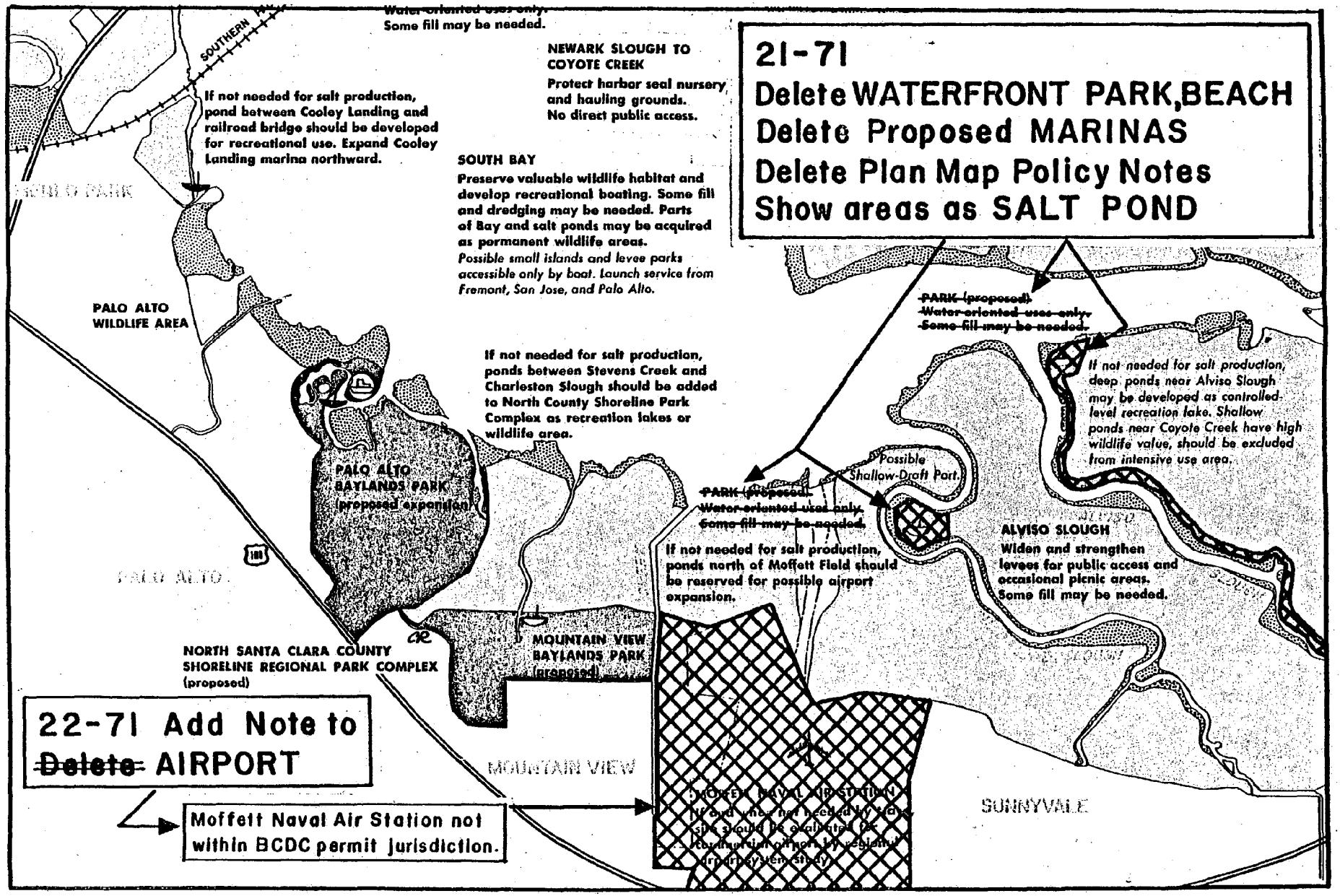
National Wildlife Refuge. Greco Island and a portion of Bair Island are being considered by the U. S. Department of the Interior for acquisition as a Federal Wildlife Refuge. This proposal would be consistent with Bay Plan policies provided that it did not interfere with commercial shipping and recreational boating in Redwood Creek.

To be withdrawn

20-71

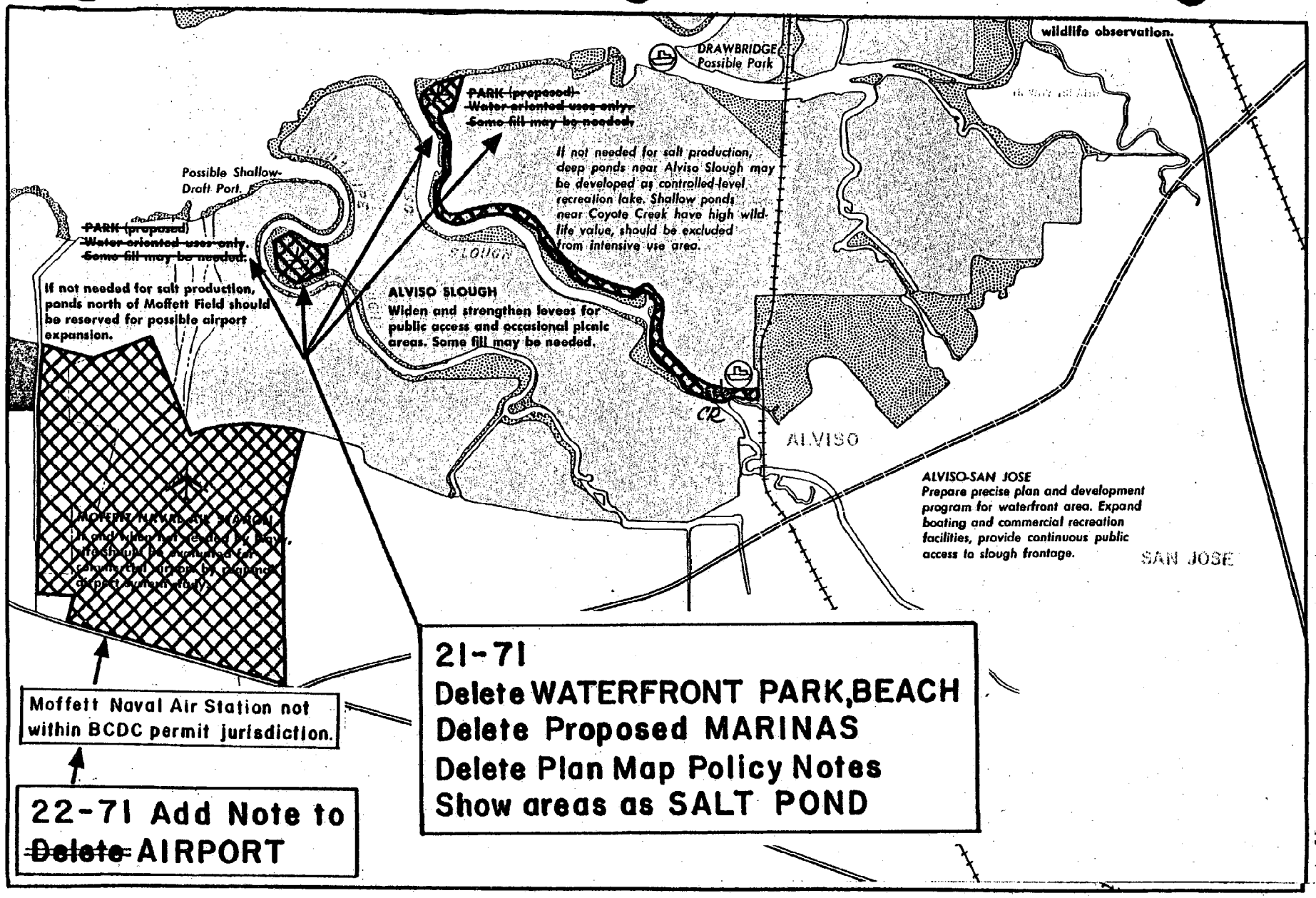
~~Add to Plan Map Note:~~

~~Acquisition of the National Wildlife Refuge is strongly recommended.~~



Plan Map 6

SANTA CLARA AND SOUTHERN ALAMEDA COS.



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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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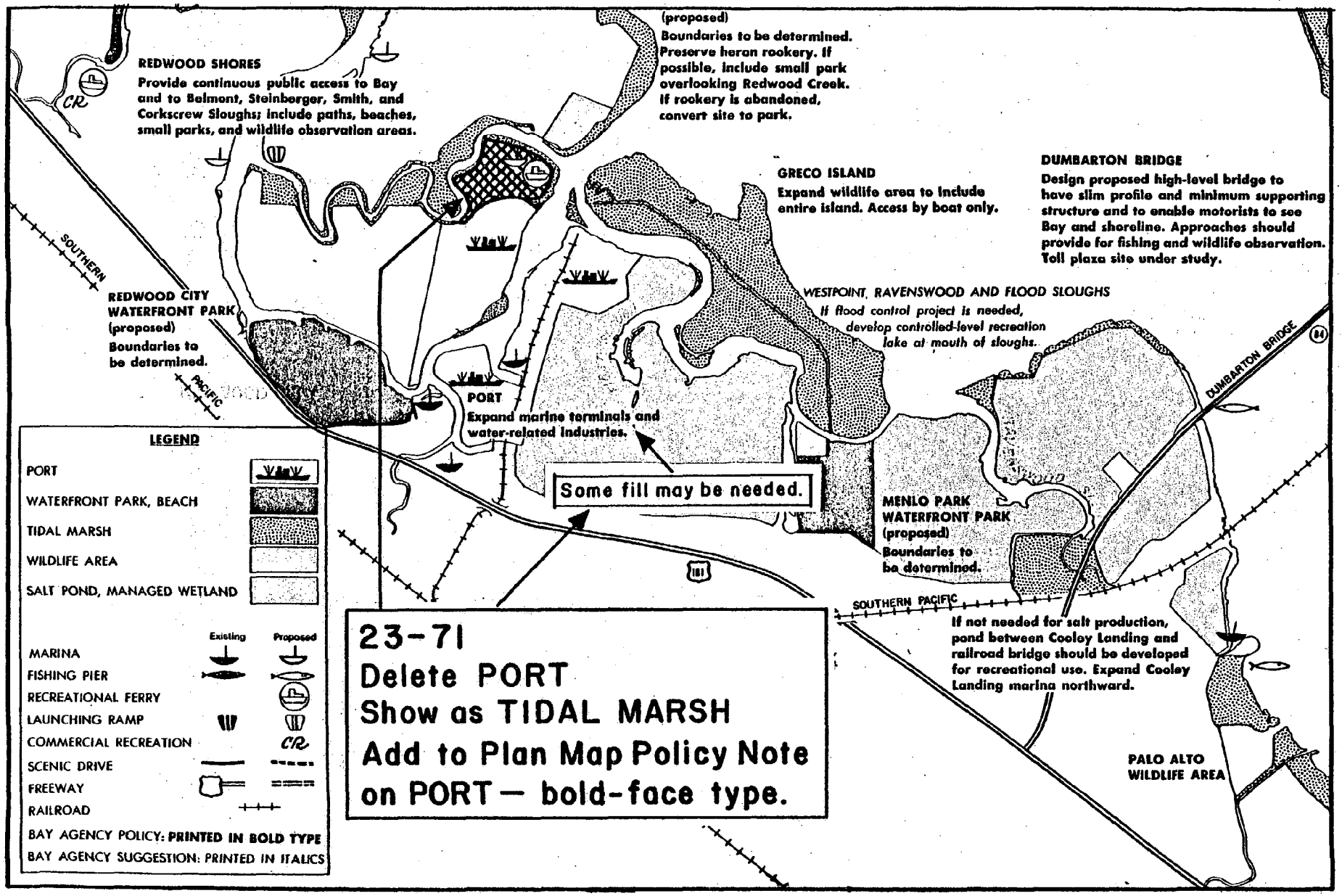
Plan Map 7

COYOTE CREEK



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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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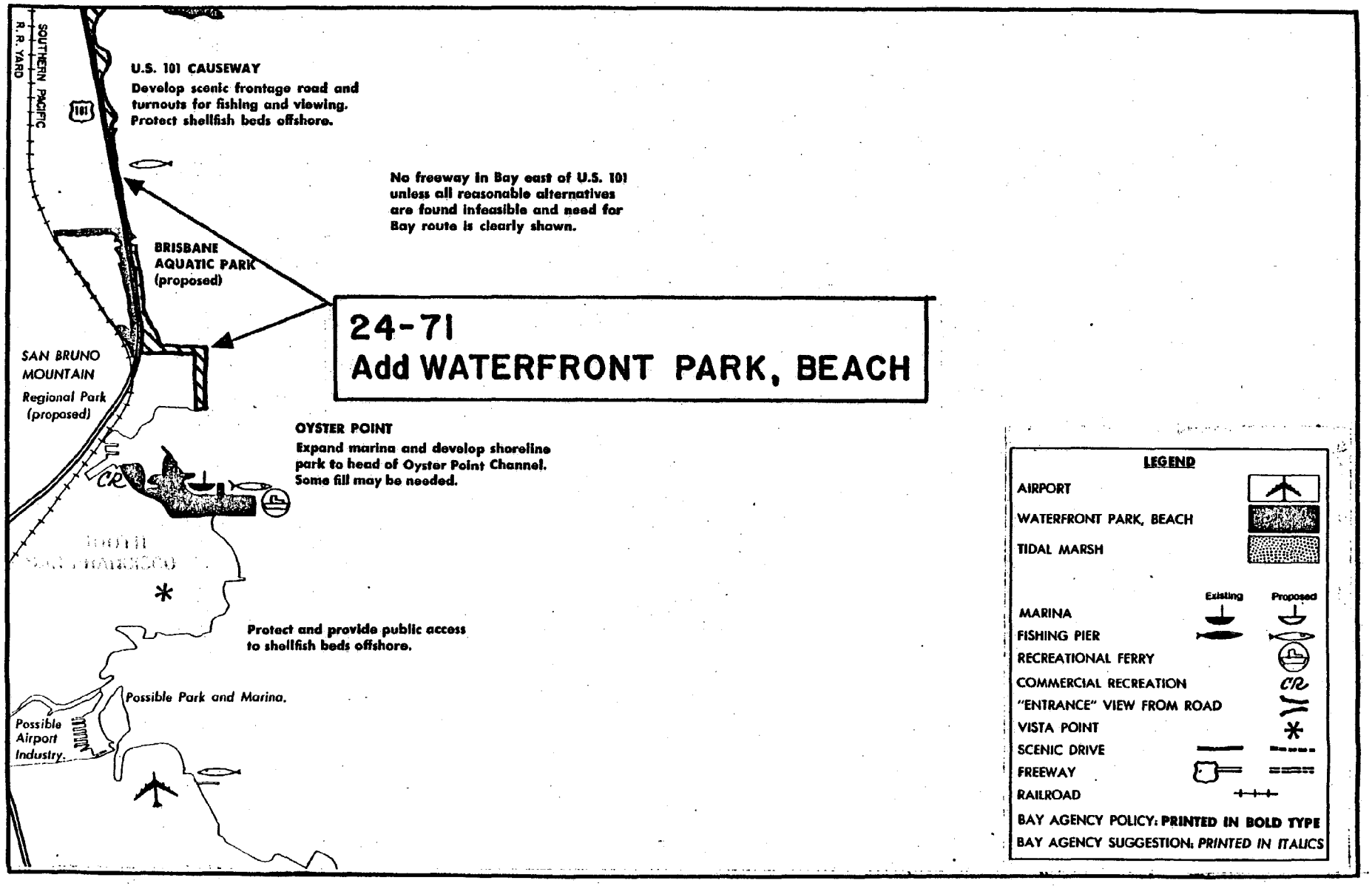
Plan Map 8

SOUTHERN SAN MATEO COUNTY



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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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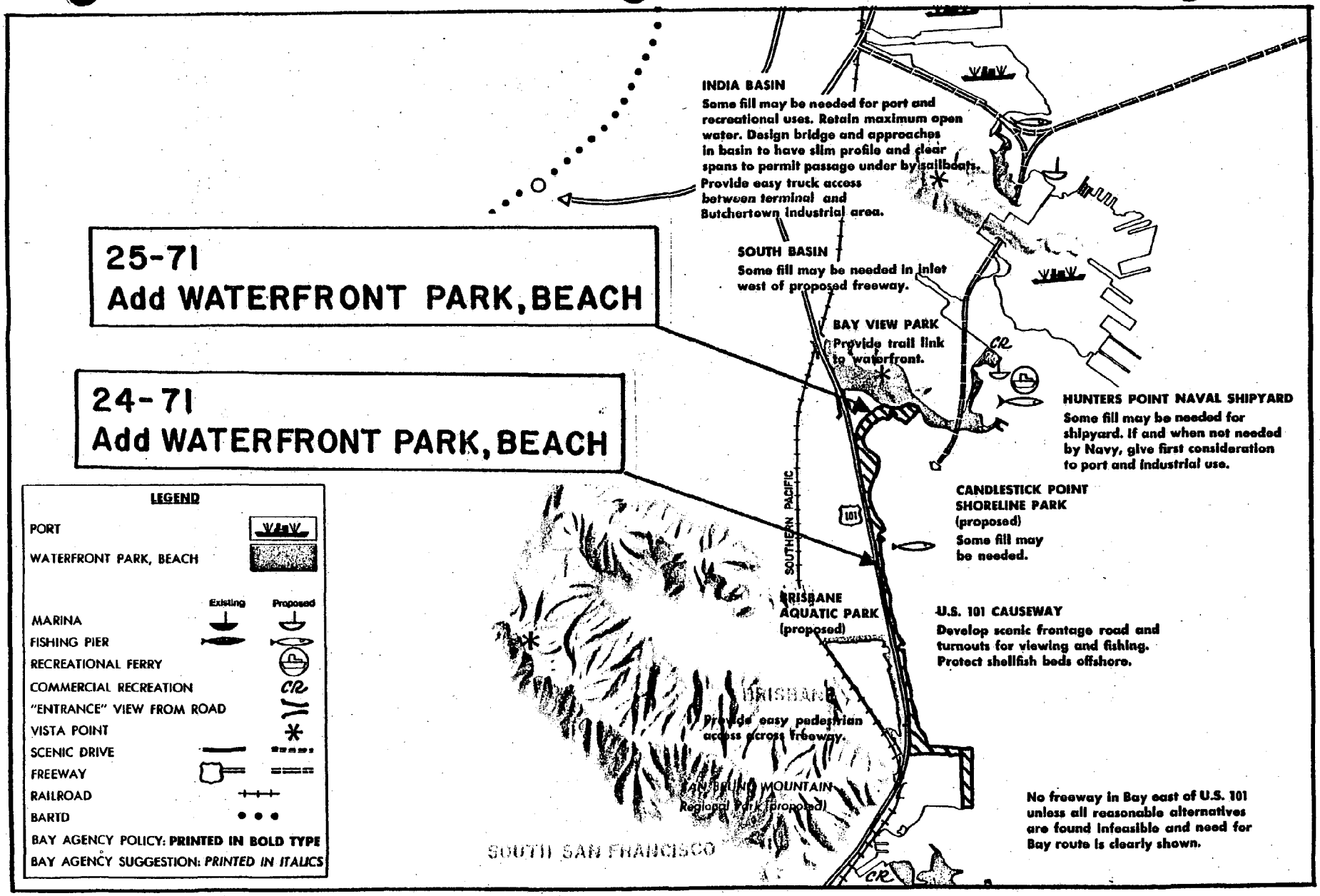
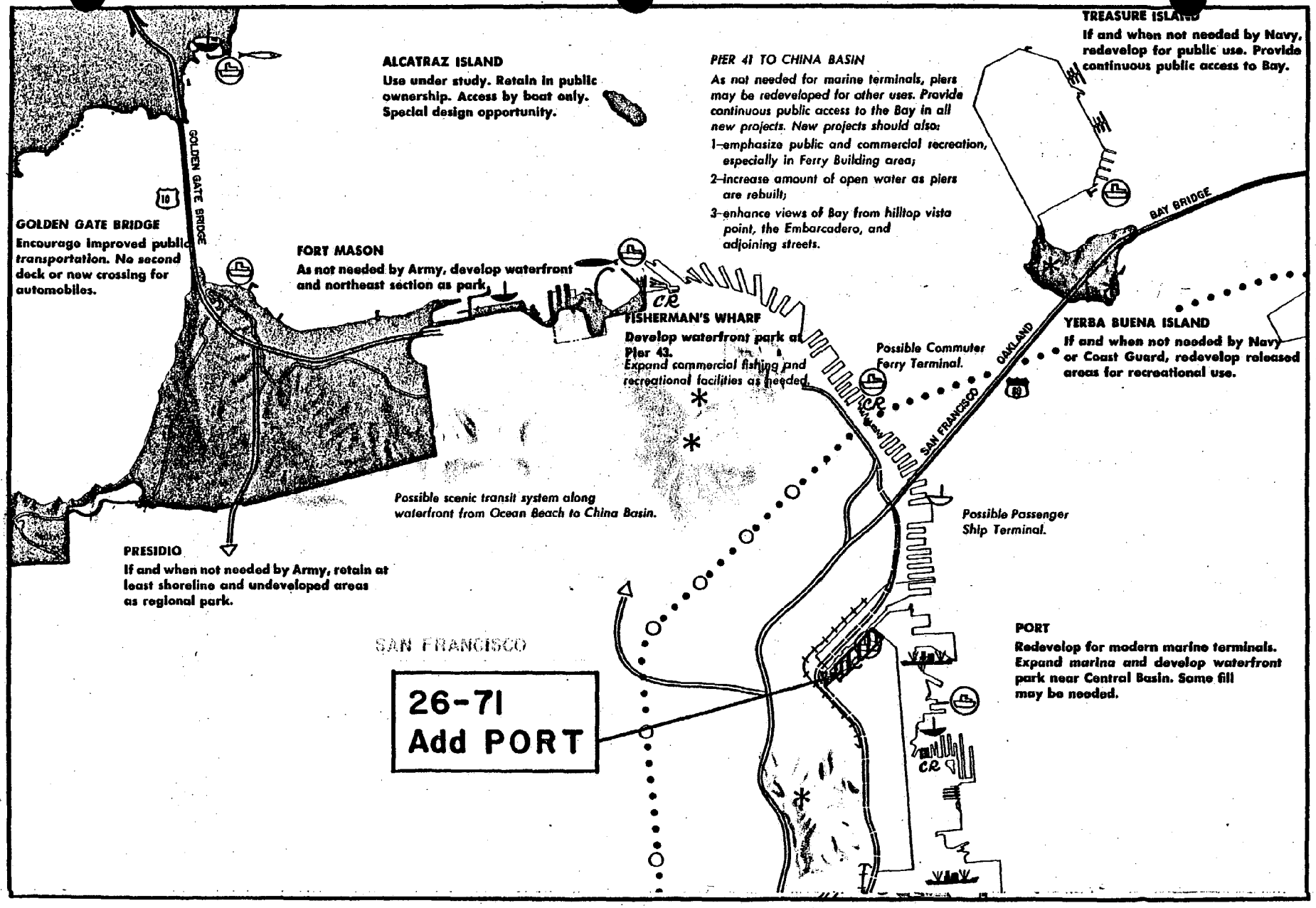
Plan Map 9

NORTHERN SAN MATEO COUNTY



Plan Map 10

SAN FRANCISCO AND BRISBANE



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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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Plan Map 10

SAN FRANCISCO AND BRISBANE

RESOLUTION NO. 16: PRIORITY USE AREAS

STATE OF CALIFORNIA RONALD REAGAN, Governor

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
30 VAN NESS AVENUE
SAN FRANCISCO, CALIFORNIA 94102
PHONE: 557-3686

MELVIN B. LANE
Chairman
WILLIAM D. EVERS
Vice-Chairman

JOSEPH E. BODOVITZ
Executive Director

November 30, 1971

TO GOVERNOR RONALD REAGAN
AND MEMBERS OF THE CALIFORNIA LEGISLATURE:

We are pleased to transmit herewith the resolution fixing and establishing the boundaries of areas reserved for designated water-oriented priority land uses around the shoreline of San Francisco Bay, as required by Section 66611 of the Government Code.

During the public hearings and public discussion of the priority-area boundaries, concern was expressed about one provision of Government Code Section 66611: under present law, no change in the boundaries listed in the Commission's adopted resolution can be made except with the approval of the Legislature.

This appears to involve the Legislature in an unusually detailed level of land-use regulation. In the future, new studies and new information will undoubtedly provide justification for revising some of the adopted boundaries, but under present law even the smallest change that the Commission might wish to approve could require a considerable delay because no change can be made except with the approval of the Legislature.

Therefore, in fairness to property owners, local governments, and the general public, it would appear that thought should be given to amending this provision of the law. An amendment could fully insure that the original purpose of this provision is retained, i.e., that the Commission not be able to expand its own jurisdiction by creating new priority areas, while at the same time allowing at least some changes in boundaries to be approved by the Commission without the necessity for Legislative approval.

Respectfully submitted,

Melvin B. Lane

MELVIN B. LANE
Chairman

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
30 Van Ness Avenue, San Francisco 94102 557-3686

November 18, 1971

RESOLUTION NO. 16: Fixing and Establishing Priority Use Areas

WHEREAS Government Code Section 66611 provides that:

> "No later than December 1, 1971, the Commission, after public hearing, of which adequate descriptive notice is given, shall adopt and file with the Governor and the Legislature a resolution fixing and establishing within the shoreline band the boundaries of the water-oriented priority land uses, as referred to in Section 66602", and

WHEREAS adequate descriptive notice of the public hearing concerning, and the proposed adoption of, designations of priority area boundaries was duly published on September 23 and October 25, 1971, was mailed to all persons known to have a particular interest in said proposed designations, and in addition was given wide publicity in the media, and

WHEREAS a public hearing on said proposed priority area boundary designations was held by the San Francisco Bay Conservation and Development Commission on November 4, and on November 18, 1971.

NOW THEREFORE BE IT RESOLVED:

1. The Commission fixes and establishes, within the shoreline band as defined in Government Code Section 66610(b), those boundaries for areas reserved for water-oriented priority land uses (pursuant to Government Code Section 66602) and those designations of the particular use for which each such area is reserved, as are contained in the text of this resolution and in Attachment A hereto (which attachment is incorporated herein by reference).

2. This resolution, including Attachment A, is intended to set forth in words the same boundaries of areas reserved for water-oriented priority land uses (with the exceptions stated in Paragraph 3 and 4 hereof) as are depicted graphically on the San Francisco Bay Plan maps <u>as such maps have been amended up to and including November 18, 1971</u>.

3. Inasmuch as the areas reserved for water-oriented priority land uses lie only within the shoreline band over which the Commission has jurisdiction pursuant to Government Code Section 66610(b), each of the priority areas is bounded on one side by the shoreline of San Francisco Bay, and on another side by a line 100 feet landward of and parallel with that line; the boundaries listed in Attachment A fix and establish the other two sides that bound each portion of the 100-foot wide shoreline strip that is reserved for a water-oriented priority land use.

4. The Executive Director is directed to prepare a typescript of Attachment A, and a set of index maps showing the general location along the Bay shore of each of the priority use areas fixed and established by Attachment A, all as adopted by the Commission on November 18, 1971, with whatever revisions of numbering and corrections of graphic and typographical errors are required to present accurately and under standably the substance of what was adopted. The conformity of the typescript and maps to the Commission's adoption action shall be evidenced by the certification of the Executive Director and of the Chairman of the Commission.

We hereby certify that:

The foregoing Resolution was adopted by the San Francisco Bay Conservation and Development Commission at its meeting of November 18, 1971 by a vote of 16 affirmative, 0 negative.

Melvin B. Lane

MELVIN B. LANE
Chairman

Joseph E. Bodovitz

JOSEPH E. BODOVITZ
Executive Director

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
30 Van Ness Avenue, San Francisco 94102 557-3686

PRIORITY USE AREA DESIGNATIONS AND BOUNDARY DESCRIPTIONS

1. The following priority use areas are each designated for the particular water-oriented land use printed in parentheses following the name of the area. The name of the area is for purposes of identification, and is not part of the designations.

2. Boundary descriptions are as follows: one boundary is the shoreline of San Francisco Bay, one boundary is a line 100 feet inland from and parallel to the Bay, and the other two boundaries listed below are the boundaries perpendicular to the shoreline and the line 100 feet inland.

3. Boundary lines, rights-of-way, and assessors' maps of parcels are those current on July 1, 1971. The physical features referred to are as shown on the U.S.G.S. 7½ minute quad maps, 1968 photorevisions. References to roads and to the "line" of a road refer to the right-of-way line of the named road rather than to the edge of the pavement of the road. Some of the descriptions are followed by the name of the major property owner within the described priority use area; this information is furnished as a convenience to users but is not part of the designation.

4. The provisions of the Commission's Administrative Regulation 10180, which provides a method for resolving boundary questions, shall apply to these priority use boundary designations to the extent possible under the McAteer-Petris Act.

1. Marin Headlands (Recreation)

   (A) West Boundary: Point Bonita.

   (B) East Boundary: Marin Headlands State Park boundary.

2. Angel Island (Recreation)

   (A) Entire Island (State).

3. Audubon Wildlife Sanctuary (Wildlife)

   (A) West Boundary: West line of parcel 55-011-34 (Audubon Society)

   (B) East Boundary: East line of parcel 55-011-34.

4. Tiburon Boulevard Shoreline (Recreation)

   (A) Northwest Boundary: Westerly line of parcel 55-041-16 extended to shoreline.

   (B) South Boundary: Northeast line of parcel 60-271-01.

5. Keil Cove/Bluff Point (Recreation)

   (A) Southwest Boundary: Southwesterly line of parcel 59-231-01.

   (B) North Boundary: Northwest line of parcel 59-231-01.

6. Marine Minerals Technology Center (former Navy Net Depot) (Recreation)

   (A) Northwest Boundary: Northwesterly lines of parcels 58-061-04 and 58-061-01 (U.S.A.).

   (B) Southeast Boundary: Southeast line of parcel 58-100-01 (U.S.A.).

7. Paradise Cove (Recreation)

   (A) West Boundary: West line of parcel 58-041-03 (County).

   (B) East Boundary: East line of parcel 58-041-03.

8. Marin Islands (Wildlife)

   (A) Entire islands, both East Marin Island and West Marin Island (Crowley).

9. The Sisters (Wildlife)

   (A) Entire two islands (State).

10. Point San Pedro (Recreation)

   (A) Southwest Boundary: A line perpendicular to the shoreline and 2000 feet southwest of Point San Pedro.

   (B) Northwest Boundary: West line of parcel 186-010-18.

11. Rat Rock (Wildlife)

   (A) Entire island (County).

12. Grove Point (Recreation)

   (A) Peninsula in marsh near Grove Point bounded on the south by north line of North San Pedro Road.

13. Gallinas Creek North (Recreation)

   (A) West Boundary: North-south line tangent to tip of levee at the confluence of the Gallinas Creek north and south forks.

(B) North Boundary: An east-west drainage ditch situated approximately 3200 feet north of the southern tip of the land peninsula bordering Gallinas Creek (Smith).

14. Hamilton Air Force Base (Airport)

(A) North Boundary: North line of parcel 157-180-01 (U.S.A.).

(B) South Boundary: South line of parcel 157-180-13 (U.S.A.).

15. Black Point (Recreation)

(A) Northwest Boundary: Northwest line of Route 37 right-of-way.

(B) Southeast Boundary: East line of parcel 157-01-17 (Geddes).

16. Petaluma River - Sonoma County (Industrial)

(A) West Boundary: South line of State Highway Route 37.

(B) East Boundary: East line of parcel 68-14-4.

17. Lower Tubbs Island (Wildlife)

(A) Entire parcel 68-160-05 (Nature Conservancy).

18. Mare Island (Industrial)

(A) Northwest Boundary: Naval Reservation Boundary (on San Pablo Bay).

(B) Northeast Boundary: Naval Reservation boundary south of Highway 37 (on Napa River).

19. Vallejo Waterfront (Recreation)

(A) North Boundary: South line of Sears Point Road.

(B) Southeast Boundary: South line of small boat launching ramp (near the foot of Marin Street).

20. Vallejo (Industrial)

(A) Northwest Boundary: North boundary line of parcel 58-090-18 (City of Vallejo).

(B) Southeast Boundary: South line of parcels 62-010-11 and 62-010-13.

21. Vallejo-Semple Point - Benicia Beach State Park (Recreation)

    (A) North Boundary: South line of parcels 62-101-11 and 62-010-13.

    (B) East Boundary: Southwest line of L Street, Benicia (west of 14th Street).

22. Benicia Waterfront (Port)

    (A) West Boundary: Southeast line of First Street extended to shoreline.

    (B) East Boundary: Southwest line of Benicia-Martinez (Highway 680) Bridge.

23. Benicia Industries (Industrial)

    (A) South Boundary: Northeast line of Benicia-Martinez (Highway 680) Bridge.

    (B) Northeast Boundary: Northeasterly line of parcel 78-24-1 (Benicia Industries).

24. Joice Island (Wildlife)

    (A) Boundaries of State Fish and Game wildlife reserve.

25. Suisun Slough Island (Recreation)

    (A) Entire island (Fairfield-Suisun Sewer District).

26. Suisun Slough (Industry)

    (A) North Boundary: North line of parcel 32-210-02 (Lawler Ranches).

    (B) East Boundary: East Section line of Section 31, T.5N., R.1W., M.D.B.&M.

27. Suisun - Montezuma Slough (Industry)

    (A) East Boundary: A line parallel to and 500 feet west of Beldons Landing Bridge (on Montezuma Slough).

    (B) North Boundary: Intermittent Creekbed south of Hill Slough and approximately coinciding with the north-south quarter section line of Section 5, T.4N., R.1W., M.D.B.&M.

28. Collinsville - Montezuma Slough (Industry)

    (A) North Boundary of North Portion: South line of Little Honker Bay Road (above Little Honker Bay).

    (B) Southwest Boundary of North Portion: North-south quarter-section line of Section 24, T.4N., R.1W., M.D.B.&M (at Nurse Slough).

(C) North Boundary of Mid-Portion: North-south quarter-section line of Section 30, T.4N., R.1E., M.D.B.&M.

(D) South Boundary of Mid-Portion: A north-south line 1600 feet west of east section line of Section 31, T.4N., R.1E., M.D.B.&M.

(E) North Boundary of West Portion: North section line of Section 8, T.3N., R.1E., M.D.B.&M. (on Montezuma Slough).

(F) Southeast Boundary of West Portion: East-west line 1500 feet north of southernmost tip of Collinsville Road, approximately 500 feet west of Collinsville Road.

(G) West Boundary of South Portion: North-south line 1800 feet due east of Collinsville Road.

(H) East Boundary of South Portion: 100 feet east of the east side of Marshall Cut.

29. Grizzly Island (Wildlife)

(A) North Boundary of East Portion: North line of parcel 46-25-3 (at Montezuma Slough).

(B) South Boundary of East Portion: Northerly bank of Roaring River Slough (at Montezuma Slough).

(C) North Boundary of West Portion: Western lines of parcel 46-26-3 (on Grizzly Bay).

(D) South Boundary of West Portion: Southwest line of parcel 46-24-1 (on Grizzly Bay).

30. North Contra Costa (Industrial)

(A) East Boundary: Stake Point.

(B) West Boundary: West line of property on assessor's map page 378-1.

31. Crockett (Industrial)

(A) East Boundary: Easternmost lines of property on assessor's map page 354-1.

(B) West Boundary: East line of Interstate 80.

32. Davis Point (Industrial)

(A) East Boundary: East extremity of parcel 355-040-02.

(B) Southwest Boundary: Southwest line of parcel 357-010-02.

33. Rodeo Shoreline (Recreation)

(A) Northeast Boundary: Northeast line of parcel 357-020-04.

(B) West Boundary: Northeast line of parcel 357-020-09.

34. Lone Tree Point (Recreation)

(A) North Boundary: South line of parcel 357-020-10.

(B) South Boundary: South lines of property on assessor's map page 357-2.

35. Hercules (Industrial)

(A) Northeast Boundary: Northeast lines of property on assessor's map pages 400-030 and 400-040.

(B) Southwest Boundary: Southwest line of parcel 400-020-10 extended to shoreline.

36. Pinole-Hercules (Recreation)

(A) North Boundary: North line of Santa Fe Street (Hercules), extended to shoreline.

(B) South Boundary: South line of Pinon Street (Pinole), extended to shoreline.

37. Wilson Point (Recreation)

(A) Peninsula bounded on the southeast by the southeast lines of property on assessor's map page 403-1.

38. Richmond Sanitary Fill (Recreation)

(A) South Boundary: Southeasterly lines of property on assessor's map page 408-14 (Richmond Sanitary Service)(near mouth of Castro Creek).

(B) North Boundary: East line of property on assessor's map page 408-14 (at San Pablo Creek).

39. Richmond (Industrial)

(A) East Boundary of North Portion: Southeast line of property on assessor's map page 408-14 (near mouth of Castro Creek).

(B) West Boundary of North Portion: East line of parcel 561-080-04 (Point San Pablo Yacht Harbor).

(C) East Boundary of South Portion: South line of parcel 561-030-04.

(D) West Boundary of South Portion: South and east lines of property on assessor's map page 561-40 (at Castro Point).

40. Point San Pablo - Point Molate - Castro Point (Recreation)

(A) Northeast Boundary: East line of parcel 561-080-04 (Point San Pablo Yacht Harbor).

(B) South Boundary: South and east lines of property on assessor's map page 561-40 (at Castro Point).

41. The Brothers (Recreation)

(A) Entire two islands (U.S.A.).

42. Red Rock (Wildlife)

(A) Entire island (Glickman).

43. Point Richmond (Recreation)

(A) North Boundary: Northeast line of parcel 561-020-01 (Kellers Beach).

(B) South Boundary: Line perpendicular to shoreline through a point 1600 feet north and 1300 feet east of the southern (outer) tip of the Santa Fe Pier.

44. Richmond (Port)

(A) West Boundary: West line of parcel 560-320-10 (west of Point Potrero on Richmond Harbor Channel).

(B) East Boundary: The breakwater located approximately 2600 feet east of the east edge of the Inner Harbor Basin east bulkhead.

45. Brooks Island (Recreation)

(A) Entire island, including breakwater (E.B.R.P.D. and others).

46. Point Isabel (Recreation)

(A) Northwest Boundary: A line parallel to and 200 feet northwest of the southeast shoreline of Point Isabel at its southwestern extremity.

(B) Southeast Boundary: Contra Costa - Alameda County line.

47. Fleming Point - Virginia Street (Recreation)

(A) North Boundary: Contra Costa - Alameda County line.

(B) South Boundary: South line of property on assessor's map page 60-2529.

48. Berkeley Marina (Recreation)

(A) Peninsula bounded on the east by the easterly line of statutory grant (City of Berkeley).

49. Berkeley Shore (Recreation)

(A) North Boundary: North line of Addison Street extended to shoreline.

(B) South Boundary: South line of parcel 49-1518-24.

50. Emeryville Peninsula (Recreation)

(A) Northeast Boundary of West Portion: Easterly line of city's statutory grant (Town of Emeryville)

(B) Southeast Boundary of West Portion: West line of Town Hall site.

(C) West Boundary of East Portion: East line of Town Hall site.

(D) East Boundary of East Portion: A line parallel to and 150 feet south of the south line of Powell Street.

51. Emeryville-Oakland Shoreline (Wildlife Refuge)

(A) North Boundary: A line parallel to and 150 feet south of the south line of Powell Street.

(B) West Boundary: East line of eastern overpass from Oakland Army Terminal to Bay Bridge toll plaza.

52. Oakland (Port)

(A) Northwest Boundary: A north-south line 2400 feet west of Bay Bridge toll booths (south of traffic lanes).

(B) East Boundary: Clay Street, Oakland, extended to shoreline.

53. Lake Merritt Channel (Recreation)

(A) West Boundary: East line of Fallon Street.

(B) Northeast Boundary: South line of Embarcadero.

54. Clinton Basin (Port)

(A) Northwest Boundary: South line of Nimitz Freeway.

(B) East Boundary: South line of railroad spur south of 10th Avenue.

55. Government Island (Recreation)

(A) Entire island (U.S.A.).

56. Alameda (Port)

(A) Northeast Boundary: East boundary of Alameda Naval Air Station (Administration Center) (on Oakland Estuary).

(B) Southeast Boundary: East line of property on assessor's map on page 74-891 (on San Francisco Bay).

57. Alameda Beach State Park (Recreation)

(A) West Boundary: East line of Sixth Street extended to the shoreline.

(B) East Boundary: Northwest line of Broadway Street extended.

58. East Creek Slough (Recreation)

(A) Northwest Boundary: Northwest line of parcel 34-2300-13-1 (Navajo Terminals).

(B) East Boundary: Southwest line of Oakport Street.

59. San Leandro Bay (Recreation)

(A) West Boundary: A line perpendicular to the shoreline at midpoint (approximately 500 feet from each end) of the westernmost dike of Bay Farm Island (Utah International).

(B) South Boundary: West line of DeHaviland Street extended to Airport Channel.

[NOTE: Utah International, Inc. claims an exemption from all Commission jurisdiction, including jurisdiction within the 100-foot shoreline band, for the portion of this area owned by it; this priority designation does not affect the claim of exemption.]

60. Oakland (Airport)

(A) West Boundary: Northeast and northwest lines of parcel 74-1040-4-2 (Port of Oakland).

(B) South Boundary: Oakland-San Leandro City boundary.

61. North San Leandro (Recreation)

(A) North Boundary: North shore edge of existing Oakland Scavenger Company fill extended to Davis Street.

(B) South Boundary: North line of Williams Street extended to the shoreline.

62. South San Leandro (Recreation)

(A) North Boundary: North and east lines of parcel 79A-590-1-3.

(B) South Boundary: South line of parcel 80G-910-2-11 (San Leandro City limit).

63. Coyote Hills - North (Recreation)

(A) East Boundary: Southwest line of Newark Boulevard.

(B) Northwest Boundary: North line of Alameda County Flood Control District right-of-way.

64. Coyote Hills - South (Recreation)

(A) East Boundary: Southwest line of Newark Boulevard.

(B) Southwest Boundary: South line of Alameda County Flood Control District right-of-way.

65. Mountain View (Recreation)

(A) Northeast Boundary: North line of parcel 15-36-025 on east side of Mountain View Slough.

(B) Northwest Boundary: North line of parcel 15-36-025 on west side of Mountain View Slough.

66. Palo Alto Baylands Park (Recreation)

(A) Northwest Boundary: North line of P.G.& E. right-of-way near mouth of Mayfield Slough.

(B) Southeast Boundary: Westerly (outer) edge of existing southwest-northeast levee approximately 1900 feet north of levee which blocks Charleston Slough from the Bay.

67. Menlo Park (Recreation)

(A) West Boundary of North Portion: East line of parcel 55-400-1 extended northerly to Westpoint Slough.

(B) East Boundary of North Portion: Eastern edge of levee along east line of parcel 55-400-31 extended northerly to Westpoint Slough.

(C) South Boundary of West Portion: South line of parcel 55-400-30, extended to Flood Slough.

(D) North Boundary of West Portion: South line of parcel 55-400-1, extended westerly to Flood Slough.

68. Redwood Creek - East (Port)

(A) Southwest Boundary: An east-west line drawn through the northernmost point of land southerly of Smith Slough and southwesterly of Redwood Creek at the confluence thereof (on the easterly bank of Redwood Creek).

(B) Northeast Boundary: Southerly line of parcel 44-300-14 (at Westpoint Slough).

69. Redwood Creek - West (Port)

(A) North Boundary: East edge of most easterly levee (of salt ponds) situated between Corkscrew Slough and Smith Slough (at Corkscrew Slough).

(B) South Boundary: East edge of most easterly levee (of salt ponds) situated between Corkscrew and Smith Slough (at Smith Slough).

70. Bair Island (Wildlife)

(A) West Boundary: Southeast side of water canal running from Redwood Point on the northeast to Corkscrew Slough on the southwest, approximately 1800 feet northwesterly of Redwood Creek (on Corkscrew Slough).

(B) East Boundary: A line 1600 feet northeast of, and parallel to the northeast side of P.G.& E. right-of-way (on San Francisco Bay near mouth of Redwood Creek).

71. Smith Slough (Recreation)

(A) Southeast Boundary: A line parallel to and 700 feet north of the south line of parcel 95-030-16 (at Smith Slough).

(B) Northwest Boundary: Westerly line of parcel 95-030-15.

72. Redwood Shores (Recreation)

(A) South Boundary: East-west mid-section line of Section 36, T.4S., R.4W., M.D.B.&M.

(B) East Boundary: East section line of Sections 25 and 36, T.4S., R.4W., M.D.B.&M.

73. Foster City (Recreation)

(A) South Boundary: East section line of Section 35, T.4S., R.4W., M.D.B.&M (on Belmont Slough).

(B) North Boundary: Southeast line of San Mateo-Hayward Bridge right-of-way.

74. Coyote Point (Recreation)

(A) East Boundary: East section line of Section 21, T.4S., R.4W., M.D.B.&M. (near mouth of former Seal Slough).

(B) West Boundary: Westerly boundary of Coyote Point County Park.

75. Burlingame (Recreation)

(A) West Boundary of North Portion: Center line of Broadway (Burlingame), extended northeasterly.

(B) East Boundary of North Portion: East section line of Section 13, T.4S., R.5W., M.D.B.&M.

(C) Northeast Boundary of South Portion: East section line of Section 13, T.4S., R.5W., M.D.B.&M. on the north bank of Burlingame lagoon.

(D) Southeast Boundary of South Portion: East section line of Section 13, T.4S., R.5W., M.D.B.&M. on the south bank of Burlingame lagoon.

76. San Francisco Airport (Airport)

(A) South Boundary: Northwest line of Millbrae Avenue extended to shoreline.

(B) North Boundary: North boundary of San Francisco International Airport.

77. Oyster Point (Recreation)

(A) South Boundary: South line of parcel 15-010-7.

(B) North Boundary: A line perpendicular to the shoreline 1250 feet west and 1000 feet north of the center of the intersection of Oyster Point Boulevard and Eccles Avenue.

78. Brisbane Lagoon (Recreation)

(A) Shoreline Boundaries: Around entire lagoon.

79. Brisbane Shoreline (Recreation)

(A) South Boundary: Northern boundary of the City of South San Francisco.

(B) North Boundary: San Mateo-San Francisco County line.

80. Candlestick-Bayview (Recreation)

(A) South Boundary: San Francisco-San Mateo County Boundary.

(B) North Boundary: Northwest line of Coleman Avenue.

81. Hunters Point Naval Reservation (Port)

(A) Peninsula bounded on the northwest by the boundary of U.S. Naval Reservation.

82. India Basin (Recreation)

(A) South Boundary: A line perpendicular to the shoreline (south side of India Basin) 1100 feet west of the U.S. Naval Reservation boundary (Earl Street) and 400 feet north of the north line of Innes Avenue.

(B) North Boundary: A line parallel to and 950 feet southeasterly of the southeast line of Jennings Street.

[NOTE: This Area does not include the PG&E Hunters Point Plant--Board of Equalization Parcels 135-38-18 (Lots 1 and 2) and Parcel 135-38-26 (Lot 3).]

83. South (Central) Waterfront (Port)

(A) Northeast Boundary of North Portion: South line of Pier 44 extended.

(B) Southwest Boundary of North Portion: West line of Sixth Street at North side of Channel Street ("China Basin").

(C) Northwest Boundary of South Portion: West line of Sixth Street at South side of channel Street ("China Basin").

(D) South Boundary of South Portion: Southwest line of Arthur Avenue.

[NOTE: This area does not include the PG&E Potrero Plant--Board of Equalization Parcel 135-38-24B (Lot 2).]

84. Aquatic Park-Presidio-Point Lobos (Recreation)

(A) East Boundary: Center line of Hyde Street extended onto Hyde Street Pier.

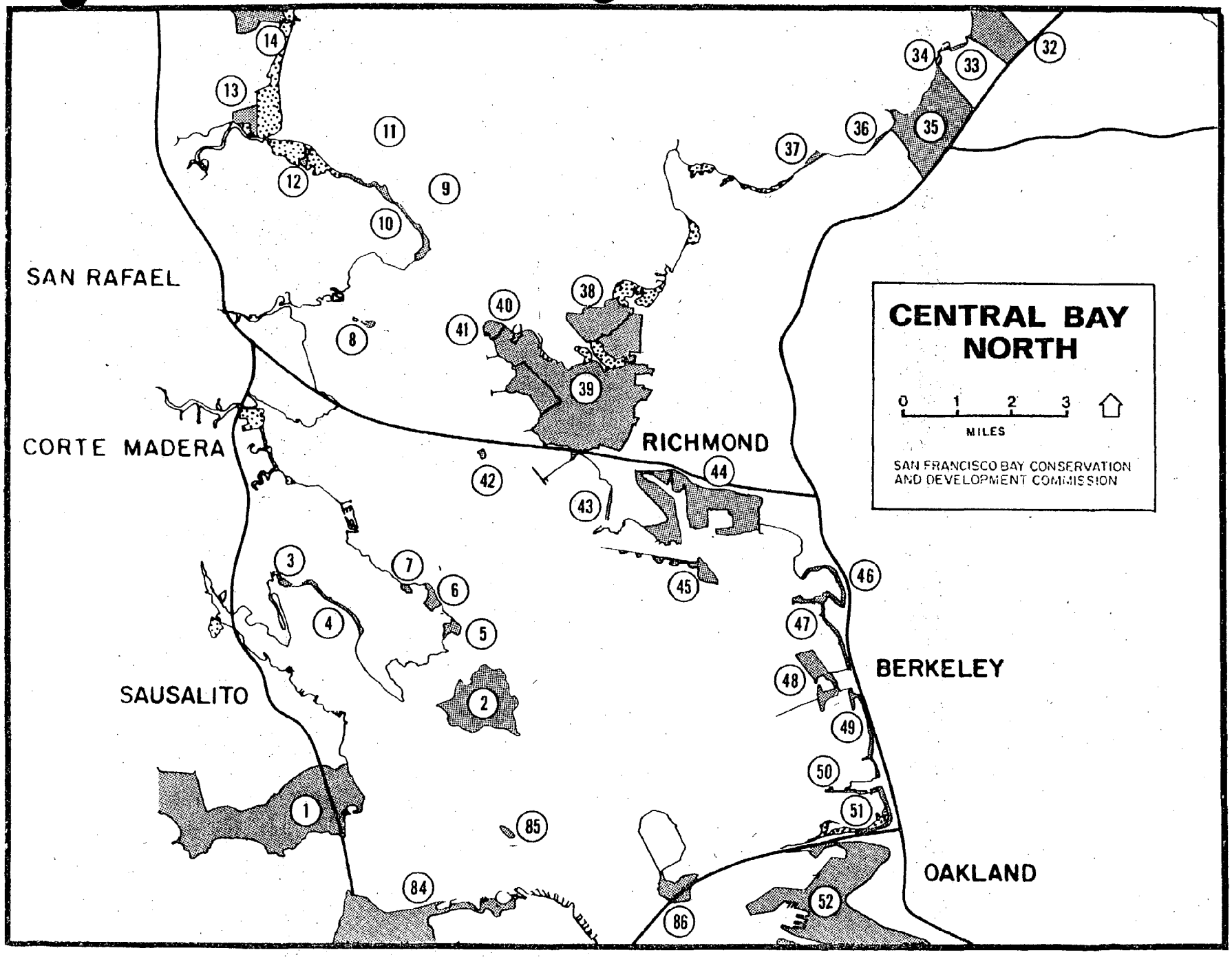
(B) West Boundary: Southwesterly line of parcel 1313-15 (State of California).

85. Alcatraz Island (Recreation)

(A) Entire island.

86. Yerba Buena Island (Recreation)

(A) Entire island from a line across land neck joining Yerba Buena with Treasure Island, 400 feet southeast of the southeastern edge of Treasure Island.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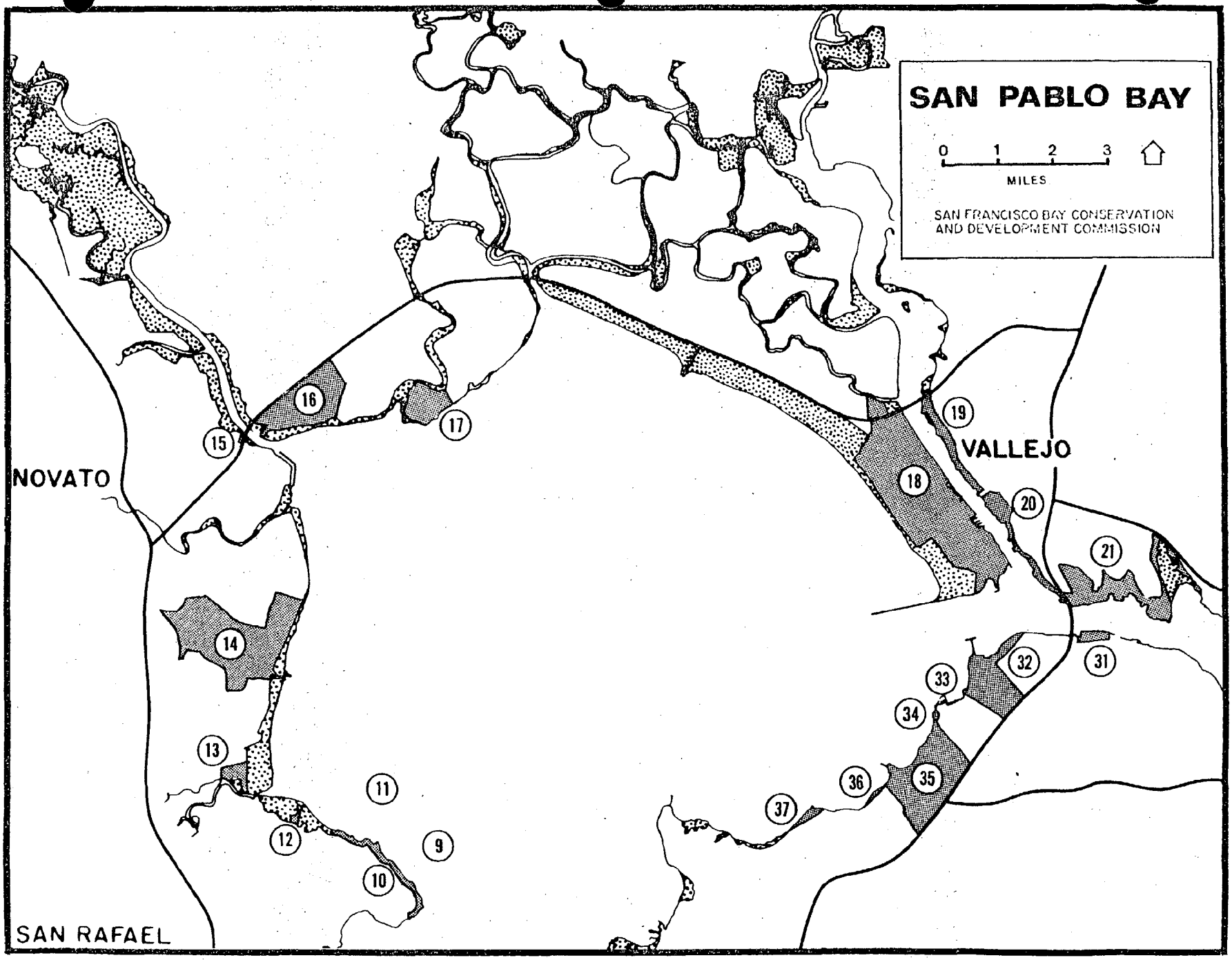
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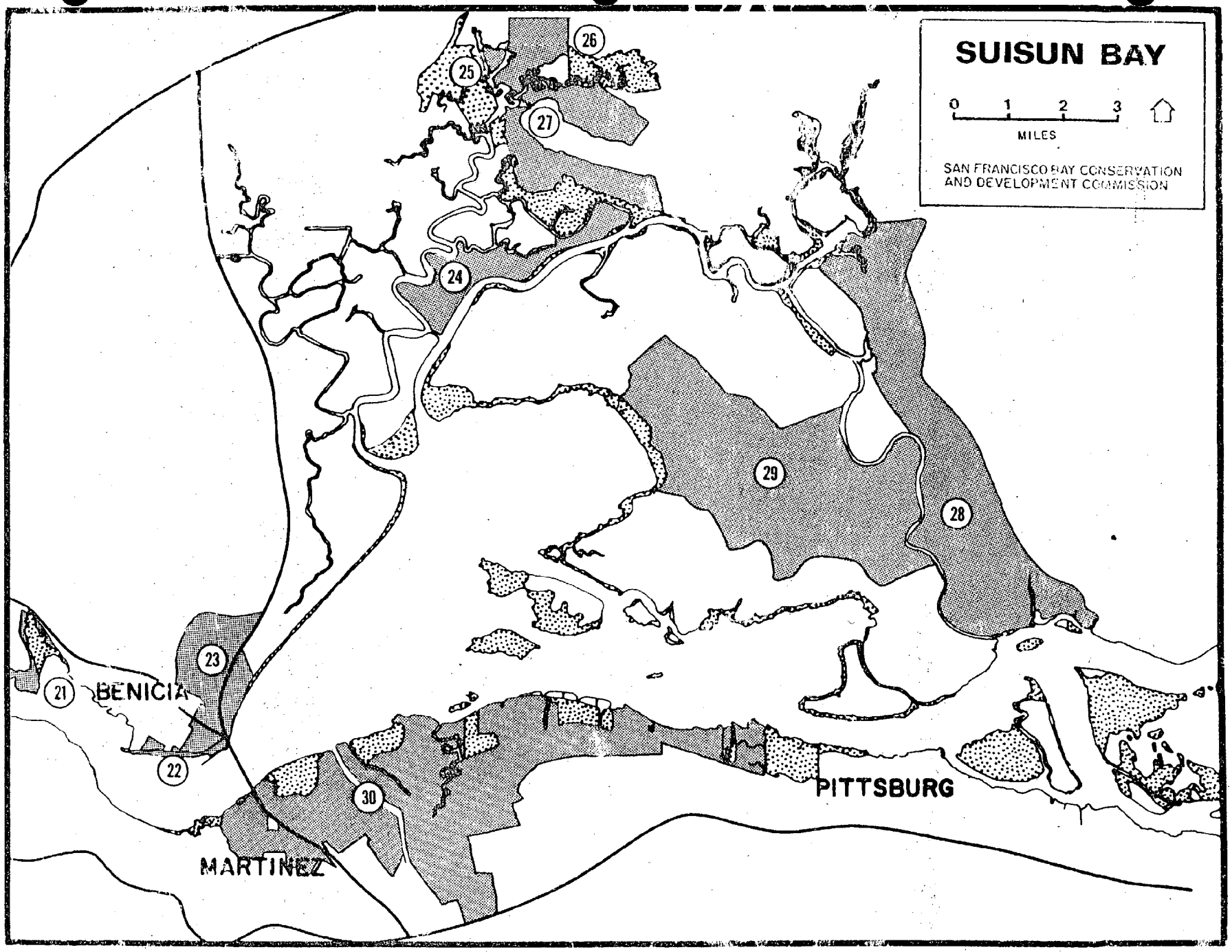
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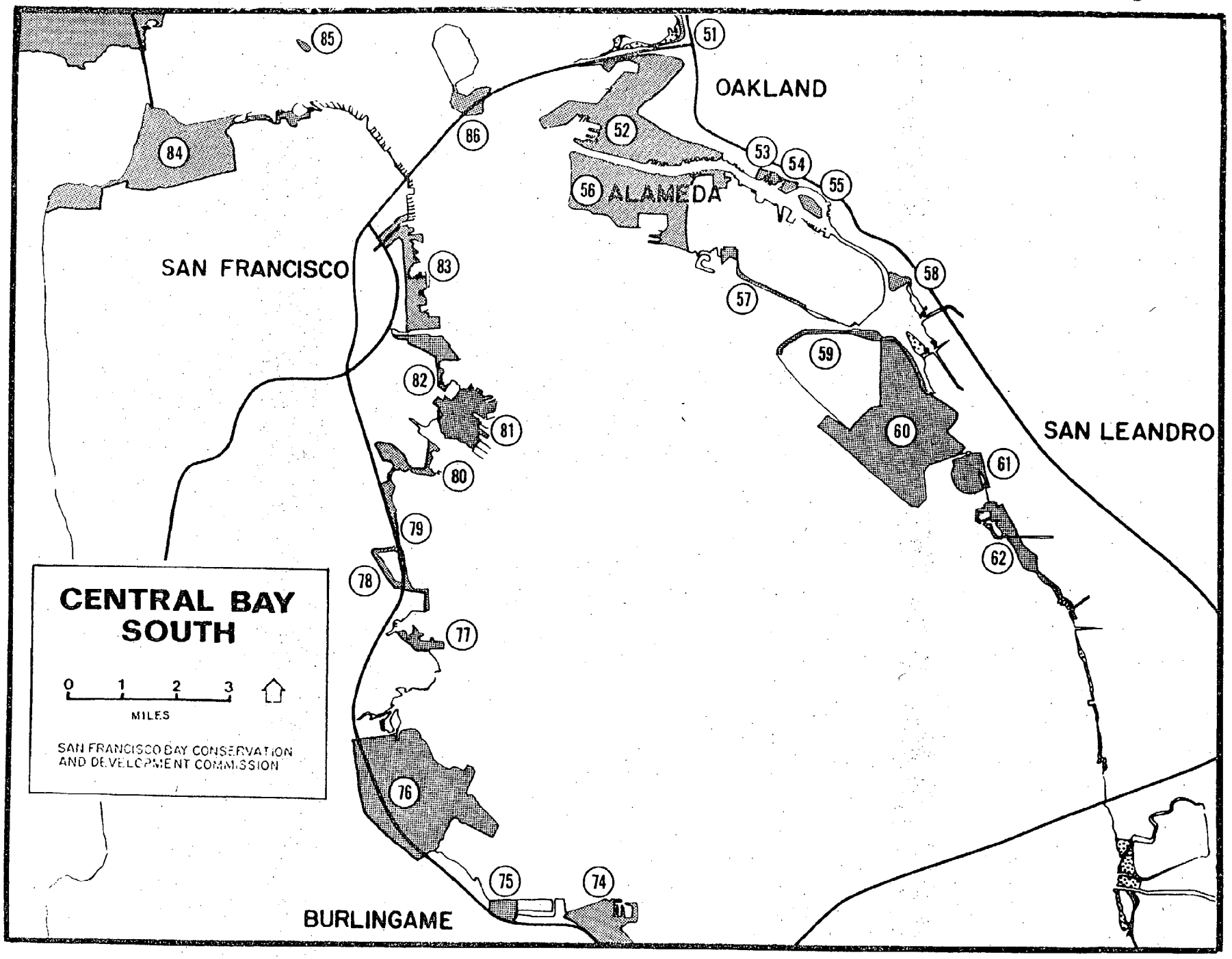
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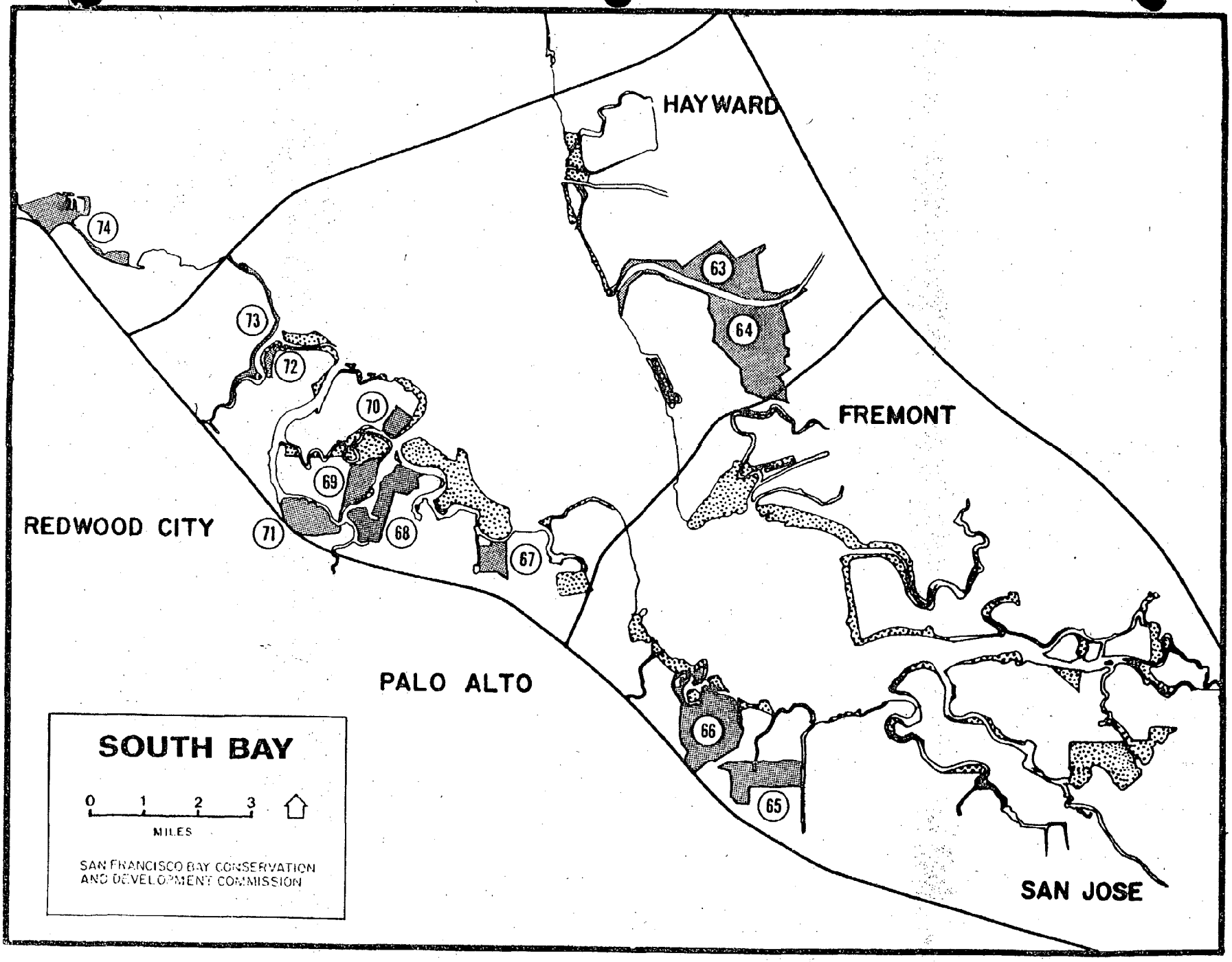
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AND DEVELOPMENT COMMISSION

SPECIAL AREA PLAN NO. 1: SAN FRANCISCO WATERFRONT

SPECIAL AREA PLAN NO. 1:

SAN FRANCISCO WATERFRONT

San Francisco Bay Conservation and Development Commission

STATE OF CALIFORNIA EDMUND G. BROWN JR., Governor

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
30 VAN NESS AVENUE
SAN FRANCISCO, CALIFORNIA 94102
PHONE: 557-3686

September 19, 1975

E R R A T A

PIERS 34, 36, 38, 40, 42, & 44

Permitted Uses on New or Replacement Fill (Subject to Policies)

COMMERCIAL RECREATION
PUBLIC RECREATION/OPEN SPACE/PUBLIC ACCESS
MARINA

1. Bay-oriented commercial recreation on replacement fill in the areas occupied by Piers 34 through 44 should be limited in scale and consistent with the recommended development of Seawall Lots 329 through 336, of existing Piers 26 through 32 and 46a and b, (when these are no longer in maritime use), and of the triangle bounded by 2nd Street, Bryant Street and The Embarcadero.
2. No hotel/boatel use should be permitted on replacement fill in the area of Piers 34 through 44.

NOTE: This section above should be inserted between pages 44 and 45 of the Special Area Plan No. 1: San Francisco Waterfront.

The Waterfront Advisory Committee was appointed in April, 1973 and submitted a recommended Special Area Plan for the San Francisco waterfront to BCDC in December, 1974. This recommended plan formed the basis for the following Special Area Plan, adopted by BCDC as a Bay Plan amendment. While the Committee members were selected to represent a wide diversity of views, they served on the Committee as individuals, and not necessarily as official representatives of their organizations. The members of the Committee and their alternates were as follows:

WILLIAM EVERS, Chairman
--Bay Conservation and Development Commission

DIANNE FEINSTEIN
--San Francisco Board of Supervisors and BCDC

RICHARD GOLDMAN
Toby Rosenblatt, Alternate
Judy Sheldon, Alternate
--Citizens' Waterfront Committee

RICHARD GRYZIEC
Ann Fogelberg, Alternate
--San Francisco Tomorrow

ROBERT KATZ
--Telegraph Hill Dwellers' Association

KAY KERR
Esther Gulick, Alternate
--Save San Francisco Bay Association

ROBERT KIRKWOOD
--San Francisco Planning and Urban Renewal Association (SPUR)

CYRIL MAGNIN (To August, 1974)
JOHN WILLIAMS
--San Francisco Port Commission

WALTER NEWMAN
Allan Jacobs, Alternate
George Williams, Alternate
--San Francisco Planning Commission

BYRON NISHKIAN
William Sargeant, Alternate
--Downtown Association of San Francisco

ROBERT RUMSEY (To October, 1974)
ART EVANS
William Mason, Alternate
--San Francisco Redevelopment Agency

LEX BYERS
--Greater San Francisco Chamber of Commerce

DWIGHT STEELE
Becky Evans, Alternate
--Sierra Club, Bay Chapter

ELAINE SUNDAHL (To November, 1973)
PAUL SHERRILL
--Potrero Hill Residents' and Homeowners' Association

DON L. ROTAN
--Marine Cooks and Stewards Union

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I. INTRODUCTION AND SUMMARY

Few cities of the world can equal San Francisco's waterfront setting. Yet the northern waterfront has for too many years been characterized by obsolete and dilapidated piers no longer suitable for either maritime use or new non-maritime development. Disagreements over the use, scale, and intensity of new development on Bay fill have stymied attempts to realize the immense public benefits that waterfront revitalization could bring.

In April, 1973, the BCDC, at the request of its Chairman, William D. Evers, appointed a widely-representative committee to advise it on a plan for the San Francisco waterfront. The committee's charge was to develop, by means of a "parcel-by-parcel" planning process, a BCDC "special area plan" for the San Francisco waterfront. Under BCDC Regulations, a special area plan applies any or all of the policies in the Commission's San Francisco Bay Plan in greater detail to a specific geographic area either wholly or partially within BCDC jurisdiction, such as the San Francisco waterfront. The special area plan is intended to serve as a guide as to what fill, dredging, or change in use in any area would appear to be consistent with the McAteer-Petris Act and the Bay Plan policies. Adoption of a special area plan, however, does not alter the requirement that a permit must be secured from the Commission for any development within its jurisdiction.

As part of the planning process, the Port delineated the waterfront areas that would probably be surplus to maritime needs, and these non-maritime areas were the primary focus of committee study, analysis, and deliberations. Working over a period of almost two years, and meeting an average of twice a month, the committee painstakingly developed a

proposed special area plan for the San Francisco waterfront from the Hyde Street Pier through India Basin.

The committee's analysis of desired uses and guidelines for development resulted in a case-by-case examination of each site's potential for serving various public needs. As the planning progressed, a number of assumptions, determinations, and findings emerged which are important in understanding the rationale for many of the plan's policies and recommendations. Some of the more important of these are summarized below:

-- The San Francisco waterfront is a vitally important regional resource which can support port and related maritime facilities, public access, open space, recreational sites, and water-oriented commercial recreation. These can be accommodated without undue conflict, if development is guided by overall planning responsive to public desires.

-- Improvement and development of the waterfront should proceed on the basis of a detailed plan which incorporates a balanced program for attaining economic, environmental, and social goals.

-- The results of economic studies indicate that the use of replacement fill for office and residential use within current city height restrictions (1975) is not likely to generate rent to the Port. In addition, these uses are not water-oriented and therefore could not be permitted on new or replacement fill without amendments to the McAteer-Petris Act.

-- Waterfront land is both valuable and scarce, and therefore should not be used for automobile access and parking unless absolutely necessary for permitted uses, no upland location is feasible, and it is the minimum necessary.

-- Elevated freeways near the shoreline impair visual access to the Bay, detract from the desirability of waterfront sites for commercial recreation and public access, and are perceived as a barrier between the city and its waterfront.

-- Maritime activities are intrinsically interesting, and provide much of the character of the waterfront. Public access, view sites, and recreation areas are desirable additions to maritime districts, provided they do not interfere with maritime functions.

-- Greater amounts of public recreation, open space, and public access along the shoreline--particularly in the Ferry Building area--are essential to full realization of the potential for public enjoyment of the Bay. Public funding may be required to achieve the desired amounts of public areas, in addition to the public access required as part of the permit process.

-- The replacement and reuse of obsolete maritime finger piers north of the Bay Bridge should be guided by a "Total Design Plan" with detailed design specifications developed by a public agency for the entire area.

-- The character of the Fishermans' Wharf area depends on the maintenance and expansion of the fishing fleet and related maritime activities.

-- The waterfront and adjacent inland areas between the Bay Bridge and China Basin hold potential for development as a unique residential area, in conjunction with commercial, existing industrial, and open space uses.

The plan the committee came up with was based on a blending of interests. It was responsive to the financial needs of the Port, the environmental constraints of the Bay Plan and McAteer-Petris Act, and the strong public desire for an accessible, usable waterfront. After extensive public hearings and the environmental impact review process, the Commission adopted the San Francisco Special Area Plan as a Bay Plan amendment on April 17, 1975. (As an amendment to the Bay Plan, the special area plan must be read in conjunction with both the McAteer-Petris Act, and other provisions of the Bay Plan.)

The special area plan contains numerous policies relating primarily to permitted uses and conditions for such uses on pier area, as well as to public access and open space. The plan allows for development on new piers of hotels, shops, restaurants, marinas, amusements, as well as maritime and public recreation uses, in a variety of configurations and intensities. In the vicinity of the Ferry Building, the plan proposes that one-half of the pier area be walkable[1] public open space, unless, as part of the Total Design Plan for the area, it is

1/ Under the special area plan, usable, walkable open space must be located at ground or platform level, but minor variations in elevation intended to enhance the design of open space may be permitted. Rooftop and interior open areas shall not be considered part of the required open space. Open space should be open to the sky, although some covering may be allowed if it serves the public areas, and does not support structures.

determined by the San Francisco Board of Supervisors and the Commission that private development cannot provide all of the fifty per cent (50%) walkable open space, and that no other public or private funds are obtainable to provide the remaining walkable open space. The plan also contains recommendations to other agencies, principally the City Planning Commission and the Port of San Francisco. Fiscal implications of the plan, studied intensively by an economic consultant, are such that the Port of San Francisco could receive almost $3 million per year in additional revenue from permitted non-maritime development.

In sum, the special area plan, together with the McAteer-Petris Act and the Bay Plan, prescribes a set of rules for non-maritime shoreline development along the San Francisco waterfront. Within these rules are contained many possibilities for creation of a revitalized, beautiful, and useful shoreline.

II. SUMMARY OF McATEER-PETRIS ACT AND BAY PLAN PROVISIONS GENERALLY APPLICABLE TO THE SAN FRANCISCO WATERFRONT

Under BCDC Regulations (Sections 10820, 10821, and 10822), this special area plan is to serve as a guide to public agencies and private parties as to when BCDC permits will be issued by showing what filling, dredging, or changes in use would appear to be consistent with the McAteer-Petris Act (the BCDC law) and the San Francisco Bay Plan. This plan does not alter the requirement that a permit be secured from the Commission for any development within its jurisdiction. Furthermore, this plan is an amendment to the Bay Plan, not a substitute for either it or the McAteer-Petris Act, and any proposed development must be consistent with the McAteer-Petris Act, the Bay Plan, and the special area plan. The special area plan must, therefore, always be read in conjunction with both the provisions of the McAteer-Petris Act and the Bay Plan. The most important of these are summarized below:

The McAteer-Petris Act

Under the McAteer-Petris Act, BCDC can permit Bay fill[2/] only for certain "water-oriented" uses specified in the law or "minor fill for improving shoreline appearance or public access to the Bay." The water-oriented uses the law permits include water-related industry, bridges, wildlife refuges, and water-oriented recreation and public assembly. Housing and offices, two uses for which large areas of the Bay were filled in the past, have been determined by the Commission not to be water-oriented uses.

2/ "Fill" includes earth or any other material including pilings; any water coverage whether on pilings or by cantilever; and floating structures moored for extended periods of time, such as houseboats and floating docks.

In addition to limiting the uses for which fill can be approved, the Act also requires the Commission to find, among other things, that:

-- There is no alternative upland location for any fill authorized;

-- The fill is the minimum necessary;

-- The nature, location, and extent of any fill will minimize harmful effects to the Bay;

-- The fill is constructed in accordance with sound safety standards;

-- The fill will, to the maximum extent feasible, establish a permanent shoreline; and

-- The person proposing to fill has sufficient title to the properties in question as to be able to fill it in the manner and for the uses to be approved.

The San Francisco Bay Plan: Policies Generally Applicable

1. Safety

Under the Plan policies on Safety of Fills (page 17), every project on fill is reviewed by the Commission's Engineering Criteria Review Board, which is composed of seismic experts of international repute, and each project must be constructed according to standards prescribed by the Board. In most cases, these standards, which are based on the latest technological and scientific knowledge, exceed those established by local building codes.

2. Public Access

The Plan policies on Public Access (page 29), as well as the provisions of the McAteer-Petris Act, require that any project built

either on fill or on the shoreline must provide public access to the maximum extent feasible. In general, this means, at a minimum, access open to the public both to and along the shoreline of project sites, although exceptions can be made if the public access is thereby improved. The extent, design and location of areas proposed for public access in projects is reviewed by the Commission's Design Review Board, which is composed of leading Bay Area architects, designers, and engineers.

3. Effects on the Bay

The Commission also evaluates all projects on the basis of the Plan policies on Water Pollution (page 10), Smog and Weather (page 10), Water Surface Area and Volume (page 11), and Marshes and Mudflats (page 11). These policies were adopted to ensure a level of water quality in the Bay that was sufficiently high to permit full public use and enjoyment of the Bay, and they require all projects to comply with the requirements of the Regional Water Quality Control Board. These policies further state that the remaining water volume and surface area of the Bay should be maintained to the greatest extent feasible and that filling and diking should be permitted only for purposes providing substantial public benefits and only if there is no reasonable alternative.

The San Francisco Bay Plan: Uses and Purposes for Which Fill May be Allowed

Within the constraints of the McAteer-Petris Act, the Bay Plan specifies the uses and purposes for which fill may be permitted in various parts of the Bay. From the standpoint of the San Francisco waterfront, the most important uses are ports, water-related recreation,

minor fill to improve shoreline appearance or public access, and Bay-oriented commercial recreation and Bay-oriented public assembly.

1. Ports

The Port policies (page 20), call for substantial redevelopment of existing facilities at San Francisco, and state that shoreline areas needed for port uses should be reserved for that purpose. These port-priority areas on the San Francisco waterfront are shown on the maps included in this plan. The Bay Plan Port policies also state that permitted filling or dredging should be consistent with an overall regional port development plan in order to avoid unnecessary filling and dredging for port purposes. The Port policies further state that other uses, especially public access and public and commercial recreational development, should be permitted in port areas if they do not significantly impair efficient utilization of the port areas.

2. Water-Related Recreation

The Bay Plan policies on Water-Related Recreation (page 23), encourage the construction of marinas at sites designated on the Bay Plan maps and at other suitable locations, i.e., sites that do not fill up unusually rapidly with silt or mud and that are not subject to dense fog. Some fill can be permitted for marina support facilities (parking, service buildings, launching lanes, etc.), but any fill must be the minimum necessary.

The Plan policies on Water-Related Recreation further suggest that key shoreline areas should be reserved for water-related recreation. In addition, limited commercial recreation facilities, such as small restaurants, can also be permitted in shoreline park areas, provided they are clearly incidental to the park use, and are in keeping with the basic

character of the park, and do not obstruct public access to and enjoyment of the Bay.

3. Minor Fill to Improve Shoreline Appearance or to Improve Public Access

In addition to fill for the uses just described, under the Bay Plan policies on Public Access (page 29) and Appearance and Design (page 31), the Commission can also approve minor fill to improve shoreline appearance and to improve public access. However, the Commission's Regulations limit such filling to cases where it is physically impossible or economically infeasible to improve shoreline appearance or public access without filling.

4. Bay-Oriented Commercial Recreation and Bay-Oriented Assembly

Under Amendment #1-71 to the Bay Plan, other major uses for which some fill can be permitted are "Bay-oriented commercial recreation and Bay-oriented public assembly." These uses are defined in the Bay Plan (Amendment #1-71) as "facilities specifically designed to attract large numbers of people to enjoy the Bay and its shoreline, such as restaurants, specialty shops, and hotels." In general, fill for these uses can be permitted on privately-owned property in the Bay where filling for other permitted uses would not be consistent with the Plan. However, because Bay-oriented commercial recreation and public assembly are the only uses for which filling is permitted on a large portion of the privately-owned property in the Bay, fill for these uses is generally not permitted on publicly-owned land, e.g., the areas held in trust by the Port of San Francisco.

The one exception to this policy is contained in Section a.(5) of Amendment #1-71, which was adopted by the Commission to encourage removal of obsolete piers on privately-owned or publicly-owned land by permitting

the piers to be replaced with fill (pile-supported structures only) for Bay-oriented commercial recreation and public assembly. However, replacement fill for these uses can occupy only up to fifty per cent (50%) of the area being uncovered by removal of the obsolete piers, and the remainder must be devoted to public recreation, open space (including open water) and public access to the Bay. Furthermore, any project involving replacement fill must provide a permanent shoreline to the maximum feasible extent. Finally, in order to avoid haphazard and piecemeal development, any project involving replacement fill must be consistent with a special area plan for the area of the proposed project. This latter requirement led in large part to the Commission's undertaking, in cooperation with the City and County of San Francisco, the preparation of a special area plan for the San Francisco waterfront.

III. SPECIAL AREA PLAN: PERMITTED USES; POLICIES; RECOMMENDATIONS; AND MAPS

Area Covered by Plan

The area covered by Special Area Plan No. 1: San Francisco Waterfront is the land and water area located along the existing shoreline of the City and County of San Francisco from the Hyde Street Pier to India Basin, including all areas within the jurisdiction of the Port of San Francisco. Special Area Plan No. 1 divides the waterfront area into numerous parcels to which particular permitted uses, policies, recommendations, and maps are addressed.

Components of Plan

1. Permitted Uses on New or Replacement Fill

The permitted uses listed in the text and on the maps refer to uses which may be allowed on fill in specified areas within BCDC's "bay" jurisdiction, subject to all relevant policies. These use designations have no effect on existing uses.

2. Policies

The policies in Special Area Plan No. 1 apply only to areas within the jurisdiction of BCDC. These policies, in addition to the McAteer-Petris Act and other sections of the San Francisco Bay Plan, will be the basis for BCDC permit decisions.

3. Recommendations

The recommendations are suggestions to be considered in BCDC's review of permit applications. In addition, the recommendations are advisory to the City and County of San Francisco, primarily the Port Commission and the Planning Commission, and set forth suggested

actions that should be taken by these agencies in areas within their jurisdiction.

4. Maps

The maps delineate port priority use areas, as well as areas for public recreation, open space, and public access. In addition, the maps also indicate permitted uses by geographic area. All maps should be read in conjunction with the relevant policies and recommendations.

General Policies

1. Criteria for Granting Permits

Within the area covered by Special Area Plan No. 1: San Francisco Waterfront, a proposed project should be approved if it is consistent with: (1) the McAteer-Petris Act; (2) the provisions of the San Francisco Bay Plan then in effect; and (3) Special Area Plan No. 1: San Francisco Waterfront.[3/]

2. Geographic Vicinities

Amendment #1-71 to the San Francisco Bay Plan specifies that pier area removed within a given geographic vicinity may be replaced only within the same geographic vicinity. Special Area Plan No. 1 designates three separate geographic vicinities to which the removal and replacement of fill must be confined. These are as follows:

a. The land and water areas within the jurisdiction of the Port of San Francisco from Hyde Street Pier through Pier 9.

3/ The minutes of the San Francisco Waterfront Advisory Committee, the Report on the Special Area Plan for the San Francisco Waterfront (December, 1974), and the proceedings of the Commission in adopting Special Area Plan No. 1: San Francisco Waterfront provide further background information on the bases for the policies and recommendations of the special area plan.

b. The land and water area within the jurisdiction of the Port of San Francisco from Pier 7 through Pier 24, including the Ferry Building and the BART platform.

c. The land and water area within the jurisdiction of the Port of San Francisco from Pier 26 to the extension of Earl Street at India Basin.

3. Parking on Replacement Fill

a. Parking on replacement fill for public and commercial recreation uses other than marinas should be allowed only if: (1) no alternative upland location is feasible; (2) the parking is located within a structure devoted to a use permitted under Special Area Plan No. 1 and is necessary to such use or to other permitted uses in the same project area; and (3) it is the minimum necessary.

b. Determination of the amount of parking allowed should be based on the desirability of reducing automobile traffic along the waterfront and to the maximum extent feasible should consider the use of existing public transit and inland parking, as well as public transit and inland parking which could reasonably be provided in the future.

4. Marina Parking

Parking for marinas should be provided wherever possible on upland locations. Where upland locations are not feasible, marina parking may be provided on new fill, provided that it is the minimum

necessary, and that the total fill for a marina does not exceed 1/2:1 land/water ratio. Loading and unloading areas adjacent to marinas are encouraged in order to minimize the need for fill for parking.

5. Fill for Maritime Facilities

Any filling or dredging for maritime purposes should be consistent with the Bay Plan and the McAteer-Petris Act.

6. Required Public Access

a. In accordance with general Bay Plan policies, maximum feasible public access should be provided in conjunction with any development of existing or replacement piers. Public access should be located at ground or platform level, but minor variations in elevation intended to enhance design of open space may be permitted. Public access should also be open to the sky, although some covering may be allowed if it serves the public areas and does not support structures. Particular attention should be given to the provision of perimeter public access along the platform edge. Other uses may extend to the platform edge subject to the following conditions:

(1) Such uses should enhance the total design of the project, should serve to make the public access more interesting, and should not divert the public way along more than twenty per cent (20%) of the total platform edge.

(2) Deviations of the public way from the platform edge should be limited to short distances.

b. Development of public access should be required as a condition of permits for new maritime and non-maritime development. The location of such access obtained as a condition of maritime development between Channel Street and India Basin should be guided by the designations for public recreation, open space, and public access, as found on Special Area Plan Maps 10(e) and 10(f).

7. View Corridors

Important Bay views along the Embarcadero and level inland streets should be preserved and improved. Minor encroachment into the view corridors from level inland streets may be permitted under the following conditions:

a. Where the encroaching element has a distinct maritime character, is separated from the shoreline by water, and adds variety to the views along the waterfront.

b. Where minor structures (such as kiosks) are desirable to provide public amenities contributing to a continuity of interest and activity along the waterfront.

c. Where essential maritime facilities cannot reasonably be located and designed to avoid view blockage.

8. Residential and Office Uses

No residential or office uses should be permitted on new or replacement fill on the San Francisco waterfront. Such uses may be permitted in conformity with city plans along the existing shoreline, excluding the BART platform, if maximum feasible public access to the Bay is provided.

9. Sport Fishing

Facilities for commercial sport fishing are permitted in all waterfront areas within the special area plan, subject to all relevant policies and recommendations of this plan.

10. Mooring of Historic Vessels

Pending completion of the Total Design Plan for the Ferry Building area and the development by BCDC of more specific guidelines governing the mooring of historic vessels in the Bay, temporary mooring (periods not to exceed one year) of ships, boats, and ferries of historic interest to the Bay Area, including those containing Bay-oriented commercial recreation, should be permitted in the area of Piers 9 through 24 at existing piers, provided that these uses: (1) do not require substantial alteration to any pier structure, (2) do not require new parking facilities over water, and (3) improve public access and shoreline appearance. Permits issued for any ships, boats or ferries under this policy should specify that no "grandfather rights" of any kind are obtained.

General Recommendations

-- The existing height and bulk limits (as of April, 1975) of the City of San Francisco should not be exceeded in any waterfront development. The Planning Commission is encouraged to use its discretionary project review authority to assure that the prominence of the Ferry Building and its tower is maintained, in accordance with the City's Northern Waterfront Plan (1969).

-- The entire San Francisco waterfront, including all areas for public recreation, open space, or public access to

the Bay, should be linked by a continuous pedestrian-bicycle path.

-- Public open space should be provided on existing piers when there is a substantial change in use from maritime to non-maritime.

-- The special problems of building over water on existing finger piers, with regard to the suppression of fire and the provision of adequate escape routes, should be called to the attention of the BCDC, the Fire Commission, and other appropriate public agencies.

-- The proposed extension of Interstate 280 should be re-aligned inland and should be linked to the Bay Bridge and East Bay Terminal, rather than to the Embarcadero Freeway, in order to enhance potential development and public use of the waterfront between the Bay Bridge and China Basin.

-- Reference is made to the report of the San Francisco Department of City Planning entitled "A Transportation System for the Embarcadero Area." Within the context of regional transportation needs and recognizing the Embarcadero Corridor as one of regional importance, BCDC recommends consideration of this report to the appropriate local, regional, state, and federal transportation agencies.

-- Parking not necessary to a use permitted under Special Area Plan No. 1 should not be allowed on existing piers; present parking on existing piers not necessary to a use

permitted under the plan should be phased out within five years of the effective date of this plan.

-- Provision of parking on existing piers, if necessary to a use permitted under the plan, should be the minimum necessary. Determination of the amount of parking provided should be based on the desirability of reducing automobile traffic along the waterfront and to the maximum extent feasible should consider the use of existing public transit and inland parking, as well as public transit and inland parking which could reasonably be provided in the future.

-- Billboards should be phased out along the waterfront within five years of the effective date of this plan.

-- Design Recommendations:

  -- In order to preserve the historical continuity of the waterfront, older buildings of architectural merit or historic significance should be retained.

  -- For historic continuity and esthetic reasons, pier entrance arches should, wherever possible, be preserved and incorporated into designs for new development.

-- Connecting buildings between piers should be eliminated wherever possible.

Geographic-Specific Policies and Recommendations

1. Hyde Street Pier Through Pier 43

The portion of the San Francisco waterfront between the Hyde Street Pier and Pier 43 comprises a diverse area serving the commercial fishing industry and providing major tourist attractions. The Maritime State Historic Park is located on the west side of the Hyde Street Pier, while the east side is unused and in a serious state of disrepair. Fish Alley, located between the Hyde Street Pier and Pier 45, is the center of commercial fishing activity in San Francisco, although the size of the commercial fishing fleet has decreased substantially over the last 15 years. Pier 45, 11 acres in area and resting partly on solid fill, is assumed to be structurally sound and available for non-maritime development. BCDC has shoreline jurisdiction over Pier 45, and therefore the provision of maximum feasible public access is of principal concern. Existing uses at Pier 43 and Pier 43-1/2 include the San Francisco Maritime Museum ship Balclutha, tour boats, landings, ferry slips, and and restaurants.

HYDE STREET PIER

Permitted Uses on New or Replacement Fill (Subject to Policies)	FISH PROCESSING LIMITED COMMERCIAL RECREATION PUBLIC ACCESS REPLACEMENT OF EXISTING BAY-ORIENTED COMMERCIAL RECREATION MARITIME
Policies:	1. The reconstruction or improvement of the east side of the Hyde Street Pier for fish processing should be permitted. It

need not be rebuilt to its present configuration, but any new fill should be the minimum necessary.

2. Replacement fill for Bay-oriented commercial recreation should be permitted as part of the reconstruction of the east side of the Hyde Street Pier if the Bay-oriented commercial recreation: (a) is limited in scale; (b) does not include hotel uses; and (c) is compatible with primary use of the pier for water-related recreation (maritime historical park) and for fish processing.

3. No parking should be allowed on new or replacement fill at the Hyde Street Pier, unless it is necessary for fish processing activities. No parking should be allowed for commercial recreation uses on replacement fill.

Recommendations:

1. Use of the existing east side of the Hyde Street Pier, or portions retained as part of any reconstruction or improvement, should be consistent with the above policies, including the restriction on parking.

FISH ALLEY (Wharves 47, J-1 through J-10, Seawall Lots 302 and 303)

Permitted Uses on New or Replacement Fill (Subject to Policies)

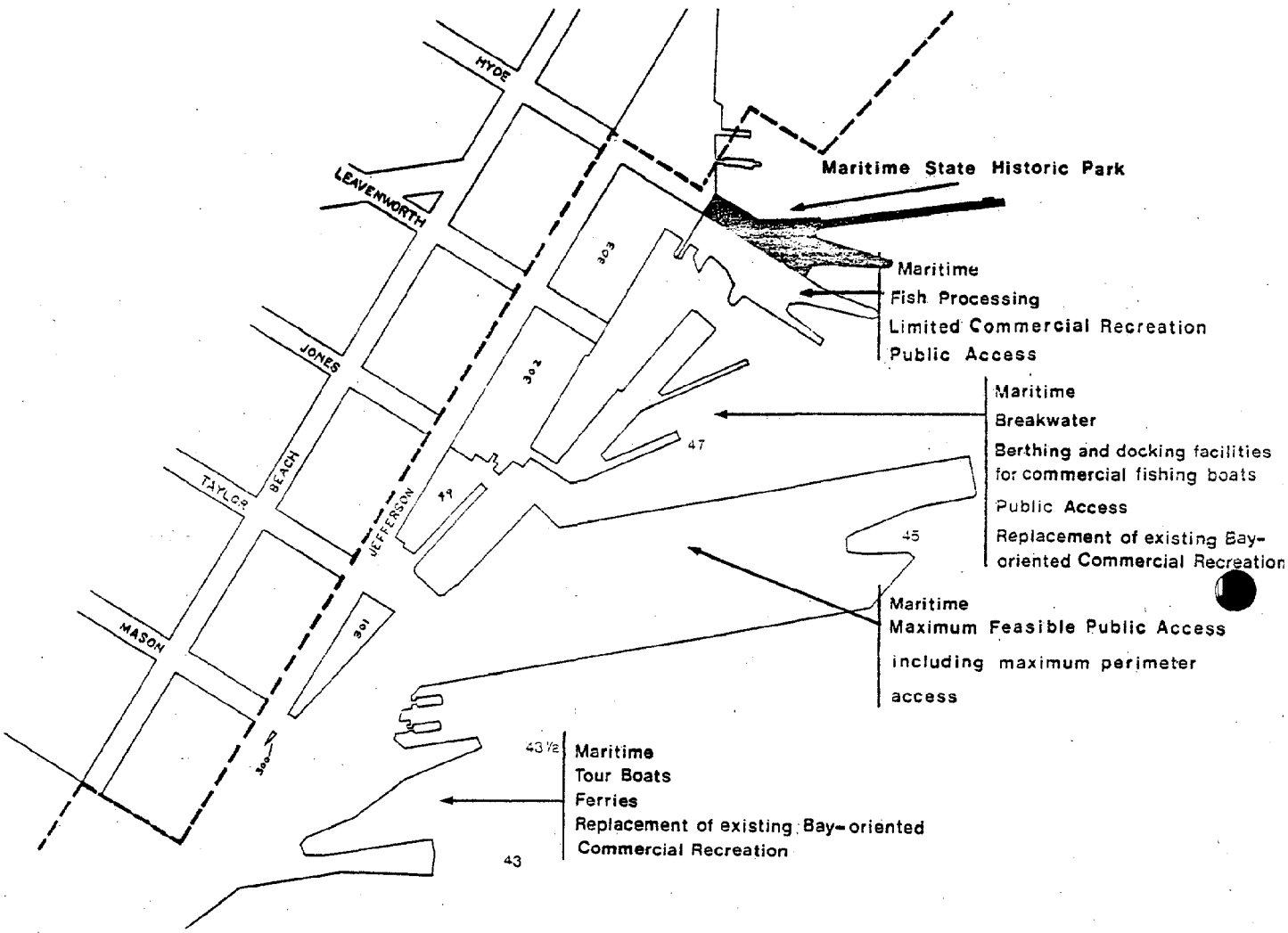
REPLACEMENT OF EXISTING BAY-ORIENTED COMMERCIAL RECREATION
BREAKWATER
BERTHING AND DOCKING FACILITIES FOR COMMERCIAL FISHING BOATS
PUBLIC ACCESS
MARITIME

Policies:

1. Fish Alley facilities should be improved and expanded to serve the commercial fishing fleet and to maintain and enhance the area as a center for commercial fishing uses. Improved berthing, docking, and related facilities for commercial fishing boats, including necessary sanitation facilities, should be permitted.

2. No new fill or replacement fill for Bay-oriented commercial recreation or Bay-oriented public assembly should be permitted unless it is to replace an existing Bay-oriented commercial recreation use that has been involuntarily destroyed.

3. A breakwater between the Hyde Street Pier and Pier 45 should be permitted if a breakwater will: (a) protect commercial fishing boats moored in Fish Alley from damage caused



Special Area Plan Map 10a

0 400 800 1200 Feet

Port Jurisdiction - - -

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Note: Map for reference only
See relevant policies and recommendations

by wave action; and (b) significantly enhance the Fish Alley area as a center for commercial fishing activities.

Recommendations:

1. The existing wharves and the seawall lots should be modernized and improved for fish processing, marine repair and supply, Bay-oriented commercial recreation, and general retail/commercial, with fish processing predominant on the Bay side of these parcels.
2. A view corridor should be opened and maintained at the foot of Leavenworth Street between Seawall Lots 302 and 303.

PIER 45[4]

Permitted Uses on New or Replacement Fill (Subject to Policies)

PUBLIC ACCESS
BOAT SLIPS
MARITIME

Policies:

1. A limited number of private boat slips should be permitted adjacent to Pier

4/ The provisions of Special Area Plan No. 1 relative to Pier 45 are based on the assumption that new uses on the pier can be accommodated without structural improvements to those portions of the pier on pilings over the water. If reuse, in fact, requires new pilings to be driven in the water, uses over the pilings would have to be water-oriented. In this case, the Special Area Plan No. 1 policies, recommendations, and map provisions for Pier 45 will become inapplicable, and new policies, recommendations, and map provisions would have to be adopted as an amendment to the special area plan.

45 as part of any residential development of the pier.

2. Development of Pier 45 should provide maximum public access at pier level; the public access should be an integral part of the pier development and should create varied and interesting open spaces for public access, including visual access, to the Bay, particularly at the end of the pier and along pier edges.

3. All areas devoted to public access on Pier 45 should be protected from the wind to the maximum extent feasible without unnecessarily blocking views.

Recommendations:

1. Preferred uses that could be developed on this pier are:

   a. Walkable public open space;

   b. Residential development; and

   c. Neighborhood commercial.

   Uses that could be included with the above are:

   a. Hotel;

   b. Office space; and

   c. General retail commercial.

The amount and types of any retail uses to be developed on the pier should complement rather than compete with the existing commercial uses in the area.

2. Development on Pier 45 should minimize automobile traffic to and from the pier and the need for parking on the pier. Public transit should be encouraged.

3. Development of Pier 45 should open views of the Bay from ground level at the Embarcadero and from numerous vantage points on the pier, particularly from the end of the pier.

PIERS 43 and 43-1/2

Permitted Uses on New or Replacement Fill (Subject to Policies)

TOUR BOATS
FERRIES
REPLACEMENT OF EXISTING BAY-ORIENTED COMMERCIAL RECREATION
MARITIME

Policies:

1. No new fill should be permitted except to maintain present uses, including tour boats, ferries, and public access to the Bay.

2. Replacement fill should be limited to replacement of commercial recreation uses involuntarily destroyed.

Recommendation: 1. Present uses may be maintained on the existing pier structures. Parking on these piers should be phased out within five years.

SEAWALL LOT 301

Recommendation: 1. Seawall Lot 301 should be developed in conformance with the Northern Waterfront Plan of the City of San Francisco (1969), which calls for a "major urban plaza at the foot of Taylor Street." This should be a waterfront plaza with views of the Bay, and no new development should be permitted that is inconsistent with this recommendation.

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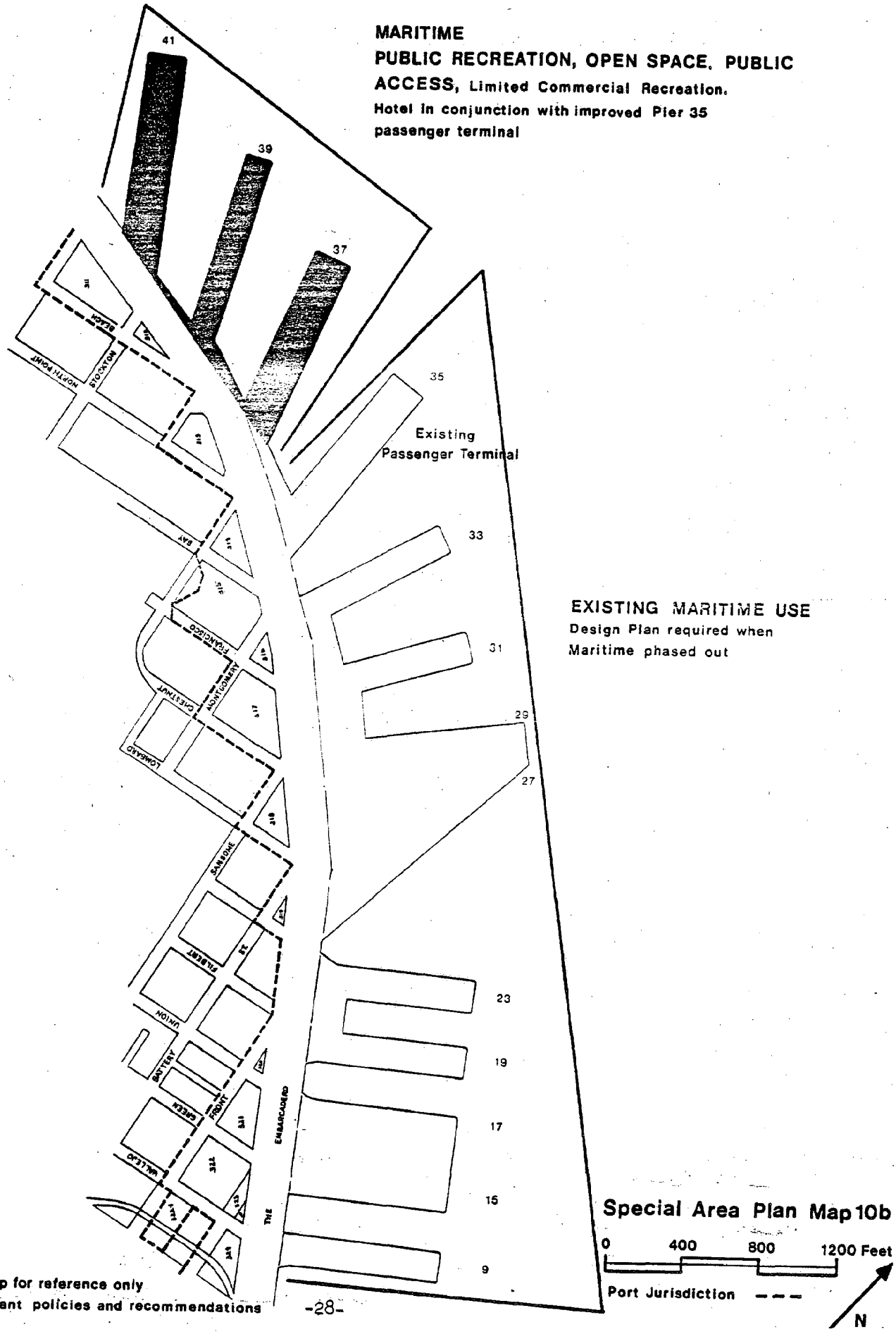
2. Pier 41 Through Pier 9

The area from Pier 41 through Pier 9 encompasses the major remaining cargo-handling piers on the northern waterfront, in addition to the passenger ship terminal. Piers 37, 39, and 41, however, are no longer used for handling cargo, although they are currently leased to several maritime tenants including water taxis, tugs and ferries, and tour boat operations. Pier 35 serves as a terminal for all incoming passenger ships, but it is generally considered to be inadequate both



Note: Map for reference only
See relevant policies and recommendations

esthetically and functionally. Piers 9 to 33 are used for break-bulk cargo operations and this use is expected to continue for some years. The maritime operations and the Bay along this portion of the waterfront are largely blocked from public view by continuous bulkhead structures connecting the piers. The inland side of the Embarcadero is lined with Port-owned seawall lots some of which have been developed for commercial office use and others of which are proposed for such development.

PIERS 37, 39, and 41

Permitted Uses on New or Replacement Fill (Subject to Policies)	MARITIME PUBLIC RECREATION/OPEN SPACE/PUBLIC ACCESS LIMITED COMMERCIAL RECREATION HOTEL
Policies:	1. Replacement fill in the area of Piers 37, 39, and 41 should be limited to: (a) public recreation and open space in conformance with local plans for the development of a "North Point Park" in this area; (b) a hotel that is as small as is economically feasible and in no event exceeds 400 rooms, that is developed only in conjunction with a new or substantially improved passenger terminal on Pier 35, and that is consistent with the park use described in (a) above; and (c) Bay-oriented commercial recreation that is limited in scale and incidental to park use.

2. No parking should be permitted on new or replacement fill in the area of Piers 41 and 39. Parking should be permitted on new or replacement fill in the area of Pier 37 only if it is part of a hotel permitted on that site and is otherwise consistent with the provisions of the general parking policies of Special Area Plan No. 1.

3. Any development on the shoreline, on existing piers or on new or replacement fill, should open to the public the exceptional views of the Bay from this location.

Recommendations:

1. The existing piers should not be used for parking lots except on Pier 41, where parking should be allowed only on a year-by-year basis in conjunction with a youth fishing program and if substantial public access to the Bay is provided.

2. If and when the Embarcadero is no longer needed as a roadway in the area of Piers 37, 39, and 41, it should be converted to an inland extension of the proposed North Point Park.

PIERS 9, 15, 17, 19, 23, 27, 29, 31, 33 and 35

Permitted Uses on New or Replacement Fill (Subject to Policies)	MARITIME PASSENGER TERMINAL PUBLIC ACCESS
Policy:	1. When and if maritime use of any pier in the area of Piers 9 through 35 is phased out, no new development should occur until a Total Design Plan for the entire area is adopted by BCDC. However, this condition shall not apply to Pier 9, if this pier is included as part of the Total Design Plan for the Pier 7 through 24 area.
Recommendations:	1. Piers 9 through 35 should continue in maritime use as long as economically feasible in order to serve cargo and passenger ships and to maintain the maritime character of the northern waterfront. 2. Pier 35 should be renovated as a modern, functional and attractive passenger terminal with associated commercial recreation uses such as a restaurant and small shops. 3. Connecting buildings between piers should be removed wherever possible in order to create new opportunities to view the Bay.

SEAWALL LOTS 311 THROUGH 324

Recommendation: 1. Seawall Lots 311 through 324 should be used for office, commercial and residential purposes and for parking.

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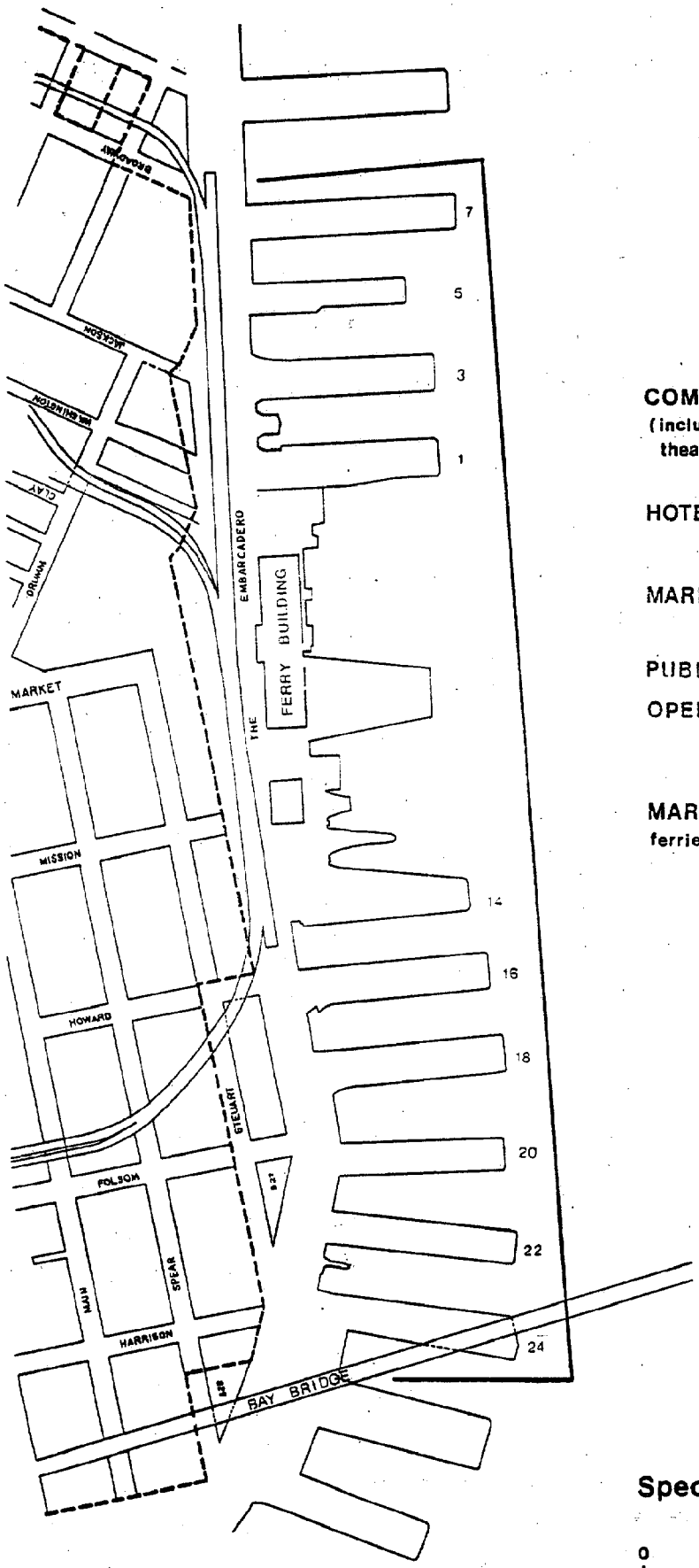
3. Piers 7 Through 24, Including the Ferry Building and BART Platform

The area from Piers 7 through 24 extends from Broadway to the Bay Bridge and includes ten finger piers, the Ferry Building and the BART platform. The ten piers flanking the Ferry Building were among the earliest built in San Francisco and most are in generally poor condition and no longer suitable for maritime use. Minor use of several of these piers continues, but such uses are interim, pending non-maritime development, while Piers 5, 14, 18, 20, and 22 have been condemned. Because of the deteriorated condition of many of the piers in this area, any major development is likely to occur largely on new platforms.

The Ferry Building, with its landmark clock tower, is the focal point of the northern waterfront, and also provides considerable office space for the Port of San Francisco and numerous other tenants. The BART platform extends bayward from the Ferry Building and is the future site of a restaurant and major landscaped open space. The Golden Gateway redevelopment area, the downtown financial district and the south-of-Market area are all adjacent to this waterfront area, although the Embarcadero Freeway creates a visual separation between the waterfront and inland uses from Pier 7 through Pier 14.



COMMERCIAL RECREATION
(includes restaurants, cafes, specialty shops, theaters, and concert halls)

HOTELS–BOATELS (Total no more than 800 rooms)

MARINA (no public launching ramp)

PUBLIC RECREATION, OPEN SPACE, PUBLIC ACCESS

MARITIME (includes pilot boats, tug boats, fire boats, ferries)

Special Area Plan Map 10c

0 400 800 1200 Feet

Port Jurisdiction — — —

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Note: Map for reference only
See relevant policies and recommendations

PIERS 7 THROUGH 24, INCLUDING THE FERRY BUILDING AND BART PLATFORM

Permitted Uses on New or Replacement Fill (Subject to Policies)

PUBLIC RECREATION/OPEN SPACE/PUBLIC ACCESS
COMMERCIAL RECREATION (including restaurants, cafes, specialty shops (e.g., boutiques, bookstores, arts and crafts, interior decoration), theaters, concert hall, galleries, amusements, night clubs, cabarets)
HOTELS/BOATELS
MARINA (no public launching ramp)
MARITIME

Policies:

1. No replacement fill should be permitted in the area of Piers 7 through 24, including the Ferry Building and the BART platform, unless it is consistent with a Total Design Plan for the area prepared by an appropriate public agency, approved by the relevant city agencies and adopted by BCDC. In the development of the Total Design Plan, there should be maximum opportunity for public comment from the earliest stages.
   a. The Total Design Plan should conform to all relevant policies and recommendations of Special Area Plan No. 1, and should include:
      (1) The approximate configuration of replacement fill and of the piers to be retained.
      (2) The approximate location and spatial allocation of uses, including the

design of parks, open space, view corridors and other areas for public access.

(3) The approximate square footage, height and bulk of proposed uses.

(4) The means by which required public recreation, open space and public access areas are to be provided and maintained (e.g., as a condition of development, through public investment, or both).

(5) The means by which unusable piers are to be removed.

(6) The amount of parking to be allowed for permitted uses.

b. The Total Design Plan, in conformity with all relevant policies and recommendations of Special Area Plan No. 1, should meet the following criteria:

(1) The total pier area (measured from the bayward curb line of the Embarcadero) devoted to walkable public recreation, open space and public access (not including roof tops, interior areas or the existing BART platform) is equal to the pier area devoted to all Bay-oriented commercial

recreation and Bay-oriented public assembly uses, unless both the San Francisco Board of Supervisors (by resolution) and the Commission, as part of the total design process, determine: (i) that private development cannot provide the fifty per cent (50%) walkable public recreation, open space and public access and at the same time yield a reasonable return both to Port and developer; and (ii) that insufficient public or private funds are obtainable from any source to provide the additional required walkable public recreation, open space and public access. In this case, the maximum feasible walkable public recreation, open space and public access should be provided; and in no case should the total area devoted to public recreation, open space (including new open water) and public access to the Bay be less than would be required under Amendment #1-71 of the Bay Plan.

(2) The required walkable public recreation, open space and public access is located at the platform level, although some variation in elevation may be desirable to make these areas more attractive and enjoyable to the public.

(3) The required walkable public recreation, open space and public access is open to the public without charge, except a small portion may be included as part of a fee-restricted amusement or theme park.

(4) The areas to be devoted to the required walkable public recreation, open space and public access are open to the sky (although some covering may be allowed if it serves the public areas and does not support structures).

(5) The required walkable public recreation, open space and public access does not include areas devoted to parking or streets open to general and regular vehicular use.

(6) Existing major view corridors from ground level at the Embarcadero and from inland streets are retained and substantial new view corridors are created.

(7) Bay-oriented commercial recreation on replacement fill is available at a range of price levels to encourage full use and enjoyment of the waterfront by all segments of the public.

(8) Hotel/boatel use does not exceed a total of 800 rooms.

(9) A theme park or amusement park is not the predominant commercial recreation use; such use should be water-oriented and enhance public enjoyment of the Bay.

(10) Bars, cabarets, night clubs, etc., are a minor use only.

(11) All hotel parking is enclosed within the hotel structure and parking is otherwise consistent with the provisions of the general parking policy of the special area plan.

(12) A passenger terminal is not included unless renovation of Pier 35 is not possible and studies have shown that a location elsewhere on the San Francisco waterfront is not feasible.

(13) Existing maritime use, including the pilot boats, the fire boats, the tug boats and the ferries, are retained to the maximum feasible extent.

(14) Housing, offices, department stores, heliports or STOL ports are not included in any development on replacement fill.

(15) No new water-related industrial use is included on replacement fill, other than maritime uses.

(16) Small-scale offices, studios (e.g., architects, art, photography) and housing are permitted on existing piers, excluding the BART platform. (Note: Under the McAteer-Petris Act, office and residential uses are not permitted on new fill, including replacement piers. BCDC

shoreline jurisdiction, except in priority use areas, is limited to assuring the provision of maximum feasible public access.)

2. The top of the BART ventilation structure behind the Ferry Building should be used only for Bay-oriented commercial recreation, such as a restaurant, that is located in a structure that extends no higher than 40 feet above the surface of the platform (minor ancillary structures such as elevator shafts and skylights may exceed this limit) and that improves the appearance of the shoreline.

3. The BART platform behind the Ferry Building should be used only as a landscaped public plaza, as the site for a ferry terminal, and for the berthing of ceremonial ships.

Recommendations:

1. To the extent that the area required to be devoted to public recreation, open space and public access to the Bay cannot be provided as a condition of private development, public funds should be used for this purpose.

2. Public funds should be sought also for the removal of piers not replaced or removed as

a condition of private development and not suitable for other uses.

3. The existing piers should not be used for parking lots.

4. Recognizing the achievements of the BCDC Waterfront Advisory Committee, a similar committee with representation of the many interests concerned with the Total Design Plan would be a useful means of assisting in development of this plan. BCDC is prepared to join with the other public agencies involved in establishing such a broad-based advisory committee, or failing such joint establishment, may reinstitute the Waterfront Advisory Committee with broad representation to review the plan.

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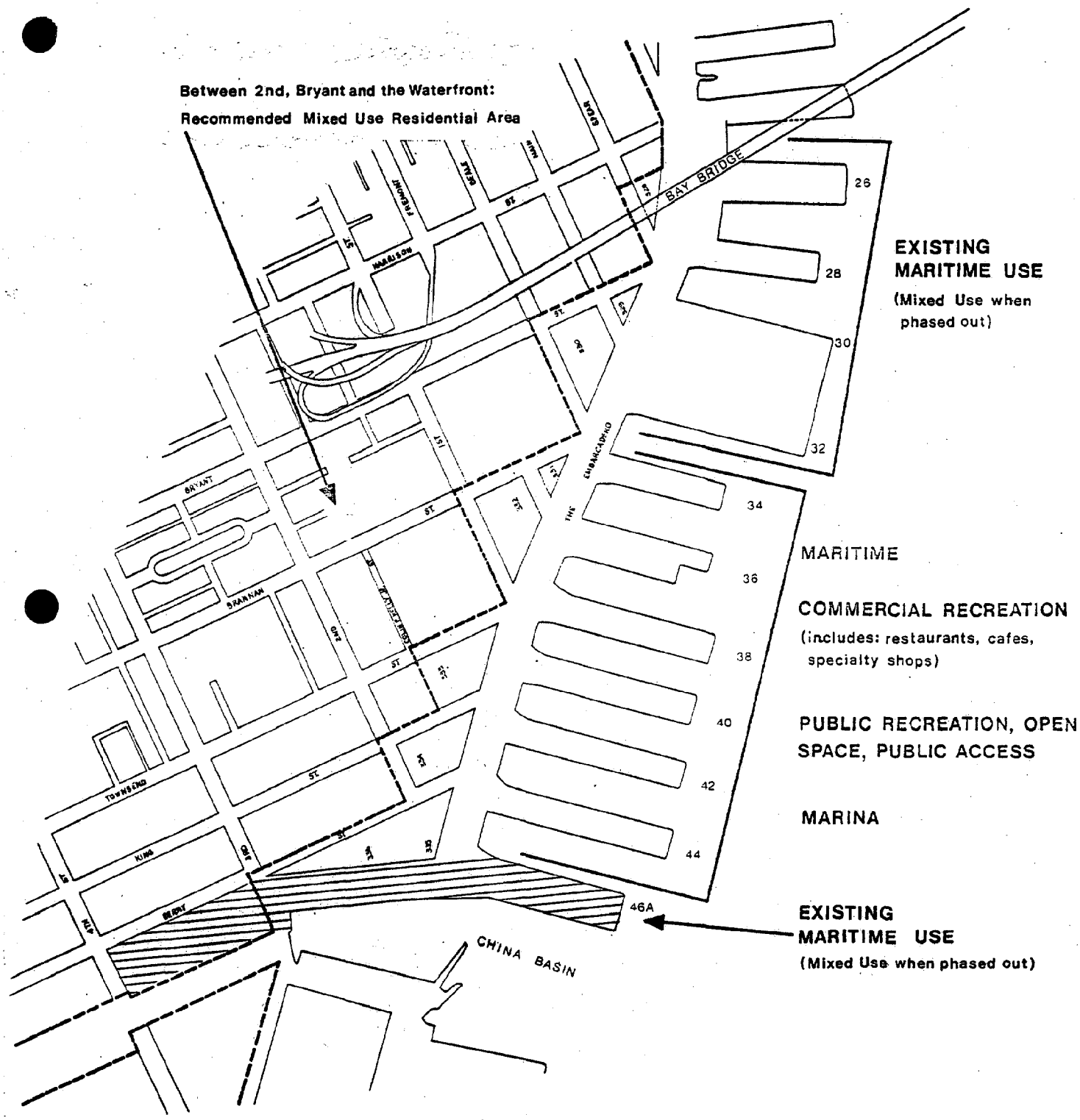
4. Bay Bridge to China Basin

The area from the Bay Bridge to China Basin is characterized by some degree of maritime use and by mixed industrial use and vacant property immediately inland. Piers 26, 28, 30, 32, and 46a and b are currently in maritime use, although it is uncertain how long this will continue. These piers are structurally sound and work now being undertaken by the Port of San Francisco will give them an extended life. Piers 34 through 44 are in poor condition and suitable for limited loading only. While some maritime use of these piers still takes place, it is expected that they will be



Special Area Plan Map 10d

0 400 800 1200 Feet

Port Jurisdiction – – –

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Note: Map for reference only
See relevant policies and recommendations

available for non-maritime development within a few years. The condition of these piers will probably require their replacement in order to support any type of new development. The inland side of the Embarcadero from the Bay Bridge to China Basin is lined with Port-owned seawall lots in very marginal use. The seawall lots are, for the most part, taken up by railroad tracks and the adjacent inland area is in light industrial and warehousing use with much vacant property. In general, the area comprises an under-utilized portion of the city with a potential for regeneration. China Basin, forming the southern boundary of this area, is largely inaccessible to the public.

SEAWALL LOTS 329 THROUGH 336 AND ADJACENT INLAND AREAS

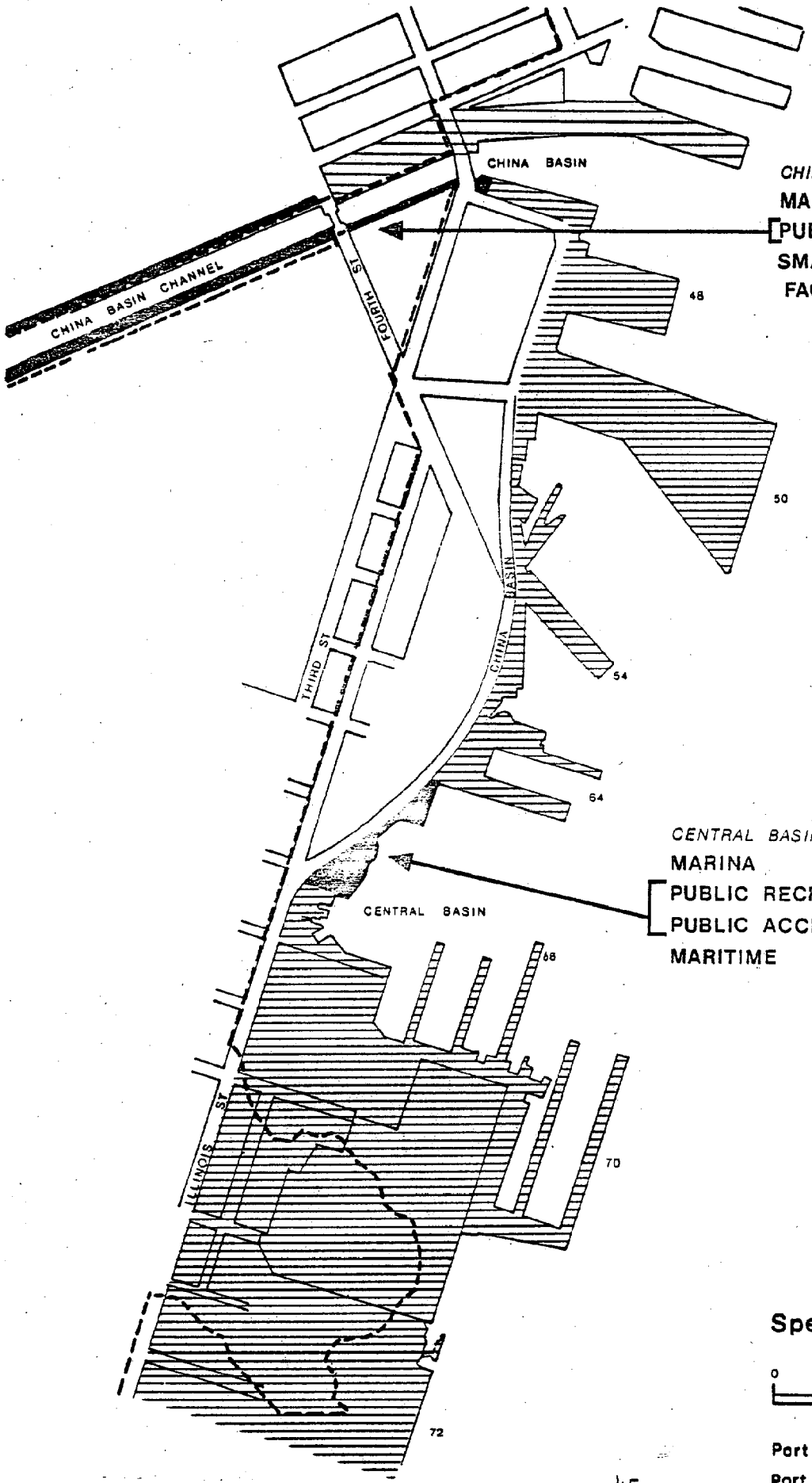
Recommendations:

1. The triangle bounded by 2nd Street, Bryant and the Embarcadero, including Seawall Lots 329 through 336, should be redeveloped as a mixed-use neighborhood, including predominantly residential uses. Preservation of viable economic uses and attractive older buildings should be encouraged.
2. If the waterfront between China Basin and the Bay Bridge is no longer needed for maritime purposes, mixed-use development should be extended bayward to the area now occupied by the Embarcadero and traffic should be re-routed around the inland triangle designated in "1" above. The

proposed extension of Interstate 280 should be re-routed away from the waterfront, and traffic from off-ramps should be channeled away from the Embarcadero.

PIERS 26, 28, 30, 32, 46a and b

Permitted Uses on New or Replacement Fill (Subject to Policies)	MARITIME PUBLIC RECREATION/OPEN SPACE/PUBLIC ACCESS COMMERCIAL RECREATION
Policy:	1. Replacement fill for Bay-oriented commercial recreation in the area of Piers 26 through 32 and 46a and b should be permitted only if these piers are no longer needed for maritime use, and only if the existing pier structure cannot be used for new uses.
Recommendation:	1. Residential and small-scale office use should be permitted on the existing piers as an extension of the development recommended in the adjacent inland area. (Note: Under the McAteer-Petris Act, office and residential uses are not permitted on new fill, including replacement piers. BCDC shoreline jurisdiction, except in priority use areas, is limited to assuring the provision of maximum feasible public access.



CHINA BASIN and CHANNEL:
MARITIME
PUBLIC ACCESS
SMALL BOAT DOCKING FACILITIES

CENTRAL BASIN:
MARINA
PUBLIC RECREATION, OPEN SPACE,
PUBLIC ACCESS
MARITIME

Special Area Plan Map 10e

0 400 800 1200 Feet

Port Priority Area
Port Jurisdiction

N

Note: Map for reference only
See relevant policies and recommendations

CHINA BASIN AND CHINA BASIN CHANNEL

Permitted Uses on New or Replacement Fill (Subject to Policies)	PUBLIC ACCESS MARITIME SMALL BOAT DOCKING FACILITIES
Policies:	1. Continuous public access, consistent with maritime activities, should be provided around China Basin Channel in accordance with the Recreation and Open Space Plan of the City of San Francisco. 2. Limited Bay-oriented commercial recreation should be permitted along China Basin Channel provided it is incidental to and does not obstruct public access. 3. The area immediately east of the Third Street Bridge on the south side of China Basin should be reserved for public access with special consideration given to providing public view areas.

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5. Pier 48 Through India Basin

Most of the current maritime activity and proposed maritime expansion of the Port of San Francisco is concentrated on the city's southern waterfront between China Basin and India Basin. Major cargo-handling facilities are under construction in this area and the inland areas, as well, are dominated by maritime and industrial activities. There is little public access to the Bay along this extensive stretch

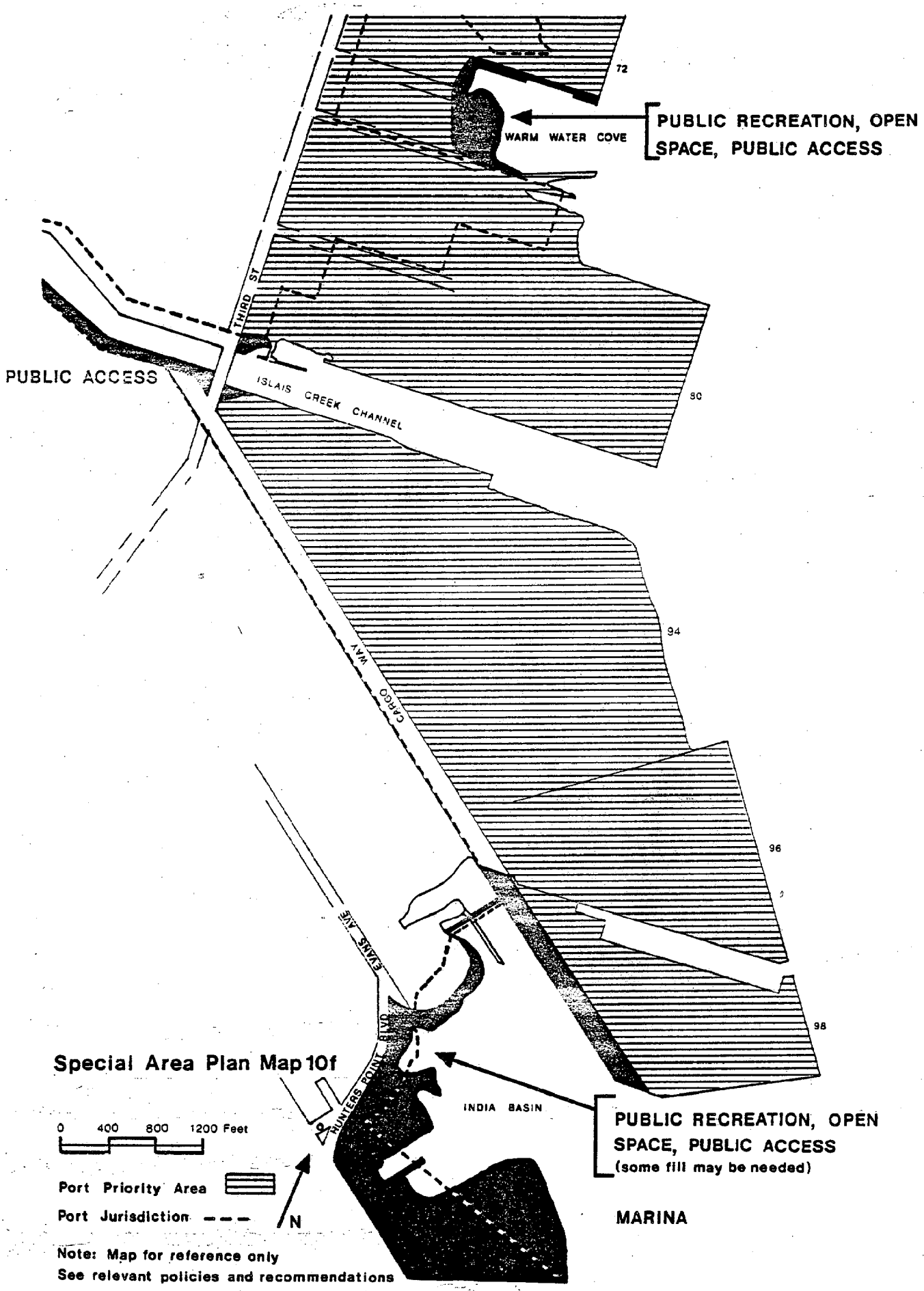
of the waterfront though the Port has recently dedicated a waterfront park at Central Basin. Significant recreational potential also exists at a number of other sites, including Warm Water Cove, Islais Creek and India Basin.

PIERS 48, 50, 54, 68 and 70

Permitted Uses on New or Replacement Fill (Subject to Policies)	MARITIME PUBLIC ACCESS MARINA
Recommendations:	1. Existing maritime uses should be continued as long as needed. 2. The public launching ramp located in this area should be retained.

CENTRAL BASIN

Permitted Uses on New or Replacement Fill (Subject to Policies)	PUBLIC RECREATION/OPEN SPACE/PUBLIC ACCESS MARINA MARITIME
Policies:	1. Central Basin should continue to be developed for public access and waterfront recreation in accordance with the Recreation and Open Space Plan of the City of San Francisco. 2. When no longer needed for maritime activity, Pier 64 should be developed for park and marina use in accordance



Special Area Plan Map 10f

with, but not limited to, the provisions of the Recreation and Open Space Plan of the City of San Francisco.

Recommendation:

1. No new development should be permitted at Central Basin that is inconsistent with the above policies.

PIERS 72, 80, 94, 96 and 98

Permitted Uses on New or Replacement Fill (Subject to Policies)

MARITIME
PUBLIC ACCESS

Policy:

1. An expanded Pier 72 should project no further south than a direct expansion eastward of the existing shoreline in order not to infringe on Warm Water Cove.

WARM WATER COVE

Permitted Uses on New or Replacement Fill (Subject to Policies)

PUBLIC RECREATION/OPEN SPACE/PUBLIC ACCESS

Policies:

1. The recreational potential and water quality of Warm Water Cove should be improved and protected, and no fill should be permitted that would adversely affect existing or potential recreation or water quality.

2. Warm Water Cove should be developed for public access and waterfront recreation in accordance with the Recreation and Open Space Plan of the City of San Francisco.

3. Limited development, preferably Bay-oriented commercial recreation, should be permitted along Warm Water Cove, provided it is incidental to public access and water-related recreation and does not obstruct public access.

ISLAIS CREEK WEST OF THIRD STREET

Permitted Uses on New or Replacement Fill (Subject to Policies): PUBLIC ACCESS
MARITIME

Policies:

1. The south side of Islais Creek Channel west of the Third Street Bridge should be developed for public access and waterfront recreation as a public esplanade and viewing area.

2. Limited development, preferably Bay-oriented commercial recreation, should be permitted on the south side of Islais Creek Channel, provided it is incidental to public access and water-related recreation and does not obstruct public access.

INDIA BASIN

Permitted Uses on New or Replacement Fill (Subject to Policies)	PUBLIC RECREATION/OPEN SPACE/PUBLIC ACCESS MARINA
Policies:	1. The India Basin area should be developed as a major waterfront park in accordance with the Recreation and Open Space Plan of the City of San Francisco. Some fill may be needed. 2. Limited development, preferably Bay-oriented commercial recreation, should be permitted on the shoreline, provided it is incidental to public access and water-related recreation and does not obstruct public access. 3. Continuous public access should be provided along the west side of future Pier 98, along India Basin, and a public access connection should be provided between the two.

ADVISORY COMMITTEE ROSTER

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
30 Van Ness Avenue, San Francisco 94102 557 - 3686

December, 1975

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BCDC PRIORITY PLANNING WORK ITEMS

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
30 Van Ness Avenue, San Francisco 94102 557-3686

January 8, 1975

TO: All Commissioners, Alternates and Interested Citizens
FROM: Stan Euston, Chief Planner

SUBJECT: BCDC PRIORITY PLANNING WORK ITEMS, AS APPROVED BY THE COMMISSION, NOVEMBER 7, 1974

As an outgrowth of the Bay Plan Evaluation project, the Commission approved on November 7, 1974 the following priority planning work items, which will be pursued during the next year and beyond. These items reflect legislative mandates, cooperative planning being undertaken with other agencies, as well as immediate issues faced by the Commission.

The topics are listed roughly in order of their immediacy, though work will be carried on simultaneously on many, if not most of them. As staff and consultant work is completed, reports will be issued for public review. Status reports and public hearings before the Commission will also be held on all studies at appropriate times. Public comments on all phases of the planning program are encouraged.

PRIORITY PLANNING WORK ITEMS
(Adopted by Commission November 7, 1974)

1. Short-term Planning items of Immediate Concern

a. The San Francisco Waterfront Special Area Plan

The San Francisco Waterfront Advisory Committee, created by the Commission to assist in resolving the existing problems on the San Francisco waterfront, is just completing a plan that it will recommend to the Commission, and the staff is preparing the necessary environmental impact report. Public hearings before the Commission on both are tentatively scheduled for January. Final action on the plan by BCDC is tentatively scheduled for March, 1975.

b. Historic Ships

Any vessel moored in the Bay for an extended period of time is considered "fill" under the McAteer-Petris Act and requires a BCDC permit. And since 1969, several proposals have been submitted to the staff to moor old ships or boats, usually with some historical relationship to the Bay, at various locations. In some cases, the vessels were simply to be put on display, while in others, the interior was to be used for commercial recreation (e.g., restaurants or hotels). In general, mooring these vessels on privately-owned land in the Bay is consistent with the McAteer-Petris Act and the Bay Plan. However, the situation is not nearly so clear on publicly-owned land. Yet most of the proposals submitted to date have involved sites on publicly-owned land, e.g., along the San Francisco and Oakland waterfronts.

The argument usually advanced in favor of these proposals is that the Commission should encourage the preservation of vessels of genuine historical interest to the Bay Area by permitting them to be put to some economic use. But even if that argument is accepted, there are additional questions. Some of the more important are defining the standards for judging a ship's historic value; whether there should be a distinction between vessels displayed solely for historical purposes, even if an admission is charged, and those used for other kinds of commercial recreation; and how many and what size vessels should be allowed in any one location--for example, would commercial use of a vessel the size of the Queen Mary be desirable anywhere in the Bay?

Because the question of historic ships is one that is likely to arise fairly soon in the context of the permit process, the staff believes a short-term study would be desirable to establish more specific standards than now exist.

c. Deteriorated Piers

Deteriorated piers exist at several locations along the Bay shoreline, particularly in the Oakland Estuary and on the San Francisco waterfront. To encourage their removal, Amendment #1-71 to the Bay Plan allows up to 50% of the area covered by an old pier to be replaced with fill for Bay-oriented commercial recreation and Bay-oriented public assembly. However, in order to prevent piece-meal and haphazard development of important shoreline areas, Amendment #1-71 also requires that the removal and replacement be part of a single project and be consistent with a special area plan approved by the Commission. Both the Port of Oakland and the Port of San Francisco have suggested that the fulfillment of these latter requirements can be a time-consuming process and claim that the requirements in fact deter the prompt removal of old piers. They have recommended that some form of "credit" be given for removal of deteriorated piers which could be used later in projects involving replacement fill. The staff believes a short-term study of this problem is desirable to see if credit can be given without encouraging the haphazard and piece-meal development Amendment #1-71 was designed to prevent.

2. The Suisun Marsh

The majority of the managed wetlands in the Bay system are located in the Suisun Marsh, and both plan evaluation and comments at the public forums emphasized the importance of protecting existing uses in this critical area. Perhaps most significantly, however, during the last session the State Legislature passed the Nejedly-Bagley-Z'berg Suisun Marsh Preservation Act of 1974. It requires BCDC and the Department of Fish and Game to develop a plan for the preservation of Suisun Marsh and a surrounding buffer zone for presentation to the Legislature by December 1, 1976. This deadline, together with the Legislature's passage of the bill as an urgency measure, requires that the Commission begin work immediately. The Act carries its own appropriation of $95,000 to BCDC.

3. Permit Coordination Study

Senate Bill 2418, effective January 1, 1975, establishes a temporary procedure for coordination through the Resources Agency of dredging applications to state agencies through July 1, 1976. (Only applications for BCDC administrative permits are included within the scope of the bill.)

Responsibility for the coordination has been delegated to BCDC. Furthermore, based on the experience gained, and other studies, BCDC will also prepare a report to the Legislature on recommendations for future streamlined processing of permit applications. The report is due by February 1, 1976, and the Commission will be involved in review of staff reports and recommendations as the study progresses. The bill carries its own appropriation, and necessary funds to complete the study will be provided through an inter-agency agreement with the Resources Agency.

4. Regional Port Planning

The staff believes that regional port planning should have high priority. The Bay Plan calls for future port planning and development to be guided by an overall regional port development plan, and this need has been reinforced by permit applications for port-related fill since completion of the Plan. In the absence of a regional port development plan, the Commission judges the individual applications for port-related fill under the McAteer-Petris Act and the Bay Plan. Both the law and the Plan, however, contain only general guidelines on port development, and more specific port planning would make it easier for the Commission to avoid authorizing duplicate facilities, which could require unnecessary Bay fill. Furthermore, the Commission has already indicated its desire to see such planning begin. In 1972, the Executive Director was authorized to advise the major Bay Area ports that nearly four years had passed since completion of the Bay Plan, and that early preparation of the port plan called for in the Bay Plan was desirable.

Moreover, pursuant to new responsibilities for seaport planning given it by the Legislature, the Metropolitan Transportation Commission (MTC) has begun a regional port planning effort. Two BCDC Commissioners are on the policy committee for the study, and the staff has been involved in the technical aspects for some time. The staff believes that the Commission's participation in this planning is essential to ensure that it: (1) reflects the determination by the Legislature through passage of the McAteer-Petris Act that the Bay is an estuarine resource of state-wide importance; (2) considers port development questions from a state-wide, as well as a regional, perspective; and (3) is sufficiently specific to meet the Commission's needs in evaluating individual permit applications.

When complete, the regional port development plan could lead to revision of Bay Plan policies on ports. The present policies call for major expansion at Benicia, Redwood City and Richmond; redevelopment at Alameda, Oakland and San Francisco; and possible shallow draft terminals near Napa, Petaluma and San Jose. The Plan also calls for construction of the John F. Baldwin Ship Channel, development of a possible supertanker terminal in the Central Bay as an alternative to constructing and maintaining even deeper channels to North Bay refineries, and the dredging of the ship channel through the Golden Gate to 70 feet. There are now questions about some of these policies, and a regional port development plan should help determine which should remain and which should be modified.

A major factor in the planning will be the economics of future port activity in the Bay, but because of the intensely competitive nature of port operation, the staff believes that the Commission should be able to evaluate all port-related economic information independently. The needed expertise is not available on the staff, and the staff is therefore recommending that a request for $20,000 for economic consulting assistance be approved.

The staff also believes that the potential size of proposed port-related fills requires that the Commission pay particular attention to their potential harmful effects on the Bay. Therefore, the staff is also recommending that the Commission approve a request for $7,000 for necessary consultant assistance on environmental and ecological questions.

5. Regional Airport Planning

As with ports, regional airport planning should have a high priority in the Commission's planning program. Though a water-oriented use, fill for airports can only be allowed if there is no feasible alternative, a determination that can be made only after careful study of regional needs.

One such study has been completed by the Regional Airports System Study Committee in 1972 under the auspices of the Association of Bay Area Governments, with BCDC participating on an ex-officio basis. However, the Commission formally stated its reservations about the study's conclusions on the ground that alternatives to airport fill were not adequately considered.

Recent legislation requires comprehensive regional transportation plans, including an airport element. A joint ABAG-MTC committee is in the process of updating the 1972 Regional Airport Systems Study, and BCDC will participate in this study through membership on the policy committee. The staff believes that Commission participation is essential to ensure that alternatives to further airport fill are exhaustively explored. The staff also believes that, as with port-related fill, the potential size of proposed airport fills requires that particular attention be given to their potential harmful effects on the Bay. For these reasons, the staff is recommending that, in addition to giving airport planning a high priority, the Commission approve a request of $3,000 for consultant assistance on ecological questions.

6. Water-Related Industry

In order to reduce pressure for further Bay fill to create sites for industries needing a waterfront location, the Bay Plan now reserves over 18,000 acres of Bay shoreline for water-related industry over the next fifty years. However, both the evaluation and experience with the Plan to date indicate there are a number of issues relating to the water-related industrial designations that should have a high priority in the Commission's planning work program:

a. The suitability of specific parcels for water-related industry

In at least two cases, the priority use area is extremely close to areas since determined to be unusually important

wildlife habitats. In other cases, for various reasons it is not unlikely that the designated sites will be developed for water-related industry. But changes should not be made piecemeal. To assure that there are sufficient sites for water-related industry in the future with a minimum of Bay fill, any changes should be evaluated in the context of future regional industrial needs.

b. Defining more precisely the industries that should have a waterfront location

Because of the limited amount of Bay frontage available in the industrial priority use areas, it is important that only industries that actually need a waterfront location be permitted to locate there. The Plan, however, offers only a general definition of water-related industry, and the staff believes that more specificity is needed to ensure that the highest and best use is made of the priority use areas.

c. The problem of "interim uses" in the industrial priority use areas

The Plan recognizes that not all of the designated sites are needed immediately and that some interim uses should be allowed. But there are no standards to guide the Commission in determining when interim uses should be permitted, or what those uses should be. The staff believes that this issue needs to be addressed in the Commission's planning, and standards developed, before decisions have to be made on individual permit applications.

d. The enforceability of the industrial priority use designations

The designations on the Plan usually include areas beyond the first 100 feet of the shoreline, which is the limit of the Commission's shoreline band jurisdiction, and during the evaluation comments on the industrial designations emphasized the importance of the Commission being able to ensure that sites designated are used for the purposes intended.

The staff believes that these questions should be given further consideration. Much of the expertise necessary to do so is available at the staff level; however, some of the economic questions, particularly those relating to a more precise definition of the industries that should have a high priority for waterfront locations, will require outside consulting assistance. The staff recommends Commission approval of a request for $20,000 for this purpose.

7. Marshes

Located at the margins of the Bay, Bay marshlands have long been susceptible to pressure for fill. Indeed, since 1850, marshland around the Bay has shrunk from 313 square miles to 127 square miles, a reduction of

over 60%. Preservation of what remains is increasingly important to the Bay, and comments during the evaluation indicated that since completion of the Plan, more precise scientific information had been developed establishing the critical roles of Bay marshes. The staff believes that the findings and policies of the Plan should be revised to reflect this new information. Moreover, this information would also help in evaluating possible proposals for port and airport fill.

Some consultant assistance will be needed to assist in collecting and interpreting this information. The staff recommends that the Commission approve a request for $10,000 to be spent for this purpose.

8. Water-Related Recreation and Public Access

The Bay Plan also reserves substantial areas of the shoreline for priority use for water-related recreation, e.g., waterfront parks, beaches, and marinas. The staff believes these need to be reviewed in light of current circumstances. These designations were based to a large extent on then current plans of local governments for parkland acquisition and the total future needs of Bay Area residents. However, local plans have in some instances changed, and the priority use designation is difficult to carry out without local commitment to acquisition. One example of the difficulties created when a local jurisdiction changes its mind about park acquisition are those involved in the current proposal by the City of South San Francisco for a change in the park priority area at Oyster Point. Furthermore, the park designation system itself may not be sufficiently effective in providing needed recreational areas on the Bay shoreline and, if not, alternatives need to be explored.

Both existing and future public access to the Bay should be considered together with planning for water-related recreation. Because public access can be required only on a permit-by-permit basis, the location of public access areas has not been fully coordinated with planning for waterfront recreational areas. Nor has much attention been given to linking public access areas. The staff believes that more precise planning for public access would lead to: (a) a better integrated system for public use of the shoreline; (b) a greater willingness by local government to assume responsibility for public access areas obtained by the Commission; and (c) a stronger legal basis on which to rest required dedications for public access as a condition of permits.

9. The Salt Ponds

Two recent events have highlighted the possible need for Commission consideration of the future of the salt ponds. This year the Leslie Salt Company closed its Redwood City plant and declared about 2,200 acres of adjacent salt ponds surplus for salt-making purposes. More recently, the Trust for Public Lands, a non-profit corporation specializing in land acquisition for public use, has 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. However, the option does not include the Redwood City property. It is also contingent on "appropriate action" by BCDC

> "to authorize Leslie's plans for future salt-making operations at its Newark Plant and in connection with operations under its retained salt making rights"

and

> "to clarify Leslie's ability to make substantial changes in use, including construction of improvements, on Leslie's retained parcels at Baumberg, inland of Coyote Hills, and Redwood City."

Leslie has not yet made specific proposals for any of the retained parcels, including the Redwood City ponds. Consequently, the staff has not determined the extent to which the future of the salt ponds should have a high priority in the Commission's planning. However, the staff believes that any consideration of either the Redwood City ponds or the Trust for Public Lands option should take place in the context of the future of all of Leslie's holdings in the Bay. This would probably require the Commission to either undertake, or participate in, relatively detailed planning for the salt ponds, and if so, the Commission would have to request additional funds for this purpose.

BCDC TENTATIVE PROPOSALS FOR USE OF SECTION 306 FUNDS

Part IV: Program Narrative

I. Plan Updating.

As part of its continuing management program, BCDC plans to undertake an updating of the San Francisco Bay Plan. As part of this effort, several tasks have been determined by the Commission to be priority work items, on which the Commission and staff will be working during the next year.

While BCDC anticipates receiving some money out of the State General Fund for this work, additional funds would permit greater breadth and depth of study. Furthermore, certain items in the priority program have not been funded by the State, and it is doubtful if they can be carried out in the absence of a 306 grant.

Below are described the planning items proposed for FY 1975 "306" funds, and a statement of the benefits to be received from the grant expenditures:

A. BCDC and the State Coastal Commission: Analysis of issues relevant to a unified State coastal management program.

(1) Need for Project. The Coastal Commission and BCDC recognize the need for an integrated coastal management program for California. This will probably be explicitly stated in the Coast Plan, along with a recommendation for a joint study to determine the best way to integrate the two programs after the Coastal Commission is permanently established. While no final conclusions are possible until after the 1976 session of the legislature, it would be desirable to begin developing alternative approaches to integration as soon as possible. Furthermore, preparation of the Coast Plan has generated considerable information, particularly in the energy field, that should be evaluated in terms of its implications for San Francisco Bay. Revision of the Bay Plan on the basis of this information in itself would be a major step toward a single, overall program.

(2) Method of Accomplishment. The analysis of the future integration of BCDC and the Coastal Commission would be done jointly by BCDC and the State Coastal Commission. The evaluation of the Coast Plan and background material would be done by BCDC. The project would cover at least two fiscal years.

(3) Benefits of Project. Both aspects of the project would lead to a more integrated coastal management program for California.

B. Water-Related Industry.

(1) Need for Project. The Bay Plan defines water-related industry as those industries that ship or receive by water. The Plan also designates certain shoreline parcels for priority use by water-related industry, and these are reserved for that purpose through the BCDC permit process. However, because the data used in the Bay Plan to project water-related industrial space needs are in some cases 15 years old, (and pre-dated the energy crisis) there is need to update the Bay Plan and to re-estimate industrial needs.

There is also a need to look more closely at the criteria for determining which industries need waterfront locations, what public costs and benefits accrue from various industrial uses on the shoreline. A more precisely drawn definition of water-related industry would aim at reserving shoreline for those industries yielding the most public benefits from a waterfront location. A related issue needing attention is establishing the conditions under which interim uses to locate in water-related industrial priority areas, some of which will not be needed for many years.

(2) Method of Accomplishment. This study would be undertaken by the staff with consultant assistance.

(3) Benefits of Project. Information on waterfront industrial needs would be updated, and a more precise basis established for determining the best allocation of Bay shoreline to water-related industry.

C. Regional Port Planning.

(1) Need for Project. Bay area ports have traditionally competed with one another for cargo. This can result in new port facilities being built by a port that can command the necessary financing, even though another site might serve regional needs equally well with less Bay fill. The Bay Plan port policies and shoreline designations need to be updated to assure they are current with trends in the maritime industry and provide for necessary facilities with the avoidance of unnecessary Bay fill.

The Metropolitan Transportation Commission has also been given responsibility for major aspects of regional ports planning, primarily the land-based links. A regional seaport policy committee has been established by MTC, and this group is in the beginning stages of port planning. Because BCDC's and MTC's port planning responsibilities are complementary, BCDC needs to be able to participate effectively in the MTC planning, which will include analysis of port capacity to handle cargo, and impact of various alternatives.

(2) Method of Accomplishment. The BCDC intends to work with MTC in developing the regional port plan, and to use the MTC Seaport Policy Committee wherever possible.

(3) Benefits of Project. The development of a regional port plan addressing both priority and timing of development among the various ports in the region would be significant and would have implications for coastal zone management in other regions. Such a plan would also help rationalize port investment and would assure that port expansion does not require unnecessary Bay fill and does not create other adverse impacts that could be avoided.

D. Shoreline Public Access and Recreation Areas: Measuring their effectiveness and guidelines for future planning.

(1) Need for Project. The Bay Plan identifies a number of shoreline areas as "park priority."

These designations are based largely on local plans current in 1968-69. The Plan also contains general policies about public access to the Bay, and these policies are implemented through the permit procedure, in which public access is usually required as a condition of the permit. In updating and reassessing the park designations and the public access policies, there is need to gauge the degree of use and the effectiveness in meeting public needs of both park and access areas now in existence. The results will be used to set more definitive guidelines for the location and development of future shoreline public access and recreation areas.

(2) Method of Accomplishment. This study would be done by the staff with consultant assistance.

(3) Benefits of Project. Future planning for public access and recreation areas would be based more clearly on public desires.

E. Marshes: Detailed Mapping and Description.

(1) Need for Project. The Bay Plan gives high importance to protection to marshes, based on earlier marsh studies. However, new information on the value of marshes has since been developed, which establishes more clearly the importance of marshland to the Bay and this should be incorporated into the Bay Plan. There is also need to map and describe both existing and restorable marshes in more detail than was possible during Bay Plan preparation. Both these efforts will lead to refinement in the Bay Plan marsh policies and the Bay Plan maps.

(2) Method of Accomplishment. The Commission will contract with university specialists in the field of marsh ecology. The project will be coordinated with an inter-disciplinary, inter-agency task force now studying San Francisco Bay marshes. Any Bay Plan changes resulting from the project would be approved by the Commission.

(3) Benefits of Project. The Bay Plan will be refined and strengthened on the basis of new and more refined data on marshes.

F. Salt Ponds: Ecological Values.

(1) Need for Project. Under the Bay Plan and the McAteer-Petris Act BCDC is responsible for protecting the public interest in nearly 40,000 acres of privately-owned salt ponds rimming the south and north Bay. To aid the Commission in carrying out this responsibility, it would be desirable to have additional and more precise information on the role of salt pond surface area in relation to Bay micro-climates, and on the biological importance of salt ponds for wildlife habitat and feeding.

(2) Method of Accomplishment. It is anticipated that university consultants will be obtained to undertake short-term, specific studies to quantify, where possible, climatological and biological values of salt ponds.

(3) Benefits of Project. The Commission will be provided with more detailed information on the public values of salt ponds and this, in turn, may be the basis for a re-evaluation of the salt pond policies found in the Bay Plan.

G. Special Area Planning.

(1) Need for Project. BCDC regulations establish procedures for adopting "Special Area Plans." These plans are intended to be developed in cooperation with local governments and promise to be an important part of the Bay Plan policies. The Commission has just recently adopted the first such plan, which covers the San Francisco waterfront. This planning process has brought together previously conflicting interests and has resulted in a detailed shoreline plan. The success of this effort has focused attention on a number of other shoreline areas (e.g., San Mateo-Redwood City area, Oakland Estuary, Richardson Bay) where detailed shoreline planning could help in meshing local and BCDC regional goals. The detailed nature of this type of planning, however, requires intensive work by both local and BCDC staff and requires a well-planned citizen participation program.

(2) Method of Accomplishment. BCDC would enter into either formal or informal agreements with local agencies to undertake joint detailed planning for specific shoreline areas. The resulting Special Area Plans would be adopted by both the local governments involved and by BCDC. The program of Special Area Planning would be a continuing effort.

(3) Benefits of Project. The regional interest in the shoreline would be given case-by-case interpretation, based on the general Bay Plan policies. At the same time, local governments would be full participants in shoreline planning, and property owners would be given predictability in determining the use and design restrictions on their land.

H. Debris Disposal Planning.

(1) Need for Project. The evaluation of the Bay Plan brought to light the potential adverse effects on the Bay of debris disposal in the aftermath of a large disaster, particularly earthquakes, which are an ever-present danger in California. Emergency situations may create pressure to override current Federal and State laws which control disposal. A comprehensive identification of feasible land-based disposal sites is needed, both to ensure that emergency disposal does not adversely affect the Bay, and to identify the areas where disposal is both feasible and does minimum environmental damage.

(2) Method of Accomplishment. The study would be undertaken jointly with ABAG, the agency responsible for regional land use planning. The study would involve analysis of potential land-based disposal sites, and would identify those that should be reserved for emergency disposal.

II. Enforcement.

A major element in any on-going management program is ensuring that it is adhered to. Where the primary means of carrying out the program is through a permit system like BCDC's, this means making certain that permits are obtained where required and that those permits issued, some of which contain extensive conditions designed to minimize the adverse impacts of projects, are complied with. Up to this point, however, the Commission has not had the enforcement staff necessary to perform these functions systematically, even though the State Legislature granted the Commission additional enforcement powers in 1972. A portion of the proposed grant would therefore be used to give the Commission this capability. Specifically, a full-time lawyer and a full-time inspector would be hired and sufficient additional funds allocated to support their activities.

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

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
STATE LANDS COMMISSION

WHEREAS, under the provisions of the McAteer-Petris Act, the San Francisco Bay Conservation and Development Commission (hereinafter "BCDC") is charged with the management of San Francisco Bay and its adjacent shorelands, and in particular with preparation, implementation, enforcement, and periodic review of the San Francisco Bay Plan; and

WHEREAS, BCDC has submitted its management program for San Francisco Bay to the Secretary of Commerce for approval as a segment of the California coastal zone management program under Section 306 of the Federal Coastal Zone Management Act of 1972; and

WHEREAS, if the BCDC management program for San Francisco Bay is approved by the Secretary of Commerce, BCDC will be the State agency responsible under the Federal Act for the management of that segment of the California coastal zone comprising San Francisco Bay and its adjacent shorelands (the area of existing BCDC permit jurisdiction); and

WHEREAS, the BCDC segment of the California coastal zone extends to certain tidelands, submerged lands, swamp and overflowed lands, and beds of navigable rivers and streams that may also be within the jurisdiction of the State Lands Commission under Section 6216 of the Public Resources Code, which is more commonly known as the State Lands Act of 1938 (Public Resources Code, Sections 6100 et seq.); and

WHEREAS, by enactment of the State Lands Act of 1938, the State Legislature has vested in the State Lands Commission the power to manage and control all

ungranted tidelands owned by the State and all tidelands granted by the State in which tidelands the State has retained or acquired any interest; and

WHEREAS, by enactment of the McAteer-Petris Act, the State Legislature has expressed its intent that BCDC shall protect the public interest in the beneficial use of San Francisco Bay for a variety of purposes in recognition of the public interest in the Bay as the most valuable single natural resource of an entire region, and by enactment of the State Lands Act of 1938, has further expressed its intent that the lands owned by the State, including tidelands, submerged lands, swamp and overflowed lands, and beds of navigable rivers and streams, shall be managed and controlled by the State Lands Commission for the benefit of the public; and

WHEREAS, the State Lands Commission has played, and will continue to play, a primary role in the BCDC management program for San Francisco Bay;

THEREFORE, BCDC and the State Lands Commission agree as follows:

1. The State Lands Commission recognizes and acknowledges the BCDC management program for San Francisco Bay as the State management program for the BCDC segment of the California coastal zone (the area of existing BCDC permit jurisdiction). In carrying out its responsibilities under State law, the State Lands Commission will comply with the BCDC management program to the maximum extent feasible.

2. BCDC will forward to the State Lands Commission for review and comment complete copies of all applications for major permits requiring public hearings under BCDC Regulations. BCDC will also forward to the State Lands Commission for review and comment each list of applications for administrative permits compiled pursuant to Section 10542 of the BCDC Regulations, including all material submitted by the applicants for administrative permits relating to title to the property involved. BCDC will not grant or deny any permit application until comments thereon have been received from the State Lands

Commission unless BCDC's failure to do so would result in the permit automatically being granted under the provisions of Section 66632(f) of the Government Code. The State Lands Commission will make every effort to submit its comments to BCDC in a timely fashion--21 days from date of mailing in the case of a major permit application and 10 days from date of mailing of the administrative permit list.

3. Except where questions of the extent of State ownership exist, the State Lands Commission will not grant or execute any lease, permit, or other entitlement to use of any land within the jurisdiction of both the State Lands Commission and BCDC until a BCDC permit authorizing such use has been obtained, if a BCDC permit is required.

4. In those cases where the State Lands Commission advises BCDC that the State may have an interest in property such that the permit applicant may not have such valid title to the property in question that he may fill it in the manner and for the uses to be approved, BCDC will request the State Lands Commission to determine the extent of the State's interest in the property, and under the authority of Government Code Section 66605(g), will not grant a permit for such filling until the title question has been resolved. When requested to do so by BCDC, the State Lands Commission will act diligently to resolve outstanding questions of the extent of State ownership in any property involved in a BCDC permit application.

5. BCDC and the State Lands Commission will continue to work closely together and cooperate in all other matters of joint interest within the BCDC segment of the California coastal zone.

STATE LANDS COMMISSION

Executed on _____, 1976. By: _____
WILLIAM F. NORTHROP
Executive Officer

SAN FRANCISCO BAY CONSERVATION
AND DEVELOPMENT COMMISSION

Executed on _____, 1976. By: _____
CHARLES R. ROBERTS
Executive Director

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
CALIFORNIA DEPARTMENT OF TRANSPORTATION

WHEREAS, under the provisions of the McAteer-Petris Act, the San Francisco Bay Conservation and Development Commission (hereinafter "BCDC") is charged with the management of San Francisco Bay and its adjacent shorelands, and in particular with preparation, implementation, enforcement and periodic review of the San Francisco Bay Plan; and

WHEREAS, BCDC has submitted its management program for San Francisco Bay to the Secretary of Commerce for approval under Section 306 of the Federal Coastal Zone Management Act of 1972 as a segment of the California coastal zone management program; and

WHEREAS, if the BCDC management program for San Francisco Bay is approved by the Secretary of Commerce, BCDC will be the State agency responsible under the Federal Act for management of that segment of the California coastal zone comprising San Francisco Bay and its adjacent shorelands (the areas of existing BCDC permit jurisdiction); and

WHEREAS, the California Department of Transportation (hereinafter "CalTrans") is responsible for State-wide planning, funding, construction, operation and maintenance of various transportation facilities, including streets and highways, bridges, mass transit, and airports; and

WHEREAS, San Francisco Bay is an important transportation route and airports and bridges are water-oriented uses under the McAteer-Petris Act (the BCDC law); and

WHEREAS, transportation planning and the location of land transportation routes have a significant impact on the BCDC segment of the coastal zone;

THEREFORE, BCDC and CalTrans agree as follows:

1. For purposes of the Coastal Zone Management Act of 1972, CalTrans recognizes the BCDC management program for San Francisco Bay as the State management program for the BCDC segment of the California coastal zone, and in carrying out its responsibilities under State law, CalTrans will comply with the BCDC management program to the maximum feasible extent.

2. CalTrans will consult with BCDC on all CalTrans projects either in or significantly affecting the BCDC segment of the coastal zone, including but not limited to the following:

(a) Construction, reconstruction, and maintenance of highways, bridges and other transportation routes or facilities either within BCDC permit jurisdiction or significantly affecting areas within BCDC's permit jurisdiction.

(b) Preparation and implementation of the California Transportation Plan insofar as it affects the BCDC segment of the coastal zone.

(c) Preparation and implementation of the Regional Transportation Plan by the Metropolitan Transportation Commission.

3. CalTrans will continue to play a primary role in BCDC planning for the Bay and in the implementation of the BCDC management program by reviewing and commenting on all BCDC reports or other material related to Bay planning or management, and dealing with, or related to, transportation matters, prior to such material being presented to the BCDC members for consideration.

Executed on _____, 1976.

California Department of Transportation

By: _____
Adriana Gianturco
Director of Transportation

Executed on _____, 1976.

San Francisco Bay Conservation and Development Commission

By: _____
Charles R. Roberts

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
BAY AREA AIR POLLUTION CONTROL DISTRICT

WHEREAS, under the provisions of the McAteer-Petris Act, the San Francisco Bay Conservation and Development Commission (hereinafter "BCDC") is charged with the management of San Francisco Bay and its adjacent shorelands, and particular with preparation, implementation, enforcement, and periodic review of the San Francisco Bay Plan; and

WHEREAS, BCDC has submitted its management program for San Francisco Bay to the Secretary of Commerce for approval under Section 306 of the Federal Coastal Zone Management Act of 1972 as a segment of the California coastal zone management program; and

WHEREAS, if the BCDC management program for San Francisco Bay is approved by the Secretary of Commerce, BCDC will be the State agency responsible under the Federal Act for management of that segment of the California coastal zone comprising San Francisco Bay and its adjacent shorelands (the area of existing BCDC permit jurisdiction); and

WHEREAS, the San Francisco Bay Plan Findings and Policies on Smog and Weather (page 10) point out the importance of the Bay in determining the climate of the Bay Area and in reducing smog; and

WHEREAS, the Bay Area Air Pollution Control District (hereinafter "the District") is charged with the regulation of emissions of air pollutants caused by stationary sources, in order to achieve and maintain certain air quality standards for the nine counties in the Bay Area; and

WHEREAS, the District is empowered as a regulatory agency to issue or deny permits authorizing construction and operation of facilities related to the

creation or emission of certain pollutants affecting air quality, in accordance with the regulations of the District; and

WHEREAS, BCDC and the District undertake, from time to time, separate review of permit applications for projects located within the geographic jurisdiction of both BCDC and the District; and

WHEREAS, the Coastal Zone Management Act mandates that the requirements established by the District pursuant to the Federal Clean Air Act, as amended, be incorporated into the BCDC management program; and

WHEREAS, air quality in the BCDC segment of the California coastal zone is of mutual concern to both BCDC and the District;

THEREFORE, BCDC and the District agree as follows:

1. For purposes of the Federal Coastal Zone Management Act of 1972, the District recognizes the BCDC management program as the State management program for the BCDC segment of the California coastal zone, which comprises San Francisco Bay and its adjacent shorelands (the area of existing BCDC permit jurisdiction), and will comply with, and will exercise its regulatory authority to aid in carrying out, the BCDC management program to the maximum feasible extent.

2. As required by Section 307(f) of the Coastal Zone Management Act, BCDC will incorporate into its management program for San Francisco Bay the requirements established by the District pursuant to the Federal Clean Air Act of 1972, as amended.

3. In carrying out its management program for the Bay, BCDC will, to the maximum feasible extent, exercise its powers and responsibilities under the McAteer-Petris Act to further the air quality objectives of the District, including requesting the comments of the District on applications for BCDC permits, or on environmental impact reports for which BCDC is responsible, relating to projects or activities that may have a substantial impact on air quality in the BCDC segment of the California coastal zone. The District will provide BCDC with its comments in a timely fashion, and where appropriate, will work jointly with BCDC on the preparation

of any document, or element of a document, relating to the projected air quality impact of any project or program pending before BCDC.

4. The District will advise BCDC of the filing of applications for permits or variances from the District prior to taking final action on such permits or variances. BCDC will provide the District with comments on the consistency of the proposed permit or variance with the BCDC management program for the Bay. In acting on such permits or variances, the District will give full consideration to all comments received from BCDC.

5. The District will advise BCDC of any proposed changes in District regulations and provide BCDC with an opportunity to comment on such changes in relation to the BCDC management program. In acting on such changes, the District will give full consideration to all comments received from BCDC.

6. BCDC and the District will coordinate and cooperate on any further planning and programming undertaken or participated in by the District to maintain Bay Area air quality and to achieve the goals of the Federal Clean Air Act, as amended, to ensure that such planning and programming and the BCDC management program are consistent.

Executed on _____, 1976.

Bay Area Air Pollution Control District

By: _____
J. C. Callahan
Air Pollution Control Officer

Executed on _____, 1976.

San Francisco Bay Conservation and Development Commission

By: _____
Charles R. Roberts
Executive Director

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

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

WHEREAS, under the provisions of the McAteer-Petris Act, the San Francisco Bay Conservation and Development Commission (hereinafter "BCDC") is charged with the management of San Francisco Bay and its adjacent shorelands, and in particular with preparation, implementation, enforcement, and periodic review of the San Francisco Bay Plan; and

WHEREAS, BCDC has submitted its management program for San Francisco Bay to the Secretary of Commerce for approval under Section 306 of the Federal Coastal Zone Management Act of 1972 as a segment of the California coastal zone management program; and

WHEREAS, if the BCDC management program for San Francisco Bay is approved by the Secretary of Commerce, BCDC will be the State agency responsible under the Federal Act for management of that segment of the California coastal zone comprising San Francisco Bay and its adjacent shorelands (the area of existing BCDC permit jurisdiction); and

WHEREAS, under the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board (hereinafter "the State Board") and the nine regional water quality control boards are responsible for preserving and enhancing the quality of California waters (including the waters within the BCDC segment of the coastal zone) and assuring their conservation and most efficient use; and

WHEREAS, under the Porter-Cologne Water Quality Control Act, the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter "the Regional Board") has jurisdiction over the State waters within the BCDC segment of the California coastal zone; and

WHEREAS, the broad objective of the State and Regional Boards' water quality control programs is to achieve and maintain the highest possible water quality in State waters consistent with their use; and

WHEREAS, the San Francisco Bay Plan Policies on Water Pollution (page 10) state that water quality in all parts of the Bay should be sufficiently high to permit water contact sports and to provide a suitable habitat for all indigenous and desirable forms of aquatic life, and assume this will be achieved, in time, as the result of measures taken in response to requirements and enforcement proceedings of the State and Regional Boards; and

WHEREAS, the Bay Plan Policies on Fresh Water Inflow (page 12, as amended January 4, 1973) recognize that the standards set by the State Board in Decision 1379 (the Delta Decision) will help maintain adequate fresh water inflow into the Bay, and these policies further recommend that the impact of diversions of fresh water inflow into the Bay should be monitored by a State regulatory agency, such as the State Board; and

WHEREAS, the Coastal Zone Management Act mandates that the requirements established by the State and Regional Boards pursuant to the Federal Water Pollution Control Act, as amended, be incorporated into the BCDC management program;

THEREFORE, BCDC, the State Board and the Regional Board mutually agree as follows:

1. For purposes of the Federal Coastal Zone Management Act of 1972, the State Board and the Regional Board recognize the BCDC management program as the

State management program for the BCDC segment of the California coastal zone, which comprises San Francisco Bay and its adjacent shorelands (the area of existing BCDC permit jurisdiction), and will comply with, and exercise their regulatory authority to assist in carrying out, the BCDC management program to the maximum feasible extent.

2. BCDC recognizes that the State Board and the Regional Board are the State agencies with primary responsibility for the coordination and control of water quality in San Francisco Bay. BCDC further recognizes that the State Board has primary responsibility for the administration of water rights pursuant to applicable law.

3. As required by Section 307(f) of the Coastal Zone Management Act, BCDC will incorporate into its management program for San Francisco Bay the requirements established by the State and Regional Boards pursuant to the Federal Water Pollution Control Act, as amended.

4. In carrying out its management program for the Bay, BCDC will, to the maximum feasible extent, exercise its powers and responsibilities under the McAteer-Petris Act to further the water quality objectives of the State and Regional Boards, including observing the following special procedures:

(a) BCDC will forward to the Regional Board for review and comment copies of all applications requiring a public hearing before BCDC. Except in unusual circumstances, the Regional Board will comment on such applications within 21 days, and copies of all such comments will be distributed to BCDC members prior to a vote on the application. To the maximum extent feasible, BCDC will incorporate recommendations of the Regional Board into any permit issued by BCDC, or into any resolution denying such a permit.

(b) As a standard condition in all BCDC permits, BCDC will require compliance with the requirements of the Regional Board.

5. BCDC may participate in all proceedings of the State and Regional Board relating to water quality in San Francisco Bay or in the Delta. In the event BCDC participates in any such proceedings, it shall be afforded full opportunity to present evidence and examine and cross-examine witnesses.

Executed on _____, 1976.

State Water Resources Control Board

By: _____
William Dendy
Executive Officer

Executed on _____, 1976.

California Regional Water Quality Control Board, San Francisco Bay Region

By: _____
Frederick Dierker
Executive Officer

Executed on _____, 1976.

San Francisco Bay Conservation and Development Commission

By: _____
Charles R. Roberts
Executive Director

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

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

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
STATE LANDS COMMISSION

WHEREAS, under the provisions of the McAteer-Petris Act, the San Francisco Bay Conservation and Development Commission (hereinafter "BCDC") is charged with the management of San Francisco Bay and its adjacent shorelands, and in particular with preparation, implementation, enforcement, and periodic review of the San Francisco Bay Plan; and

WHEREAS, BCDC has submitted its management program for San Francisco Bay to the Secretary of Commerce for approval as a segment of the California coastal zone management program under Section 306 of the Federal Coastal Zone Management Act of 1972; and

WHEREAS, if the BCDC management program for San Francisco Bay is approved by the Secretary of Commerce, BCDC will be the State agency responsible under the Federal Act for the management of that segment of the California coastal zone comprising San Francisco Bay and its adjacent shorelands (the area of existing BCDC permit jurisdiction); and

WHEREAS, the BCDC segment of the California coastal zone extends to certain tidelands, submerged lands, swamp and overflowed lands, and beds of navigable rivers and streams that may also be within the jurisdiction of the State Lands Commission under Section 6216 of the Public Resources Code, which is more commonly known as the State Lands Act of 1938 (Public Resources Code, Sections 6100 et seq.); and

WHEREAS, by enactment of the State Lands Act of 1938, the State Legislature has vested in the State Lands Commission the power to manage and control all

ungranted tidelands owned by the State and all tidelands granted by the State in which tidelands the State has retained or acquired any interest; and

WHEREAS, by enactment of the McAteer-Petris Act, the State Legislature has expressed its intent that BCDC shall protect the public interest in the beneficial use of San Francisco Bay for a variety of purposes in recognition of the public interest in the Bay as the most valuable single natural resource of an entire region, and by enactment of the State Lands Act of 1938, has further expressed its intent that the lands owned by the State, including tidelands, submerged lands, swamp and overflowed lands, and beds of navigable rivers and streams, shall be managed and controlled by the State Lands Commission for the benefit of the public; and

WHEREAS, the State Lands Commission has played, and will continue to play, a primary role in the BCDC management program for San Francisco Bay;

THEREFORE, BCDC and the State Lands Commission agree as follows:

1. The State Lands Commission recognizes and acknowledges the BCDC management program for San Francisco Bay as the State management program for the BCDC segment of the California coastal zone (the area of existing BCDC permit jurisdiction). In carrying out its responsibilities under State law, the State Lands Commission will comply with the BCDC management program to the maximum extent feasible.

2. BCDC will forward to the State Lands Commission for review and comment complete copies of all applications for major permits requiring public hearings under BCDC Regulations. BCDC will also forward to the State Lands Commission for review and comment each list of applications for administrative permits compiled pursuant to Section 10542 of the BCDC Regulations, including all material submitted by the applicants for administrative permits relating to title to the property involved. BCDC will not grant or deny any permit application until comments thereon have been received from the State Lands

Commission unless BCDC's failure to do so would result in the permit automatically being granted under the provisions of Section 66632(f) of the Government Code. The State Lands Commission will make every effort to submit its comments to BCDC in a timely fashion--21 days from date of mailing in the case of a major permit application and 10 days from date of mailing of the administrative permit list.

3. Except where questions of the extent of State ownership exist, the State Lands Commission will not grant or execute any lease, permit, or other entitlement to use of any land within the jurisdiction of both the State Lands Commission and BCDC until a BCDC permit authorizing such use has been obtained, if a BCDC permit is required.

4. In those cases where the State Lands Commission advises BCDC that the State may have an interest in property such that the permit applicant may not have such valid title to the property in question that he may fill it in the manner and for the uses to be approved, BCDC will request the State Lands Commission to determine the extent of the State's interest in the property, and under the authority of Government Code Section 66605(g), will not grant a permit for such filling until the title question has been resolved. When requested to do so by BCDC, the State Lands Commission will act diligently to resolve outstanding questions of the extent of State ownership in any property involved in a BCDC permit application.

5. BCDC and the State Lands Commission will continue to work closely together and cooperate in all other matters of joint interest within the BCDC segment of the California coastal zone.

STATE LANDS COMMISSION

Executed on _____, 1976. By: _____
WILLIAM F. NORTHROP
Executive Officer

SAN FRANCISCO BAY CONSERVATION
AND DEVELOPMENT COMMISSION

Executed on _____, 1976. By: _____
CHARLES R. ROBERTS
Executive Director

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
CALIFORNIA DEPARTMENT OF TRANSPORTATION

WHEREAS, under the provisions of the McAteer-Petris Act, the San Francisco Bay Conservation and Development Commission (hereinafter "BCDC") is charged with the management of San Francisco Bay and its adjacent shorelands, and in particular with preparation, implementation, enforcement and periodic review of the San Francisco Bay Plan; and

WHEREAS, BCDC has submitted its management program for San Francisco Bay to the Secretary of Commerce for approval under Section 306 of the Federal Coastal Zone Management Act of 1972 as a segment of the California coastal zone management program; and

WHEREAS, if the BCDC management program for San Francisco Bay is approved by the Secretary of Commerce, BCDC will be the State agency responsible under the Federal Act for management of that segment of the California coastal zone comprising San Francisco Bay and its adjacent shorelands (the areas of existing BCDC permit jurisdiction); and

WHEREAS, the California Department of Transportation (hereinafter "CalTrans") is responsible for State-wide planning, funding, construction, operation and maintenance of various transportation facilities, including streets and highways, bridges, mass transit, and airports; and

WHEREAS, San Francisco Bay is an important transportation route and airports and bridges are water-oriented uses under the McAteer-Petris Act (the BCDC law); and

WHEREAS, transportation planning and the location of land transportation routes have a significant impact on the BCDC segment of the coastal zone;

THEREFORE, BCDC and CalTrans agree as follows:

1. For purposes of the Coastal Zone Management Act of 1972, CalTrans recognizes the BCDC management program for San Francisco Bay as the State management program for the BCDC segment of the California coastal zone, and in carrying out its responsibilities under State law, CalTrans will comply with the BCDC management program to the maximum feasible extent.

2. CalTrans will consult with BCDC on all CalTrans projects either in or significantly affecting the BCDC segment of the coastal zone, including but not limited to the following:

(a) Construction, reconstruction, and maintenance of highways, bridges and other transportation routes or facilities either within BCDC permit jurisdiction or significantly affecting areas within BCDC's permit jurisdiction.

(b) Preparation and implementation of the California Transportation Plan insofar as it affects the BCDC segment of the coastal zone.

(c) Preparation and implementation of the Regional Transportation Plan by the Metropolitan Transportation Commission.

3. CalTrans will continue to play a primary role in BCDC planning for the Bay and in the implementation of the BCDC management program by reviewing and commenting on all BCDC reports or other material related to Bay planning or management, and dealing with, or related to, transportation matters, prior to such material being presented to the BCDC members for consideration.

Executed on _____, 1976.

California Department of Transportation

By: _____
Adriana Gianturco
Director of Transportation

Executed on _____, 1976.

San Francisco Bay Conservation and Development Commission

By: _____
Charles R. Roberts

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
BAY AREA AIR POLLUTION CONTROL DISTRICT

WHEREAS, under the provisions of the McAteer-Petris Act, the San Francisco Bay Conservation and Development Commission (hereinafter "BCDC") is charged with the management of San Francisco Bay and its adjacent shorelands, and particular with preparation, implementation, enforcement, and periodic review of the San Francisco Bay Plan; and

WHEREAS, BCDC has submitted its management program for San Francisco Bay to the Secretary of Commerce for approval under Section 306 of the Federal Coastal Zone Management Act of 1972 as a segment of the California coastal zone management program; and

WHEREAS, if the BCDC management program for San Francisco Bay is approved by the Secretary of Commerce, BCDC will be the State agency responsible under the Federal Act for management of that segment of the California coastal zone comprising San Francisco Bay and its adjacent shorelands (the area of existing BCDC permit jurisdiction); and

WHEREAS, the San Francisco Bay Plan Findings and Policies on Smog and Weather (page 10) point out the importance of the Bay in determining the climate of the Bay Area and in reducing smog; and

WHEREAS, the Bay Area Air Pollution Control District (hereinafter "the District") is charged with the regulation of emissions of air pollutants caused by stationary sources, in order to achieve and maintain certain air quality standards for the nine counties in the Bay Area; and

WHEREAS, the District is empowered as a regulatory agency to issue or deny permits authorizing construction and operation of facilities related to the

creation or emission of certain pollutants affecting air quality, in accordance with the regulations of the District; and

WHEREAS, BCDC and the District undertake, from time to time, separate review of permit applications for projects located within the geographic jurisdiction of both BCDC and the District; and

WHEREAS, the Coastal Zone Management Act mandates that the requirements established by the District pursuant to the Federal Clean Air Act, as amended, be incorporated into the BCDC management program; and

WHEREAS, air quality in the BCDC segment of the California coastal zone is of mutual concern to both BCDC and the District;

THEREFORE, BCDC and the District agree as follows:

1. For purposes of the Federal Coastal Zone Management Act of 1972, the District recognizes the BCDC management program as the State management program for the BCDC segment of the California coastal zone, which comprises San Francisco Bay and its adjacent shorelands (the area of existing BCDC permit jurisdiction), and will comply with, and will exercise its regulatory authority to aid in carrying out, the BCDC management program to the maximum feasible extent.

2. As required by Section 307(f) of the Coastal Zone Management Act, BCDC will incorporate into its management program for San Francisco Bay the requirements established by the District pursuant to the Federal Clean Air Act of 1972, as amended.

3. In carrying out its management program for the Bay, BCDC will, to the maximum feasible extent, exercise its powers and responsibilities under the McAteer-Petris Act to further the air quality objectives of the District, including requesting the comments of the District on applications for BCDC permits, or on environmental impact reports for which BCDC is responsible, relating to projects or activities that may have a substantial impact on air quality in the BCDC segment of the California coastal zone. The District will provide BCDC with its comments in a timely fashion, and where appropriate, will work jointly with BCDC on the preparation

of any document, or element of a document, relating to the projected air quality impact of any project or program pending before BCDC.

4. The District will advise BCDC of the filing of applications for permits or variances from the District prior to taking final action on such permits or variances. BCDC will provide the District with comments on the consistency of the proposed permit or variance with the BCDC management program for the Bay. In acting on such permits or variances, the District will give full consideration to all comments received from BCDC.

5. The District will advise BCDC of any proposed changes in District regulations and provide BCDC with an opportunity to comment on such changes in relation to the BCDC management program. In acting on such changes, the District will give full consideration to all comments received from BCDC.

6. BCDC and the District will coordinate and cooperate on any further planning and programming undertaken or participated in by the District to maintain Bay Area air quality and to achieve the goals of the Federal Clean Air Act, as amended, to ensure that such planning and programming and the BCDC management program are consistent.

Executed on _____, 1976.

Bay Area Air Pollution Control District

By: _____
J. C. Callahan
Air Pollution Control Officer

Executed on _____, 1976.

San Francisco Bay Conservation and Development Commission

By: _____
Charles R. Roberts
Executive Director

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

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

WHEREAS, under the provisions of the McAteer-Petris Act, the San Francisco Bay Conservation and Development Commission (hereinafter "BCDC") is charged with the management of San Francisco Bay and its adjacent shorelands, and in particular with preparation, implementation, enforcement, and periodic review of the San Francisco Bay Plan; and

WHEREAS, BCDC has submitted its management program for San Francisco Bay to the Secretary of Commerce for approval under Section 306 of the Federal Coastal Zone Management Act of 1972 as a segment of the California coastal zone management program; and

WHEREAS, if the BCDC management program for San Francisco Bay is approved by the Secretary of Commerce, BCDC will be the State agency responsible under the Federal Act for management of that segment of the California coastal zone comprising San Francisco Bay and its adjacent shorelands (the area of existing BCDC permit jurisdiction); and

WHEREAS, under the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board (hereinafter "the State Board") and the nine regional water quality control boards are responsible for preserving and enhancing the quality of California waters (including the waters within the BCDC segment of the coastal zone) and assuring their conservation and most efficient use; and

WHEREAS, under the Porter-Cologne Water Quality Control Act, the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter "the Regional Board") has jurisdiction over the State waters within the BCDC segment of the California coastal zone; and

WHEREAS, the broad objective of the State and Regional Boards' water quality control programs is to achieve and maintain the highest possible water quality in State waters consistent with their use; and

WHEREAS, the San Francisco Bay Plan Policies on Water Pollution (page 10) state that water quality in all parts of the Bay should be sufficiently high to permit water contact sports and to provide a suitable habitat for all indigenous and desirable forms of aquatic life, and assume this will be achieved, in time, as the result of measures taken in response to requirements and enforcement proceedings of the State and Regional Boards; and

WHEREAS, the Bay Plan Policies on Fresh Water Inflow (page 12, as amended January 4, 1973) recognize that the standards set by the State Board in Decision 1379 (the Delta Decision) will help maintain adequate fresh water inflow into the Bay, and these policies further recommend that the impact of diversions of fresh water inflow into the Bay should be monitored by a State regulatory agency, such as the State Board; and

WHEREAS, the Coastal Zone Management Act mandates that the requirements established by the State and Regional Boards pursuant to the Federal Water Pollution Control Act, as amended, be incorporated into the BCDC management program;

THEREFORE, BCDC, the State Board and the Regional Board mutually agree as follows:

1. For purposes of the Federal Coastal Zone Management Act of 1972, the State Board and the Regional Board recognize the BCDC management program as the

State management program for the BCDC segment of the California coastal zone, which comprises San Francisco Bay and its adjacent shorelands (the area of existing BCDC permit jurisdiction), and will comply with, and exercise their regulatory authority to assist in carrying out, the BCDC management program to the maximum feasible extent.

2. BCDC recognizes that the State Board and the Regional Board are the State agencies with primary responsibility for the coordination and control of water quality in San Francisco Bay. BCDC further recognizes that the State Board has primary responsibility for the administration of water rights pursuant to applicable law.

3. As required by Section 307(f) of the Coastal Zone Management Act, BCDC will incorporate into its management program for San Francisco Bay the requirements established by the State and Regional Boards pursuant to the Federal Water Pollution Control Act, as amended.

4. In carrying out its management program for the Bay, BCDC will, to the maximum feasible extent, exercise its powers and responsibilities under the McAteer-Petris Act to further the water quality objectives of the State and Regional Boards, including observing the following special procedures:

(a) BCDC will forward to the Regional Board for review and comment copies of all applications requiring a public hearing before BCDC. Except in unusual circumstances, the Regional Board will comment on such applications within 21 days, and copies of all such comments will be distributed to BCDC members prior to a vote on the application. To the maximum extent feasible, BCDC will incorporate recommendations of the Regional Board into any permit issued by BCDC, or into any resolution denying such a permit.

(b) As a standard condition in all BCDC permits, BCDC will require compliance with the requirements of the Regional Board.

5. BCDC may participate in all proceedings of the State and Regional Board relating to water quality in San Francisco Bay or in the Delta. In the event BCDC participates in any such proceedings, it shall be afforded full opportunity to present evidence and examine and cross-examine witnesses.

Executed on _____, 1976.

State Water Resources Control Board

By: _____
William Dendy
Executive Officer

Executed on _____, 1976.

California Regional Water Quality
Control Board, San Francisco Bay Region

By: _____
Frederick Dierker
Executive Officer

Executed on _____, 1976.

San Francisco Bay Conservation and
Development Commission

By: _____
Charles R. Roberts
Executive Director

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