

Regulatory Reform Plan (Approved on August 17, 1995)

Summary

On August 17, 1995, the Commission adopted the following regulatory reform plan and directed that, as required, the plan be submitted to the Secretary for Resources and the Joint Legislative Budget Committee by September 1, 1995. This regulatory reform plan is closely interrelated with the two-year work program which the Commission also approved on August 17, 1995. In approving the work program the Commission allocated much of its discretionary resources in FY 95-96 to implementing components of the regulatory reform plan and endorsed requests for additional funds to invest in initiating other components of the regulatory reform plan in FY 96-97.

Introduction

The past year has been a tumultuous time for BCDC, one in which a series of events have focused the attention of both the Administration and the Legislature on BCDC's programs and its future. It began with a legislative proposal in 1994 to abolish BCDC, followed by the Governor's budget proposal to fund BCDC for half of the 1995-96 fiscal year and thereafter transfer BCDC's responsibilities and staff to the Coastal Commission. Critics claimed that BCDC's permitting process was redundant, cumbersome, and lengthy. After learning of the strong support for BCDC, the Governor revised his budget proposal to provide funding for the full 1995-96 fiscal year. But it is clear that the Commission cannot simply go back to "business as usual."

The Commission was been asked to report to the Legislature and the Resources Agency, by September 1 of this year, on measures to streamline its regulatory program. After almost thirty years of protecting and enhancing San Francisco Bay, the time has come to evaluate BCDC's programs and identify improvements or changes that would better achieve the dual mandate of protecting the Bay's resources and approving appropriate development on the Bay's shoreline.

The terms "regulatory reform" and "permit streamlining" are much in vogue these days, but are sometimes misinterpreted to mean simply cutting costs or reducing the number of government employees. In developing a regulatory reform plan for BCDC's program, the Commission has focused on ideas that will ultimately allow BCDC to better achieve its goals at less cost to the public and the regulated community. The Commission's regulatory program is the tool that implements the public policies and goals established by the McAteer-Petris Act and the *San Francisco Bay Plan*. But, without solid policies based on scientific research that address current issues in the Bay Area, the most efficient and streamlined implementation tool is worthless. Therefore, this regulatory reform plan requires some investments in the short term which will pay off in future years when BCDC has both an updated policy foundation and a more efficient program for implementing those policies.

New policy initiatives clearly fall under the heading of regulatory reform, because they can lead to substantial improvements in regulatory processes. Through its North Bay Wetlands Planning and LTMS programs, for example, BCDC has already moved to improve its regulatory program by developing partnerships with local governments and other regulatory agencies to simplify state and local permitting processes and by reaching consensus on dredging policies. The North Bay project will culminate in a North Bay Wetlands Protection Plan, that will be implemented by amending the general plans and zoning ordinances of Marin, Sonoma, Napa, and Solano Counties and the Cities of San Rafael, Novato, American Canyon, and Vallejo. *San Francisco Bay Plan*

policies, findings, recommendations, designations, and maps will be amended to be consistent with local government plans, which will expedite permit processing for project applicants in the North Bay.

The Commission's LTMS program is a joint effort of state and federal agencies and the dredging community to develop a consensus-based regional approach to managing dredging and disposal of dredged materials in San Francisco Bay. One product of the LTMS program will be a Comprehensive Management Plan for dredging, to be implemented jointly by the Regional Water Quality Control Board, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and BCDC. Another product is a pilot project for "one-stop" permit processing, in which dredging permit applications will be submitted to the relevant regulatory agencies simultaneously on a single application form. A test application is already in progress. Although it will have taken several years and a substantial investment in staff resources, the LTMS program will result in coordinated policies and processes that will expedite and simplify the permitting process for dredging, thereby lowering costs and providing greater benefit to the Bay Area economy.

The Commission has also considered problems in the permitting process that can be addressed directly through changes to that process. Some of the proposed reforms include expanding the category of projects that can be approved administratively, clarifying the scope and timing of project reviews by the Design Review and Engineering Criteria Review Boards, and amending the Commission's regulations to shorten the length of time between public hearings and Commission votes on permit applications.

Over the past five months, representatives of the Save San Francisco Bay Association and the Bay Planning Coalition have been meeting regularly to discuss their concerns about the Commission's programs and to prepare their own recommendations for reform. Those recommendations are not available as of the writing of this plan. Fortunately, the Commission's staff was able to attend many of the meetings held by the two organizations to discuss various ideas for improving BCDC's program, and several of those concepts are reflected in this plan. Save San Francisco Bay Association and the Bay Planning Coalition plan to complete their final recommendations by September 1, 1995. Their report may include additional proposals not included in this plan, and/or others that may not be consistent with this plan.

This report contains a series of proposals for reform, each of which includes a problem description, a variety of solutions, a recommended solution and rationale, actions necessary to implement the recommended solution, potential obstacles, estimated costs, and schedule for implementation. The two-year work program for the 1995-96 and 1996-97 fiscal years, which the Commission also adopted on August 17, 1995 along with this regulatory reform plan will implement many of the plan's proposals to the degree allowed by available resources.

The proposals for reform fall into three categories: (1) those that can be undertaken in the current fiscal year with the resources available in the Commission's FY 95-96 budget; (2) those for which the substantive work can be initiated in the next fiscal year if the resources requested in the Commission's FY 96-97 work program are approved; and (3) those which must be deferred at least until FY 97-98 because of a lack of available resources. The reform proposals include:

Projects Included in the FY 95-96 Work Program

1. Permit Streamlining 3
2. Eliminating Duplicative Project Reviews (Dredging Projects) 6
3. Improving Dredging Management..... 7
4. Eliminating Unnecessary Regulations..... 8
5. North Bay Wetlands Planning 8
6. Creating a Partnership with the Port of San Francisco..... 9
7. Improving Project Review by the Design Review Board..... 10

Projects Included in the FY 96-97 Work Program

8. Improving Information Management.....	11
9. Creating a Partnership with Solano County and the City of Vallejo.....	13
10. Creating a Partnership with the Port of Oakland.....	13
12. Improving Enforcement.....	14
13. Improving Project Review by the Engineering Criteria Review Board	15
14. Updating Bay Plan Policies	17
15. Eliminating Duplicative Project Reviews (Non-dredging Projects).....	17
16. Deregulating BCDC.....	18

Unfunded Projects

16. Developing a Shoreline Transportation Plan	20
--	----

Projects Included in the FY 95-96 Work Program

1. Permit Streamlining

Problem. Applicants for permits for maintenance dredging, or routine repairs and maintenance of structures in the shoreline band are subject to an unnecessarily long and burdensome application review process. The BCDC staff spends more time and attention on such projects than is merited by their significance to the Bay and the region. Although BCDC permits must be issued within 90 days of the filing of a complete application, some applicants have complained that the permit application review process is too long.

Alternative Solutions. (1) Exempt all less significant types of projects from BCDC permit requirements; (2) add more permit analysts to handle the workload generated by the existing types and numbers of applications, thereby allowing projects to be approved more quickly; (3) shorten the 90-day review period to force earlier Commission decisions; (4) wherever possible, hold public hearings and votes on projects that raise no conflicts with the Commission's laws and policies at the same Commission meeting (or create a consent calendar); (5) wherever possible, hold two Commission meetings a month to allow voting on projects to occur within two weeks of the public hearing; (6) eliminate the requirement that a second public hearing be held on a project if more than five weeks elapse between a public hearing and vote; and (7) reform the permitting process by "downgrading" certain types of projects to reduce permitting requirements.

Proposed Solution. BCDC has adopted Alternatives #4 through #7 to simplify and expedite review and processing of permit applications for minor projects. Each of these proposals will require changes to the Commission's regulations or administrative practices.

Permit reform measures include creating an abbreviated regionwide permit program with a shortened application and a shortened review for certain inconsequential projects; "downgrading" the manner in which certain types of projects are processed (e.g., changing some major permit categories to administrative permit categories, or changing some administrative permit categories to regionwide permit categories), revising definitions so that some de-minimus work would not require Commission authorization, and simplifying the permit application forms. Simplifying and abbreviating certain BCDC permit processes would expedite authorization for maintenance dredging, routine repairs, and ministerial types of work within the Commission's jurisdiction, without sacrificing resource protection.

A. The type of project with the most promise for streamlining, but with minimum potential for raising major policy issues, affecting resources, or incurring project sponsor liability, are those that would qualify for an "abbreviated" regionwide permit. The staff would develop a one or two-page application form in which applicants can describe the proposed work. Upon submission of this abbreviated regionwide permit application, the staff would determine whether or not the work

qualifies for the abbreviated regionwide permit. Such applications would not be placed on the administrative listing. The staff would have 30 days to review abbreviated regionwide permit applications for completeness, but intends to review such applications within 15 days. Once the staff filed the abbreviated application as complete, they would inform the applicant of the decision within seven days. If the project is approved under the abbreviated regionwide permit, staff would send the applicant a copy of the permit, with conditions if appropriate, with a one-page cover memo.

The following work now authorized by a regionwide permit could be covered by an abbreviated regionwide permit:¹

- Routine repairs, maintenance, and removal of water-oriented structures and facilities such as boat docks, shoreline protective works, utility cables, etc. (most of the existing Regionwide Permit Nos. 1 through 4); and
- Repairs and maintenance of single and multiple family residential structures within the shoreline band (most of the existing Regionwide Permit No. 5).

B. Another permit reform would allow some projects that are now classified as major permits, administrative permits, and regionwide permits to be “downgraded” to a lower type of permit. The following “minor repairs or improvements” could be downgraded from administrative permits to regionwide permits, subject to a variety of conditions and exclusions:

- Maintenance dredging projects with in-Bay disposal, so long as the disposal meets target volumes, is limited to small projects, and has no feasible upland or ocean disposal alternative; and maintenance dredging projects with ocean or upland disposal with no environmental impacts;
- Repairs to and maintenance of existing residential structures on pilings (excluding replacement or reconstruction); and
- Placement of new utility lines and cables, but not pipelines (with conditions regarding resource and navigation channel protection).

C. Third, the following major permit activities could be downgraded to administrative permits (recognizing that the Executive Director would still have to make all of the appropriate findings and would require conditions to protect natural resources and provide public access):²

- New sand dredging projects that exceed the existing 100,000 cubic yards per 30-month volume limitation, but no more than a yet-to-be determined upper limitation;
- New dredging projects that exceed the existing 100,000 cubic yards per 30-month volume limitation, limited to deepening existing navigation channels or basins, without significant environmental or other policy concerns;
- New or maintenance dredging and disposal projects that would last for more than 30 months;
- Multiple boat dock expansions of up to 20,000 square feet within an existing marina; and

¹The following work would continue to be authorized pursuant to the existing regionwide permit process: (1) replacement and reconstruction of existing water-oriented structures and facilities such as boat docks, shoreline protective works, utility cables, etc., and incidental additions to existing outfall pipes, utility cables, etc.; (2) replacement and reconstruction of single family residences and most new construction that is incidental to an existing single family residence on a lot zoned for a single family residence within the shoreline band (with a kick out provision to protect views); (3) routine repair and maintenance of most existing multi-unit residential and non-residential structures and associated facilities and paved surfaces; (4) construction of most boat docks no larger than 1,000 square feet; and (5) most seismic retrofitting of State bridges across the Bay.

²Downgrading dredging projects from major to administrative dredging permits would occur after completion of the LTMS.

would be voluntary and its success would depend upon the willing involvement of the member agencies. If any of the dredging agencies dropped out of the DMMO, its benefits would be lost.

Strategy for Overcoming Obstacles. Ensure that the DMMO process includes sufficient public review so that the public's ability to review and comment on dredging projects is increased. Ensure that the resource agencies have a strong role in the DMMO process, and perhaps, are made members of the DMMO. Work to bolster the already strong support of the Long Term Management Strategy member agencies for the program, and execute Memoranda of Agreement to commit the agencies to the program.

Cost and Implementation Schedule. Estimated cost: \$42,000. Schedule: FY 95-96 through FY 96-97, invest 0.5 PY per year to help formulate and staff the program and prepare necessary changes to the Commission's regulations. (See page 12 of the work program for more detail.)

3. Improving Dredging Management

Problem. The dredging and disposal policies and management approaches used by the state and federal agencies in the region are not consistent, and have resulted in inter-agency conflicts and confusing direction to project sponsors. Fishermen and environmentalists believe that present dredging and disposal practices are harming the Bay environment, while dredging interests believe that present regulations hamper their ability to maintain important channels and berthing areas at a reasonable cost.

Alternative Solutions. (1) Complete the Long Term Management Strategy (LTMS) to manage dredging and disposal activities in the region in cooperation with the other regulatory agencies; (2) BCDC could independently prepare proposed amendments to the Bay Plan dredging findings and policies based on its technical studies as part of the LTMS and other appropriate technical and planning work performed by others; and (3) BCDC, in partnership with the Regional Water Quality Control Board, could prepare a State Management Plan for dredging and disposal in the region that would be implemented through the Bay Plan and the Basin Plan.

Proposed Solution. BCDC will pursue Alternative #1, and with the U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, and Regional Water Quality Control Board, complete the LTMS and prepare a Comprehensive Management Plan to implement the LTMS. The Plan will manage dredging and disposal activities in the San Francisco Bay region in a manner that will accommodate needed dredging projects, protect the Bay's natural resources, and encourage the reuse of dredged material.

Reasons for Selecting Proposed Solution. The four agencies have already invested substantial resources toward preparing the LTMS, and are in the final stages of preparing an environmental document that evaluates alternative strategies for managing Bay dredging and disposal. This effort represents the best chance of resolving the controversies that have beset dredging activities in the past.

Alternative #2 would not result in coordinated state and federal policies and management of Bay dredging, and thus would not alleviate the region's dredging problems. Alternative #3 would not include the U.S. ACE, which is a major dredger in the Bay, nor would it reconcile federal and state policies regarding dredging and disposal activities.

Implementing Action(s). BCDC should continue its planned work program to complete the LTMS, develop a Comprehensive Management Plan (CMP), and implement the adopted plan through appropriate changes to the Bay Plan and its regulations.

Potential Obstacles. The involved agencies will have to reach consensus on policies and implementing actions for the LTMS. The U.S. ACE in particular may be hampered by the need to reconcile the regional approach with national guidance regarding management of dredging and disposal. Current dredging fees will fund the Commission's efforts through FY 95-96, but additional support will be required to fund any Commission activities in subsequent fiscal years.

Strategy for Overcoming Obstacles. Continue negotiations with the other LTMS agencies to achieve consensus on proposed policies. Proposed amendments to AB 1102 (Sher) would fund the Commission's LTMS program for an additional year by imposing a fee on the disposal of dredged material in the Bay. These amendments are supported by the dredging community.

Cost and Implementation Schedule. Estimated cost: \$230,000. Schedule: In FY 95-96, approximately 2.7 PY will be needed to continue the various LTMS projects and the CMP. In FY 96-97, 3.0 PYs will be needed to complete the CMP and LTMS, and prepare the Bay Plan amendments and changes to Commission regulations necessary to implement the CMP. (See pages 11 and 12 of the work program for more detail.)

4. Eliminating Unnecessary Regulations

Problem. During the last ten years, the Commission has not comprehensively reviewed those regulations that affect businesses, organizations, or individuals outside of State Government to ensure that they are clear, "user friendly," and do not unduly burden the regulated public. The Governor's Regulatory Review Working Group has directed each agency to review all such regulations, and to complete the review process by the end of 1995. Each agency is to commence any rulemaking activity needed to implement the results of the review process in early 1996.

Alternative Solutions. (1) Adopt a limited review process, with written comments only; and (2) adopt a broader review process, including appropriate notice and a public hearing with opportunity for written comments.

Proposed Solution. BCDC will pursue Alternative #2, and conduct a wide review of regulations with a public hearing and opportunities for public comment.

Reasons For Selecting Proposed Solution. The selected solution will respond to the direction of the Governor's Regulatory Review Working Group. In addition, it has been over ten years since the Commission examined these regulations in a comprehensive manner.

Implementing Action(s). In September, 1995, the Commission will mail a notice of intent to review category one regulations, and hold a public hearing in November 1995. The Commission staff will then review all written and oral comments and develop a recommendation for proposed changes to be considered by the Commission in December 1995. In early 1996, the staff will then commence any rulemaking activity needed to respond to the Commission's direction and response to the staff recommendation.

Potential Obstacles. This process, combined with any necessary follow-up rulemaking activity, will take 0.3 PY of staff attorney time, which will further reduce the Commission's enforcement abilities.

Strategy for Overcoming Obstacles. Defer enforcement work until FY 96-97. If the funding requested to implement the work program for FY 96-97 is approved, BCDC will have two additional enforcement staff who can catch up on enforcement efforts deferred during the review of regulations.

Cost and Implementation Schedule. Estimated Cost: \$40,000. Schedule: in both FY 95-96 and 96-97, invest 0.3 PY in the review. It will take four months to complete the review of regulations and hearing, with another 6 to 12 months for follow-up rulemaking activity. (See page 5 of the work program for more detail.)

5. North Bay Wetlands Planning

Problem. The inconsistency of local, state, and federal wetlands definition, identification and policy has resulted in frustration for local governments and project proponents regarding what kinds of projects, if any, can be permitted in areas thought to be wetlands.

Alternative Solutions. (1) BCDC could independently continue to comment on projects in diked wetlands outside its jurisdiction using its advisory diked baylands policies; (2) local governments could independently seek to define wetlands and their location in their jurisdiction and develop their individual policies concerning their use; and (3) BCDC could establish a partnership with the North Bay local governments to develop a comprehensive region-wide wetlands protection plan consistent with federal and state wetland definitions and policies.

Proposed Solution. BCDC will pursue Alternative #3, which will: (1) establish a voluntary partnership with the local governments in the North Bay, the last remaining expanse of wetlands in the San Francisco Bay region, to jointly prepare a uniform and comprehensive regional wetlands protection plan that would be implemented by BCDC and the local governments; (2) adopt the North Bay Wetlands Protection Plan as a special area plan and an amendment of the San Francisco Bay Plan; and (3) assist the local governments in adopting the North Bay Wetlands Protection Plan, amending their general and specific plans, and adopting enforceable regulations consistent with the Wetlands Plan.

Reasons for Selecting Proposed Solution. Past collaborative partnerships between BCDC and local governments have been highly effective in establishing mutually agreed upon land use plans and integrated regulatory systems. This proven concept should be followed again, using BCDC's existing authority to develop and adopt Special Area Plans and its experience in developing similar plans to integrate local and regional regulatory systems in the Suisun Marsh area of the San Francisco Bay region. The purpose of the North Bay Wetlands Protection Plan is to prepare a comprehensive wetlands habitat conservation plan adopted and implemented by BCDC and the North Bay local governments—the agencies with the land use planning and regulatory authority in the North Bay wetlands. The plan will provide for a consistent and predictable sub-regional system for regulating uses in wetlands and guiding urban development to appropriate upland sites with minimal impacts on wetlands.

Implementing Action(s). BCDC and the local governments will enter into a partnership to prepare, adopt, and implement the North Bay Wetlands Protection Plan.

Potential Obstacles. Some of the local governments may not choose to participate in the process, although all have indicated an interest. Most local governments will have limited staff resources to participate in the process, consequently BCDC staff will be required to do most of the work. Funding for the BCDC staff work is not assured.

Strategy for Overcoming Obstacles. Enter into discussions with the local governments to gain their support for (1) the planning partnership with BCDC, and (2) sufficient funding for BCDC staff to complete the planning work. Assist the local governments in their consideration and adoption of the North Bay Wetlands Protection Plan and the amendment of their plans and regulations.

Cost and Implementation Schedule. Estimated cost: \$225,000 in FY 95-96 and \$120,000 in FY 96-97. Schedule: FY 95-96, invest 3.0 PY to (1) establish the planning partnership; (2) pursue sources of funding for completion of the planning project; and (3) prepare planning background reports and the draft North Bay Wetlands Protection Plan. In FY 96-97, request additional funds for 2.0 PY to complete the environmental document and assist the local governments in the review and adoption of the North Bay Wetlands Protection Plan. (See pages 9 and 10 of the work program for more detail.)

6. *Creating a Partnership with the Port of San Francisco*

The Port of San Francisco has recently completed its proposed Waterfront Plan, which will be adopted by the City of San Francisco. The policies of the Bay Plan, the San Francisco Waterfront Special Area Plan, and the Total Design Plan guide development along the San Francisco waterfront consistent with the provisions of the McAteer-Petris Act. The draft Waterfront Plan contains elements that appear to be inconsistent with the Commission's plans, which could lead to delays and controversies over future waterfront development projects.

Alternative Solutions. (1) Exempt Port projects from BCDC permit requirements; and (2) BCDC could enter into a partnership with the Port of San Francisco to develop an integrated waterfront plan meeting local needs and reflecting state interests.

Proposed Solution. BCDC will pursue Alternative #2 and enter into a partnership with the Port of San Francisco to bring the Waterfront Plan and the Commission's *Bay Plan*, the *San Francisco Waterfront Special Area Plan*, and the *San Francisco Waterfront Total Design Plan* policies and implementing mechanisms into consistency prior to the Port's adoption of the Waterfront Plan.

Reasons for Selecting Proposed Solution. Past collaborative partnerships between BCDC and local governments, in this case the Port of San Francisco and the City and County of San Francisco, have been highly effective in establishing policies on waterfront development that have been adopted by the local governments and BCDC. This effective approach should be employed again to address potential conflicts between the Waterfront Plan and the Commission's plans. The special area plan approach leads to consistency and predictability of local and BCDC policies regarding shoreline use, which would help to speed project reviews during the permit application process.

Alternative #1 would exempt Port projects, which have historically had some of the greatest impacts on Bay resources, from compliance with Bay protection policies, and would require amendments to the McAteer-Petris Act.

Implementing Action(s). BCDC and the Port of San Francisco will enter into a partnership to adopt a consistent waterfront plan for the San Francisco waterfront .

Potential Obstacles. Both BCDC and San Francisco would have to agree to enter into the partnership. No source of funding has been identified to pay for BCDC's participation in this planning process.

Strategy for Overcoming Obstacles. Enter into negotiations with the Port of San Francisco to gain its support for the planning project and work jointly with the Port to secure funding for BCDC's participation in the planning effort.

Cost and Implementation Schedule. Estimated cost: \$60,000. Schedule: FY 95-96, invest 0.5 PY to negotiate agreement with the Port of San Francisco, obtain funding, and initiate the work in FY 96-97. Although no state funding is available for this project in FY 95-96, the Port of San Francisco has agreed to provide funding to the Commission so this project can be initiated immediately. In FY 96-97, approximately 0.5 PY would be needed to complete the project, including amending the Bay Plan, Special Area Plan, and the Total Design Plan. Additional funding may be necessary for cartographic consultant assistance. (See page 9 of the work program for more detail.)

7. Improving Project Review by the Design Review Board

Problem. The Design Review Board aids the Commission in achieving the best quality project design and identifying what is the maximum feasible public access to the Bay consistent with a proposed project. Consideration of applicants' projects is not fully successful when (1) the DRB is not fully informed about individual project sites and related wildlife issues; (2) the DRB does not always focus on the issues the Commission expects it to address; (3) applicants are not sufficiently familiar with the DRB review process and submittal requirements; and (4) the DRB's review of complex projects comes too late in an applicant's planning process to accommodate fundamental changes to the proposed project.

Alternative Solutions. (1) Disband the Design Review Board; (2) exempt complex projects from the DRB's review; (3) have the staff organize more field trips with relevant experts and policy makers and have the staff provide an analysis of a site and its surroundings at DRB meetings to ensure that the DRB understands all aspects of a project; (4) have the staff conduct periodic briefings for the DRB to inform Board members of legislative, judicial, or regulatory changes which may guide or influence the DRB's consideration of individual projects; (5) increase the staff's participation at DRB meetings to focus the DRB on pertinent policy and design issues and to

ensure that the DRB adopts clear and concise recommendations to the Commission; (6) have the staff review and clarify, if necessary, the DRB's submittal requirements and the application instruction booklet to assist applicants in preparing for a DRB review; and (7) have staff encourage early review of large, complex projects to obtain conceptual approvals early in the project planning stages.

Proposed Solution. The Commission will implement alternatives #3 through #7. Each selected solution will help to better prepare both DRB members and project applicants for the DRB review process, consequently expediting DRB reviews.

Reasons for Selecting Proposed Solution. Alternatives #3 through #7 will make the DRB's project review process more focused and efficient, yet would not create a review process that is so formal that it would inhibit an open discussion between the DRB, applicants, staff, and members of the public. These changes should increase staff support for the DRB and ensure the members are better prepared to consider the policy issues associated with each project.

Alternatives #1 and #2 would eliminate an extremely effective and valuable service provided at no cost to the Commission by some of the best design and planning professionals in the country. This assistance is particularly important in the Commission's consideration of large and complex projects. Alternative #1 would also require an amendment to the McAteer-Petris Act.

Implementing Action(s). BCDC staff will undertake the proposed solutions on an administrative basis without amending BCDC's regulations or permit process. In addition to reviewing the DRB process and written materials for applicants, this reform will require allocating more of the Bay Design Analyst's time to assisting and educating DRB members on the projects coming before that body.

Potential Obstacles. Some staff time will be required to review and revise DRB-related documents and this effort will require a minor redirection of staff resources. Some plan reviews will likely be delayed as the Bay Design Analyst devotes his or her attention to this effort. Some resistance might be encountered by DRB members if they believe that the staff is intruding into the DRB's review of projects.

Strategy for Overcoming Obstacles. Defer for a short time the Bay Design Analyst's permit work load, and assign the Analyst to work with the DRB in improving its process. The BCDC staff should engage members of the DRB in candid discussions throughout this process to ensure that the existing excellent relationship between the DRB and staff will continue.

Cost and Implementation Schedule. Estimated cost: \$6,000 in FY 95-96 and annually thereafter. Schedule: Invest 0.10 PY of staff time on an ongoing basis to implement the review of DRB procedures and to provide greater staff support to the DRB to carry out this reform.

needs forceful person
Projects Included In the FY 96-97 Work Program

8. Improving Information Management

Problem. BCDC's review of permit applications and response to inquiries is frequently delayed because information is not always electronically recorded or easily retrieved. Information on permits and geographic resources is not readily obtained because the Commission does not have staff to organize and manage the Commission's information storage and retrieval system.

Alternative Solutions. (1) Lay off a staff member and replace that position with an Electronic Data Processing (EDP) specialist; (2) use the next available staff vacancy as an opportunity to hire an EDP specialist; (3) retrain an existing staff member to become an EDP specialist; (4) retain an EDP consultant on an as-needed basis; and (5) seek a budget augmentation to create a new staff position and hire a permanent EDP specialist.

Proposed Solution. BCDC will pursue Alternative #5 and seek a budget augmentation to hire a staff EDP system administrator with expertise in Macintosh computer systems, information storage and retrieval, and geographic information systems. Hiring an EDP specialist would enable the staff to make optimal use of the Commission's substantial investment in Macintosh computers and software, and would help integrate BCDC's programs and data into regional and statewide databases. These steps would lead to improved coordination with local and state planning, and would facilitate permit processing.

Reasons for Selecting Proposed Solution. Hiring an EDP system administrator as described in Alternative #5 would greatly increase the overall productivity of the Commission's staff. Over the past several years, the Commission has made a substantial investment in Macintosh computers, modems, servers, and software. But the staff does not fully use the capabilities of the equipment because BCDC has not had the staff capability to develop an information management system, administer the system, and assist the staff in using the system. The Commission recently entered into a contract with the University of California to gain access to UC's extensive geographic information storage and analysis capabilities. Through the Internet, staff also has access to the California Environmental Resources Evaluation System (CERES), the state's on-line system which provides information about California's natural resources. However, these valuable resources are used intermittently and only by a few staff members because there is no in-house program to assist the rest of the staff in making full use of this information. The Commission's permit data base, which is on a WANG system, is now antiquated, and must be converted to the Commission's Macintosh-based network. Without access to this permit database, staff responses to inquiries and review of permit applications are delayed. A staff EDP specialist would allow the Commission to fully integrate electronic data processing into BCDC's staff operations.

Alternatives #1 and #2 would increase efficiency in EDP management, but at the expense of another program—permits, enforcement, planning, administrative support, or management oversight. While an EDP specialist would increase the overall efficiency of all staff operations, those increases cannot justify further reductions to an already inadequate staff level in other areas.

Alternative #3 would have similar drawbacks as Alternatives #1 and #2. In addition, it would take considerable time and expense to retrain a current staff member as a fully-qualified EDP system administrator.

Alternative #4 has been used in the past when the staff retained outside contractors for program development, advice, training, and trouble-shooting. This approach is expensive, has generated a patchwork of results, and does not provide the staff with on-the-spot assistance to deal with malfunctions, provide advice, and manage system operations. Moreover, budget reductions have eliminated the funding for consulting contracts for EDP assistance.

Implementing Action(s). BCDC will request a \$50,000 budget augmentation in FY 96-97 to hire an EDP system administrator.

Potential Obstacles. For fiscal or policy reasons, the Administration or the Legislature may oppose augmenting the Commission's budget or adding to the size of the Commission's staff.

Strategy for Overcoming Obstacles. The Commission will emphasize that the addition of this position would be an investment in regulatory coordination and permit streamlining. It would decrease the time needed to process a permit application by increasing the efficiency of BCDC's staff.

Cost and Implementation Schedule. Estimated cost: \$50,000 beginning in FY 96-97 and continuing at that level in subsequent fiscal years. Schedule: FY 95-96; request funding to be included in FY 96-97 budget. In FY 96-97, if funding is provided, hire an EDP system administrator. (See pages 6 and 7 of the work program for more detail.)

9. *Creating a Partnership with Solano County and the City of Vallejo*

Problem. Section 66679 of the Government Code requires Solano County and the City of Vallejo to jointly adopt a White Slough Specific Area Plan and submit the plan to the Commission in 1996 for review and certification. The City and County are preparing the White Slough Plan. Once BCDC certifies the plan, the County and the City are required to bring their land use plans and enforceable regulations into consistency with the certified White Slough Plan. Thereafter, BCDC will issue or deny permits for the placing of fill, extraction of materials, or the substantial change in use of any area within White Slough if consistent with the White Slough Plan. Delays in projects in the White Slough Area of Solano County will likely occur if the Commission is unable to certify the White Slough Specific Area Plan in a timely manner.

Alternative Solutions. (1) BCDC could receive the White Slough Specific Plan without participating in its development; and (2) BCDC could enter into a partnership with Solano County and the City of Vallejo to participate in the White Slough planning process, and set up a process for reviewing local plans and regulations for consistency of amendments with the McAteer-Petris Act and the Bay Plan.

Proposed Solution. BCDC will pursue Alternative #2 and enter into a partnership with Solano County and the City Of Vallejo to ensure that the White Slough Plan is consistent with the criteria BCDC must employ in determining whether or not to certify the document. This partnership would expedite the review and certification process. In addition, BCDC should work with the County and the City during their respective general plan amendment processes to assure adoption of the new regulatory scheme in a timely manner.

Reasons for Selecting Proposed Solution. The White Slough Plan review and certification process closely parallels BCDC's successful partnership with local governments in the Suisun Marsh for approval of local Marsh protection plans. This effective process could once again be employed to ensure the consistency of Solano County and Vallejo's recommended White Slough Plan with the McAteer-Petris Act, as well as amendments to local governments' plans and regulations, and to ensure an integrated, consistent, and streamlined regulatory scheme for the White Slough area.

Alternative #1 would delay adoption of consistent state and local regulatory programs for the White Slough area, resulting in further delays of important projects in the White Slough area.

Implementing Action(s). BCDC and Solano County and the City of Vallejo will enter into a partnership to adopt and implement the White Slough Specific Area Plan in an expeditious manner.

Potential Obstacles. BCDC, Solano County, and the City of Vallejo would have to agree to enter into the partnership. No source of funding has been identified to pay for BCDC's participation in this planning process.

Strategy for Overcoming Obstacles. Enter into discussions with the Solano County and Vallejo to gain their support for BCDC participation in the planning project and work jointly with the two local agencies to secure funding for BCDC's participation in the planning effort.

Cost and Implementation Schedule. Estimated cost: \$33,000 beginning in FY 96-97. Schedule: FY 95-96, discuss an agreement with Solano County and Vallejo, and seek funding so the work can be initiated in FY 96-97. In FY 96-97, if funding is provided, invest 0.3 PY to initiate the partnership project. (See page 9 of the work program for more detail.)

10. *Creating a Partnership with the Port of Oakland*

Problem. The Port of Oakland is working with the City of Oakland and numerous citizen groups to develop general goals for Oakland's waterfront that will lead to a land use plan and a waterfront public access plan. Historically, conflict over the amount and location of public access for Port of Oakland projects has lengthened and complicated the regulatory process for the Port and

BCDC. Due to a shortage of resources, BCDC staff has not been participating fully in the City's planning process and would be unable to participate in public access planning.

Alternative Solutions. (1) Exempt Port projects from BCDC permit requirements; and (2) BCDC could enter into a partnership with the Port of Oakland and the City of Oakland to jointly develop a shoreline access plan that meets local needs and reflects state interests.

Proposed Solution. BCDC will pursue Alternative #2 and enter into a partnership with the Port of Oakland and the City of Oakland to develop a detailed public access plan for the Oakland waterfront. Such a plan could lay out, in a comprehensive manner, the kinds of public access and amenities that should be provided as part of the requirements for project approval along the Oakland waterfront and, in particular, projects of the Port of Oakland. The Port could identify public access improvements that would be linked with proposed maritime projects, thus eliminating the time-consuming process of formulating access projects on an ad-hoc basis when maritime developments are proposed. If access projects are developed in advance of future maritime improvements, the Port would receive credit for the public access improvements that it could apply to a future maritime project.

Reasons for Selecting Proposed Solution. Past collaborative partnerships between BCDC and local governments have been highly effective in establishing mutually acceptable policies which have been adopted by the local governments and BCDC to guide future shoreline development, as well as design and use of public access. This successful concept should be employed again for Oakland's land use and public access plans, using BCDC's existing authority to develop and adopt Special Area Plans.

Alternative #1 would exempt port projects, which historically have had some of the greatest impacts on Bay resources, from complying with Bay protection policies, and would require amendments to the McAteer-Petris Act.

Implementing Action(s). BCDC and the Port of Oakland and City of Oakland would enter into a partnership to adopt a specific public access plan for the Oakland waterfront.

Potential Obstacles. BCDC, the Port of Oakland, and the City of Oakland would have to agree to enter into the partnership. The Port of Oakland has expressed an interest in doing so and BCDC has historically entered into these kinds of partnerships with local agencies. No source of funding has been identified to pay for BCDC's participation in this planning process. There may also be no funding for the Port or the City to participate in the project.

Strategy for Overcoming Obstacles. Gain the support of the Port of Oakland and the City of Oakland for the planning project and work jointly with the Port and the City to secure funding for BCDC's participation, and possibly the Port and City's participation, in the planning effort.

Cost and Implementation Schedule. Estimated cost: \$60,000 beginning in FY 96-97. Schedule: FY 95-96, request funding for FY 96-97. In FY 96-97, if funding is provided, invest 0.3 PY to negotiate agreement with the Port of Oakland and City of Oakland, and initiate the waterfront public access plan. In FY 97-98, invest 0.5 PY to complete planning work and amend the Bay Plan. (See page 8 of the work program for more detail.)

12. Improving Enforcement

Problem. The Commission is unable to fully enforce the provisions of state law it administers. In the late 1980s, one staff enforcement position was converted to a permit analyst position to accommodate an increase in permit workload. The chief enforcement officer position was eliminated in FY 92-93 as part of a general budget reduction. Funding for enforcement interns has been sporadic and is available for only short-term positions. These cuts in the enforcement program have virtually eliminated permit monitoring, and have placed most of the enforcement workload on the two staff attorneys. Only major violations are investigated, even though smaller violations may threaten public access, resources, or habitat. One or two major cases absorb all of the staff's en-

enforcement resources. The Enforcement Committee has not met in nine months because an insufficient number of cases have been investigated and brought to the point where Commission action is desirable.

Alternative Solutions. (1) Continue the existing enforcement program; and (2) add enforcement personnel to the staff.

Proposed Solution. BCDC will pursue Alternative #2 and seek restoration of the two enforcement positions: one intern and one full-time enforcement staff.

Reasons for Selecting the Proposed Solution. Alternative # 1 is unacceptable because the current level of enforcement activity does not adequately protect the public interests in the Bay, nor does it create a credible threat to deter potential violators of the Commission's authority. Without adequate enforcement of its permits and conditions, the Commission's permit authority could become meaningless. Alternative #1 would result in continued inadequate enforcement of the McAteer-Petris Act and Suisun Marsh Preservation Act.

Alternative #2 would help restore the Commission's enforcement program to a level at which staff can monitor and enforce major permit conditions, investigate violations, and develop enforcement cases. Violators of the McAteer-Petris Act cannot be identified and penalized unless the Commission obtains more enforcement staff.

Implementing Action(s). Request additional funding to restore enforcement personnel, and seek other potential funding sources, such as using civil penalties to pay for enforcement activities.

Potential Obstacles. No source of funding has been identified for any additional positions. The Administration has indicated that it will not support the use of civil penalties to pay for agency enforcement efforts on the grounds that it would give agencies perverse incentives to unjustly pursue unimportant violations to increase funding.

Strategy for Overcoming Obstacles. The Commission will try to convince the Administration and the Legislature that the Bay is threatened by inadequate enforcement in order to obtain support and funding for additional positions in enforcement.

Cost and Implementation Schedule. Estimated cost: \$90,000 per year once the positions are approved. Schedule: In FY 95-96, request funding to hire enforcement analysts. In FY 96-97, if funding is available, hire one enforcement staff and one enforcement intern. (See pages 5 and 6 of the work program for more detail.)

13. Improving Project Review by the Engineering Criteria Review Board

Problem. The Engineering Criteria Review Board (ECRB) advises the Commission on the safety of projects proposed to be built on fill. The ECRB's consideration of some projects is not fully successful when (1) applicants are not sufficiently familiar with the ECRB review process and submittal requirements, (2) the staff does not have a full-time staff engineer to assist applicants in preparing for ECRB reviews and prepare minutes of the meetings to advise applicants, the staff and members of the public about the nature of the ECRB's discussions about projects, and (3) the ECRB's review of large, complex projects, particularly Caltrans' projects, sometimes occurs too late in an applicant's planning process to accommodate fundamental changes to the proposed project.

In addition, the Commission lacks a staff engineer to review the soundness and safety of projects involving shoreline protection, structures on fill (except for the ECRB's basic review of the criteria used to design a project), or grading. Nor is there a staff member who can assist applicants to prepare for the ECRB review and support the ECRB meetings. The absence of a staff engineer has also led to delays in the Commission's approval of projects because: (1) the Commission, its staff, and the ECRB are forced to grapple with engineering issues without the advice and expertise normally provided by a staff engineer (and permits for fill projects are being issued without the

engineering and seismic findings required by the McAteer-Petris Act); (2) having no staff engineer has shifted additional plan review responsibilities onto the Bay Design Analyst, which has led to delays and some missed deadlines in plan review work; and (3) engineering plan review and approval (which would ensure that projects are built in accordance with the advice of the ECRB and the conditions of BCDC permits) is often foregone because no staff member is capable of reviewing such plans.

Alternative Solutions. (1) Disband the Engineering Criteria Review Board; (2) exempt large, complex projects from the ECRB's review; (3) reinstate the staff engineer position to implement the following four tasks: (a) create an ECRB review memorandum/handbook and clarify, if necessary, the ECRB's submittal requirements and the application instruction booklet to assist applicants in preparing for an ECRB review; (b) work with the ECRB to develop guidelines for expected performance criteria for projects to withstand earthquakes; (c) provide ongoing support to the ECRB and review engineering plans submitted as conditions of Commission permits; and (d) carry out the other duties of a staff engineer; and (4) appoint a qualified Caltrans engineer to the ECRB to encourage early review of large, complex projects to obtain conceptual approvals early in the project planning stages.

Proposed Solution. The Commission will implement alternatives #3 and #4.

Reasons for Selecting Proposed Solution. The selected solutions would make the ECRB's project review process more effective and efficient in assisting the Commission to make findings about seismic safety of fills, as required by the McAteer-Petris Act. Funding and filling the staff engineer position would allow the Commission and its staff to carry out a critical public safety function. The proposed solutions would also provide adequate staff support for the ECRB and the Commission to carry out their charges, and to assist applicants in taking advantage of the tremendous resources offered at no cost by the ECRB.

Alternatives #1 and #2 would eliminate an extremely effective, valuable, and free service provided to the Commission by some of the best engineering and geotechnical professionals in the country. The ECRB members assist the Commission by ensuring that projects meet state-of-the-art engineering standards to withstand earthquakes and flooding. This assistance is particularly important in the Commission's consideration of highway and bridge projects built on fill. Disbanding the ECRB or exempting large projects from review by the ECRB would make it impossible for the Commission to make the necessary findings set out in the McAteer-Petris Act regarding seismic safety of fills. Alternative #1 would also require an amendment to the McAteer-Petris Act.

Implementing Action(s). Obtain additional funding to restore the staff engineer position, perhaps using a shared funding arrangement with Caltrans. Once a staff engineer is hired, she or he could undertake most of the proposed solutions on an administrative basis without amending the Commission's regulations or the permit process. The Commission could ask Caltrans to nominate an engineer to be appointed to the ECRB by the Commission.

Potential Obstacles. No source of funding has been identified to pay for the staff engineer. Without the addition of the staff engineer, there would be no resources to implement these reforms. Caltrans may not be willing to help fund the engineer position, or to volunteer one of its engineers to become an ECRB member.

Strategy for Overcoming Obstacles. Request additional funding in FY 96-97, and seek other sources of funding such as Caltrans to restore the staff engineer position. Work with Caltrans to emphasize that it would be one of the greatest beneficiaries of restoring the staff engineer and adding an appropriate Caltrans engineer to the ECRB.

Cost and Implementation Schedule. Estimated cost: \$70,000 in FY 96-97, and in each fiscal year thereafter. Schedule: In FY 95-96, request funding to hire the staff engineer. In FY 96-97, if funding is available, hire the staff engineer and have that person carry out the changes described in the proposed solutions. (See pages 4 and 5 of the work program for more detail.)

- Foster dredged material reuse projects including Hamilton Airfield, Marin County; Cargill East Side Ponds, Napa County; dredged disposal ponds at Mare Island, Solano County; and Delta levee projects;
- Chair the Reuse/Upland Workgroup and provide staff support to LTMS committees;
- Help prepare the final EIS/R for the LTMS and ensure that it will reflect the Commission's mandates and concerns;
- Help prepare the Comprehensive Management Plan for the LTMS to ensure that it will be integrated with and meet the needs of the Commission's program; and
- Finalize and implement the dredging permit application coordination program.

Scenario 3: Funding for North Bay Planning. (Total Staff: 25) By the end of FY 95-96, the Commission will have invested over \$350,000 in work on the North Bay planning project. Federal funding will be requested to complete this project in FY 96-97. To avoid squandering this investment, if federal funding is not made available, the Commission will request an additional \$150,000 in General Fund support for 2.0 PY in FY 96-97. If funds are provided, the 0.5 PY assigned to North Bay planning under Scenario #1 will be reassigned to other work, allowing some limited work to be initiated on updating of the Bay Plan policies described on page 10. In addition, the staff could complete the following North Bay planning work:

- Finalize the North Bay Wetlands Protection Plan for adoption by the Commission as a special area plan; and
- Assist the North Bay local governments in preparing and adopting amendments to their enforceable plans and regulations to carry out the North Bay Wetlands Protection Plan.

Scenario 4: Other Budget Augmentations. (Total Staff: 31) The following augmentations are needed to correct staff deficiencies arising from past budget reductions.

- **Staff Engineer.** Restoring the staff engineer position which was eliminated five years ago would expedite the processing of permits involving shoreline protection, grading, flooding, and, in particular, seismic safety. A staff engineer would also provide staff support for the Engineering Criteria Review Board which the Commission relies upon for advice in dealing with complex technical problems and sophisticated engineering issues. Having an engineer on BCDC's staff would be particularly beneficial to the California Department of Transportation which needs to secure BCDC permits for a number of bridge, highway expansion, and seismic retrofit projects over the next several years. These types of projects involve engineering issues which could be addressed more effectively and quickly if BCDC has an engineer on its staff.
- **Computer Specialist.** Investing in a staff specialist with expertise in computers, electronic data processing, and geographic information systems would yield immediate results by increasing the overall productivity of the Commission's staff. Over the past several years, the Commission has made a substantial investment in computer hardware and software which has added much to staff productivity. But the staff is not making full utilization of all the capabilities at its disposal because BCDC has no staff member assigned exclusively to administer the system and provide assistance to the staff in using the system. Moreover, the Commission recently entered into a contract with the University of California to gain access to UC's extensive geographic information storage and analysis capabilities. As a result, the staff can now gain access to the California Environmental Resources Evaluation System (CERES), the state's on-line system which provides information about California's natural resources. But there is no staff position available to develop these capabilities and assist the rest of the staff in making full use of this information. Also, the Commission has a permit data base which was developed and is maintained on a system which is now antiquated. The data need to be converted to a format compatible with the Commission's current system. To deal with these issues and all other EDP matters, the staff has relied on outside

Because it can take up to nine months to begin a layoff under California Civil Service procedures, the Commission believes it is prudent to initiate the process leading to a layoff in October 1995. This process can be terminated at any time. This will allow staff who could be affected by a layoff as much time as possible to find another position and will assure that the Commission will not be carrying unfunded positions at the beginning of FY 96-97. No staff will be laid off before June 1996.

