

# THE McATEER–PETRIS ACT

*As amended through the 1999 Legislative Session*

California Government Code 66600–66682

The McAteer–Petris Act, which created the San Francisco Bay Conservation and Development Commission, was enacted September 17, 1965, in response to widespread public concern over the future of San Francisco Bay. The Act required the Commission to prepare “a comprehensive and enforceable plan for the conservation of San Francisco Bay and the development of its shoreline.”

In 1969, the Commission submitted the completed San Francisco Bay Plan to the Governor and the Legislature. After Legislative review and approval, the McAteer–Petris Act was amended to incorporate the findings and policies of the Bay Plan. On August 7, 1969, the Governor signed the revised Act into law.

Subsequent amendments were made as follows:

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

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| Chapter 998 (AB 1200)  | Changed the date in Section 66611.         |
| Chapter 1179 (AB 1771) | Added a second paragraph to Section 66622. |
| Chapter 1279 (AB 1771) | Added Subdivision (e) to Section 66610.    |

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

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| Chapter 1339 (SB 1533) | Changed the representative to the Commission from HEW to EPA in Section 66620(b).<br>Added to second paragraph to Section 66632(a) to authorize the Commission 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*):

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| Chapter 373 (SB 34)  | Amended Sections 66611 and 66652 to authorize change 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’s jurisdiction.  |
| Chapter 651 (SB 181) | Amended Section 66622 with regard to alternates to county representative on BCDC.  |

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

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| 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 violations. |
| Chapter 835 (SB 1804) | Added Section 66656.1 to provide for procedures for filing and determining claim of exemptions from BCDC's jurisdiction.   |

### Acts of the 1974 Regular Session of the Legislature *(effective January 1, 1975):*

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| Chapter 1332 (SB 2155) | Amended Section 66610 to exclude the Larkspur and Greenbrae Boardwalks in Marin County from BCDC's jurisdiction. |
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### Acts of the 1975 Regular Session the Legislature *(effective January 1, 1976):*

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| Chapter 582 (AB 128)   | Amended Section 66657 to reflect the recodification of the State's eminent domain law.                         |
| Chapter 642 (AB 571)   | Amended Section 66620 to allow a member of the State Lands Commission to be a BCDC Commissioner.               |
| Chapter 1204 (AB 1601) | Amended Section 66622 to provide a per diem of \$50.00 per Commission meeting, in-lieu of other reimbursement. |

### Acts of the 1976 Regular Session of the Legislature *(effective January 1, 1977):*

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| Chapter 1026 (AB 539)  | Added Section 66634 to provide that members of the Commission are entitled to the same rights and immunities as public employees for purpose of the California Tort Claims Act. |
| Chapter 1155 (AB 1717) | Added Sections 66645 and 66646, regarding sites for energy facilities within Suisun Marsh.  |
| Chapter 1223 (AB 1383) | Repealed Section 66656 and renumbered Section 66656.1 as 66656, concerning claims of exemptions for fills.  |

### Acts of the 1977 Regular Session of the Legislature *(effective January 1, 1978):*

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| Chapter 380 (SB 2052)  | Section 66634, as added by Chapter 1026 in 1977, was renumbered as Section 66633.3.            |
| Chapter 1013 (SB 1859) | Amended Section 66645 revising criteria for reports on energy to the Governor and Legislature. |
| Chapter 1094 (SB 2063) | Amended Sections 66637, 66638, and 66641 to modify the power of the Commission to allow        |

issuance of cease and desist orders to government agencies.

Added Section 66643 to authorize the Commission to conduct hearings and investigations.

Chapter 1094 (SB 2063)

Added Section 66647 to authorize the Commission to establish and administer a Bay Fill Clean-Up and Abatement Fund.

Repealed Section 66606.5 to no longer require the Commission to file periodic reports on the cost of financing the acquisition of private property for public use.

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

Chapter 413 (AB 675)

Amended Section 66605 to state that fill policies also apply to certain waterways.

Amended Section 66620 to add “appointed” and “or her” in subdivisions (a) through (e).

Amended Section 66620 to substitute “shall” for “must” after “representative” in the second sentence of subdivision (h) and in the second paragraph of subdivision (i).

Amended Section 66620 to substitute subdivision (j) for former subdivision (j) which read: “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.”

Amended Section 66630 to substitute “Sections 66603 and 66651” for “Sections 66603, 66606.5, and 66651.”

Amended Section 66647 to substitute the section for the former section.

Acts of the 1987 Regular Session of the Legislature (*effective January 1, 1988*):

Chapter 529 (AB 2450)

Amended Section 66622 to increase Commissioner’s per diem from \$50.00 per day to \$100.00 per day.

Amended Section 66632 to remove the requirement for “local report” and provide instead that the Commission shall establish

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reasonable filing requirements, which shall include allowing a city or county the opportunity to act on all discretionary approvals and inform the Commission prior to Commission action on a permit application.

Amended Section 66637 to extend the effective period for an executive director's cease and desist order from 30 days to 90 days.

Added Section 66641.5 to authorize courts to impose civil penalties not exceeding \$5,000.00 for a violation of the McAteer–Petris Act or a Commission permit and civil penalties of between \$50.00 and \$5,000.00 per day and exemplary damages for a knowing and intentional violation of the Act or a Commission permit and to authorize the Commission to impose administrative civil penalties of between \$10.00 and \$1,000.00 per day for each day of a violation of the Act or a Commission permit up to a maximum limit of \$20,000.00.

Added Sections 66641.6 and 66641.7 to establish the general procedures by which the Commission can impose administrative civil penalties.

Added Section 66641.8 to provide that no person can be subject to both administrative civil penalties and court imposed civil penalties for violation of the Act.

Added Section 66641.9 to provide what factors the Commission must consider when it considers imposing administrative civil penalties and that the penalties imposed shall be deposited into the Bay Fill Clean–Up and Abatement Fund.

### Acts of the 1990 Regular Session of the Legislature (*effective January 1, 1991*):

#### Chapter 247 (AB 719)

Amended Section 66651 to authorize the development of a specific area plan for White Slough by the City of Vallejo and the County of Solano.

Added Chapter 6 (commencing with Section 66670) to revise the description of plan elements and to permit the plan to incorporate special area plans with more specific findings and policies or address special needs.

### Acts of the 1991 Regular Session of the Legislature (*effective January 1, 1992*):

#### Chapter 583 (AB 1059)

Amended Section 66602 to add upland dredged material disposal sites to the list of specifically

enumerated water oriented land uses that are essential to the public welfare of the Bay Area.

Added Section 66646.1 to clarify the relationship of the Commission and the San Francisco Bay Regional Water Quality Control Board when the Commission carries out its water quality responsibilities in San Francisco Bay.

Added Chapter 5.5 (commencing with Section 66663 through 66667) to establish Commission goals and objectives regarding dredging and the Commission’s participation in the development of a long–term management strategy for dredging and the disposal of dredged materials.

Chapter 1031 (AB 1427)

Amended Section 66645 to require that the Commission must update the designations of locations where an electric transmission line or thermal power plant would be inconsistent with state law (“the Non–Siting Study”) not less than every five years rather than not less than every two years.

Acts of the 1994 Regular Session of the Legislature (*effective January 1, 1995*):

Chapter 528 (AB 3523)

Amended Section 66679 to make several minor changes.

Acts of the 1995 Session of the Legislature (*effective October 10, 1995*):

Chapter 682 (SB 1359)

Amended Section 66621 to authorize the member of the Assembly and the member of the Senate who are authorized to participate in the Commission’s activities to appoint any person whom the member deem qualified as an alternate for the member.

Acts of the 1995 Session of the Legislature (*effective January 1, 1996*):

Chapter 951 (AB 1102)

Amended Section 66621 to authorize the member of the Assembly and the member of the Senate who are authorized to participate in the Commission’s activities to appoint any person whom the member deem qualified as an alternate for the member.

Amended Section 66631 to add the San Francisco Bay Regional Water Quality Control Board to the agencies whose data and information the Commission must make maximum use of in its review and amendment of the Commission’s Bay Plan and other planning documents.

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Amended Section 66663.2 to clarify what should be included in the joint agency comprehensive dredging management plan to implement the Long-Term Management Strategy (LTMS).

Amended Section 66667 to authorize a fee of \$0.07 per cubic yard of material dredged from or dredged material disposed of San Francisco Bay or a certain waterway up to a total of \$210,000 to support the Commission's work in helping to develop a Long Term Management Strategy (LTMS) for the dredging and disposal of dredged material.

Acts of the 1999 Session of the Legislature (*effective January 1, 2000*):

### Chapter 774 (AB 177)

Amended Section 66605(d) to require the Commission to consider the relationship between the nature, extent, and location of a proposed fill and other conditions impacting the environment as defined in Public Resources Code Section 21060.5 when determining whether or not to authorize the placement of fill.

## CHAPTER 1. FINDINGS AND DECLARATIONS OF POLICY

### 66600. Declaration of Public Interest.

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. Findings and Declarations as to Threat of Uncoordinated, Haphazard Filling.

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. Findings and Declarations as to Necessity for Providing Locations for Water–Oriented Land Uses and Increased Public Access to Shoreline and Waters.

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 these uses include ports, water–related industries, airports, wildlife refuges, water–oriented recreation and public assembly, desalinization plants, upland dredged material disposal sites, 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 these uses, thereby minimizing the necessity for future bay fill to create new sites for these uses; that existing public access 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. Findings and Declarations as to Importance of Salt Ponds and Managed Wetlands and Development.**

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. Findings and Declarations as to Study of Characteristics of Bay.**

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. Findings and Declarations as to Maximum Protection of Present Shoreline and Body of Bay.**

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. Findings and Declarations as to Benefits, Purposes and Manner of Filling.**

The Legislature further finds and declares:

- (a) That further filling of San Francisco Bay and certain waterways specified in subdivision (e) of Section 66610 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 and certain waterways specified in subdivision (e) of Section 66610 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, or other conditions impacting the environment, as defined in Section 21060.5 of the Public Resources Code;
- (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. Findings and Declarations as to Desirability of Development and Preservation of Shoreline by Public and Private Development.**

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,

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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. Findings and Declarations as to Payment of Just Compensation for Taking or Damaging Private Property.**

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.

**66606.6. Encouragement of Agricultural Preserves.**

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. Severability of Provisions.**

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. Specification of Areas of Jurisdiction of San Francisco Bay Conservation and Development Commission; Definition as prescribing Jurisdiction; Construction; Areas Excluded from Jurisdiction.

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.

The jurisdiction of the commission under this section shall not extend to the areas commonly known as the Larkspur and Greenbrae Boardwalks in the County of Marin, such areas to be defined by commission regulation.

**66611. Resolution Fixing Boundaries of Water-Oriented Priority Land Uses; Change of Boundaries.**

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 a three-year period commencing January 1 of the year following the year in which such a finding is made. 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. Creation of Commission; Members.

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

- (a) One member appointed by the Division Engineer, United States Army Engineers, South Pacific Division, from his or her staff.
- (b) One member appointed by the Administrator of the United States Environmental Protection Agency, from his or her staff.
- (c) One member appointed by the Secretary of Business and Transportation, from his or her staff.
- (d) One member appointed by the Director of Finance, from his or her staff.
- (e) One member appointed by the Secretary of Resources, from his or her staff.
- (f) One member appointed by the State Lands Commission, who shall be a member of that commission or from its staff.
- (g) One member appointed by the San Francisco Bay Regional Water Quality Control Board, who shall be a member of that 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 shall 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, Sonoma, Napa, and Solano Counties;
  - (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 shall be an elected city official.
- (j) Seven representatives of the public, who shall be residents of the San Francisco Bay area. Five of the representatives shall be appointed by the

Governor and their appointments shall be subject to confirmation by the Senate. One of the representatives shall be appointed by the Committee on Rules of the Senate, and one by the Speaker of the Assembly.

**66621. Authorization for Participation in Activities of Commission by Members of Legislature; Appointment of Representative Members; Legislative Members as Constituting Joint Interim Investigating Committee; Powers and Duties.**

(a) 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 the participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this title, the Members of the Legislature, or their alternates if the alternates are 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 those committees by the Joint Rules of the Senate and Assembly.

(b) The Member of the Senate and the Member of the Assembly may appoint any person as an alternate for the member whom the member deems qualified.

**66622. Commission Members to Serve at Pleasure of Appointing Powers; Members to Serve Without Compensation; Expenses; Per Diem In Lieu of Expenses for Other than State or Federal Employees.**

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 necessary expenses incurred in the performance of the member's duties. However, in lieu of reimbursement for attendance at commission or committee meetings, or at meetings in an official capacity as a commissioner, each member of the commission or alternate who is not a state or federal employee shall receive a per diem of one hundred dollars (\$100) per day, not to exceed a combined total of four days in any one calendar month. No member of the commission who receives a per diem from any other source for attending a meeting shall receive a per diem under this section for attending the same meeting.

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

**66623. Power of Governor to Select Chairperson and Vice Chairperson from Public Representatives.**

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

**66624. Time and Place of First Meeting to be Prescribed by Governor.**

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. Headquarters of Commission.**

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

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## CHAPTER 4. POWERS AND DUTIES OF THE COMMISSION

### 66630. Continuing Review of San Francisco Bay Plan.

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

### 66631. Cooperation Required in Making Study; Coordination With Local Agencies in Preparing Comprehensive Plan; Required Use of Data and Information Available from Other Programs.

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. 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 and Research, the Association of Bay Area Governments, the San Francisco Bay Regional Water Quality Control Board, the cities and counties in the San Francisco Bay area, and other public and private planning agencies.

### 66632. Permit for Fill, Extraction of Materials, or Substantial Change in Use of Land, Water, or Structure; Application for Permits.

(a) 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 the 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.

(b) The commission shall establish reasonable requirements to assure that sufficient information is provided by permit applicants to allow the commission to act on the applications. The requirements shall include measures to assure that the city or county which has jurisdiction over a project may consider and act on all matters regarding the project that involve a discretionary approval before the commission acts on an application. The city or county shall fully inform the commission on any such matters and the actions taken. The commission shall give full consideration to that information in its application review.

(c) 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 Section 6103.

(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 the 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 the filing of an application for a permit by the commission, the commission shall transmit a copy thereof to the San Francisco Bay Regional Water Quality Control Board. Within 30 days, the regional 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 files the application. 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 those 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 or not a permit shall be granted.

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 Section 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 the 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) 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 that action by the commission.

(j) 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.

**66632.1. Projects to Which Provision of Title Inapplicable.**

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.

**66632.2. Construction and Repair of Public Service Facilities Without Permit.**

(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 that 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 those facilities as may be necessary to maintain service if the emergency requires repairs before an emergency permit can be obtained under subdivision (f) of Section 66632 and if that notification is given to the commission not later than the first working day following the 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.

(d) Any agency that intends to undertake, carry out, or approve an emergency project to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage, need not obtain a permit from the commission, if notification is given to the commission not later than the first working day following the commencement of the undertaking or action. This subdivision does not exempt from this section any agency that is required to obtain from the commission a permit to undertake, carry out, or approve a project to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

**66632.4. Permits for Projects Within Shoreline Band Located Outside Boundaries of Water-Oriented Priority Land Uses.**

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. Further Permissive Powers.**

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.

**66633.1. Entitlement of Advisory Bodies to Same Rights and Immunities as Public Employees for Purposes of California Tort Claims Act.**

The Legislature finds and declares that because the San Francisco Bay Conservation and Development Commission must rely on the expertise provided by volunteer members of advisory boards to make decisions which relate to the public safety, members of the advisory boards should be entitled to the same immunity from liability provided commission members and other public employees.

Members of the advisory bodies appointed pursuant to Sections 66633 and 66636 while performing duties required by this title or by the commission shall be entitled to the same rights and immunities granted public employees by Article 3 (commencing with Section 820) of Chapter 1 of Part 2 of Division 3.6 of Title 1. Those rights and immunities are deemed to have attached and shall attach as of the date of appointment of a member to the advisory body. This provision shall apply to members appointed to the Engineering Criteria Review Board (14 Cal. Adm. Code 10298), the Design Review Board (14 Cal. Adm. Code 10295), and any other advisory bodies created pursuant to Sections 66633 and 66636.

**66634. Funds for Planning Activities; Authority to Obtain From Sources Other Than Legislative Appropriations.**

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. Appointment of Executive Director; Power of Executive Director to Appoint Additional Employees.**

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. Appointment of Citizens' Advisory Committee; Number of Members; Representation.**

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. Cease and Desist Order Issued by Executive Director.**

(a) When the executive director determines that any person or governmental agency 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, the executive director may issue an order directing that person or governmental agency 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 that 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 90 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 or governmental agency being charged with the actual or threatened violation of this title.

**66638. Cease and Desist Order by Commission.**

(a) When the commission, after public hearing, determines that any person or governmental agency 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 or governmental agency 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 agencies 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 or governmental

agency being charged with the actual or threatened violation of this title and upon other affected persons and agencies who appeared at the hearing and requested a copy.

**66639. Review of Cease and Desist Order on Petition of Aggrieved Party; Time for Filing Petition; Effect of Failure to File.**

(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. Enforcement of Cease and Desist Order by Injunction.**

(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. Civil Penalty for Violation of Cease and Desist Order.**

(a) Any person or governmental agency 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 or governmental agency 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.

**66641.5. Additional Penalties.**

(a) In addition to any other penalties, any person or entity who violates this title is subject to a civil penalty of not to exceed five thousand dollars (\$5,000).

(b) In addition to any other penalties, any person or entity who intentionally and knowingly undertakes any activity requiring a permit pursuant to subdivision (a) of Section 66632 without that permit, or who intentionally and knowingly violates any term or condition of any permit issued by or on behalf of the commission, is subject to a civil penalty of not less than fifty dollars (\$50), nor more than five thousand dollars (\$5,000), per day for each day in which that violation occurs or persists.

(c) Except as provided in Section 818, whenever a person or entity has intentionally and knowingly violated this title or any term or condition of a permit issued by or on behalf of the commission, the commission may maintain an action, in addition to the actions authorized pursuant to subdivisions (a) and (b), for the recovery of exemplary damages. In determining the amount to be awarded, the court shall consider the amount of damages necessary to deter further violations.

(d) Civil liability may be administratively imposed by the commission in accordance with Section 66641.6 on any person or entity for any violation of this title or any term or condition of a permit issued by or on behalf of the commission in an amount which shall be not less than ten dollars (\$10), nor more than one thousand dollars (\$1,000), for each day in which that



violation occurs or persists, but the commission shall not administratively impose a fine of more than twenty thousand dollars (\$20,000) for a single violation.

(e) Any moneys recovered by the commission pursuant to this section shall be deposited in the fund established and administered pursuant to Section 66647.

**66641.6. Complaint for Administrative Civil Liability; Service; Hearing; Orders Setting Administrative Civil Liability.**

(a) The executive director of the commission may issue a complaint to any person or entity on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision of law authorizing civil liability to be imposed pursuant to this title, and the proposed civil liability.

(b) The complaint shall be served by personal notice or certified mail, and shall inform the party so served that a hearing shall be conducted within 60 days after the party has been served. The hearing shall be before the commission. The complainant may waive the right to a hearing, in which case the commission shall not conduct a hearing.

(c) After any hearing, the commission may adopt, with or without revision, the proposed decision and order of the executive director.

(d) Orders setting administrative civil liability shall become effective and final upon issuance thereof, and any payment shall be made within 30 days. Copies of these orders shall be served by personal service or by registered mail upon the party served with the complaint and upon other persons who appeared at the hearing and requested a copy.

**66641.7. Judicial Review; Action by Attorney General to Collect Penalties.**

(a) Within 30 days after service of an order issued under Section 66641.6, 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. If no aggrieved party petitions for a writ of mandate within the time provided by this section, an order of the commission shall not be subject to review by any court or agency, except that the commission may grant review on its own motion of an order issued under Section 66641.6 after the expiration of the time limits set by this section.

(b) Upon request of the commission, the Attorney General shall institute an action in the appropriate superior court to collect and recover any administrative civil penalties imposed pursuant to Section 66641.6. The court shall accord priority on its calendar to any such action.

**66641.8. Prohibition on Imposition of Both Administrative and Judicial Civil Liability.**

No person shall be subject to both civil liability imposed under Section 66641.6 and civil liability imposed by the superior court under Section 66641.5 for the same act or failure to act.

**66641.9. Determination of Amount of Administrative Civil Liability; Deposit of Funds.**

(a) In determining the amount of administrative civil liability, the commission shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the violation is susceptible to removal or resolution, the cost to the state in pursuing the enforcement action, and with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary removal or resolution efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require.

(b) Any moneys recovered by the commission pursuant to Section 66641.6 shall be deposited in the fund established and administered pursuant to Section 66647.

**66642. Parties to Civil Action; Jurisdiction.**

(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.

**66643. Hearings and Investigations.**

The commission 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 shall have the same power to conduct investigations and hearings as those conferred upon the heads of state departments by Article 2 (commencing with Section 11180) of Chapter 2 of Division 3 of Title 2.

Upon authorization of the commission, any member of the commission or its designated representative may conduct a hearing or investigation of the commission. Any final action of the commission shall only be taken by a majority of all the members of the commission, at a meeting duly called and held.

All hearings held by the commission or by any designated representative of the commission shall be open and public.

**66645. Joint Responsibility Over Power Plant Sites and Facilities.**

(a) In addition to the provisions of Sections 25302, 25500, 25507, 25508, 25514, 25516.1, 25519, 25523, and 25526 of the Public Resources Code, 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) After one or more public hearings, and prior to January 1, 1979, the commission shall designate those specific locations within the Suisun Marsh, as defined in Section 29101 of the Public Resources Code, or the area of jurisdiction of the commission, where the location of a facility, as defined in Section 25110 of the Public Resources Code, would be inconsistent with this title or Division 19 (commencing with Section 29000) of the Public Resources Code. The following locations, however, shall not be so designated: (1) any property of a utility that is used for such a facility or will be used for the reasonable expansion thereof; (2) any site for which a notice of intention to file an application for certification has been filed pursuant to Section 25502 of the Public Resources Code prior to January 1, 1978, and is subsequently approved pursuant to Section 22516 of the Public Resources Code; and (3) the area east of Collinsville Road that is designated for water-related industrial use on the Suisun Marsh Protection Plan Map. Each designation made pursuant to this section shall include a description of the boundaries of those locations, the provisions of this title or Division 19 (commencing with Section 29000) of the Public Resources Code with which they would be inconsistent, 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 issued pursuant to Section 25309 of the Public Resources Code. The commission also shall request the assistance of the State Energy Resources Conservation and Development Commission in carrying out the requirements of this section. 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 revise and update the designations specified in subdivision (b) not less than once every five years. The provisions of subdivision (b) shall not apply to any sites and related facilities specified in any notice of intention to file an application for certification filed pursuant to Section 25502 of the Public Resources Code 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 of the Public Resources Code with respect to any thermal powerplant or transmission line to be located, in whole or in part, within the Suisun Marsh or the area of jurisdiction of the commission, the commission shall participate in those 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 Suisun Marsh or the area of jurisdiction of the commission. The commission shall analyze each notice of intention and, prior to commencement of the hearings conducted pursuant to Section 25513 of the Public Resources Code, shall 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 that notice. The commission's report shall contain a consideration of, and findings regarding, the following:

- (1) If it is to be located within the Suisun Marsh, the consistency of the proposed site and related facilities, with the provisions of this title and Division 19 (commencing with Section 29000) of the Public Resources Code, the policies of the Suisun Marsh Protection Plan (as defined in Section 29113 of the Public Resources Code) and the certified local protection program (as defined in Section 29111 of the Public Resources Code) if any.
- (2) If it is to be located within the area of jurisdiction of the commission, the consistency of the proposed site and related facilities with the provisions of this title and the San Francisco Bay Plan.
- (3) The degree to which the proposed site and related facilities could reasonably be modified so as to be consistent with this title, Division 19 (commencing with Section 29000) of the Public Resources Code, the Suisun Marsh Protection Plan, or the San Francisco Bay Plan.
- (4) Such other matters as the commission deems appropriate and necessary to carry out Division 19 (commencing with Section 29000) of the Public Resources Code.

**66646. Construction of New or Expanded Thermal Electric Generating Plants Within Suisun Marsh; Condition.**

Notwithstanding any other provision of this title, except subdivisions (b) and (c) of Section 66645, and notwithstanding any provision of Division 19 (commencing with Section 29000) of the Public Resources Code, new or expanded thermal electric generating plants may be constructed within the Suisun Marsh, as defined in Section 29101 of the Public Resources Code, or the area of jurisdiction of the commission, if the proposed site has been determined,

pursuant to the provisions of Section 25516.1 of the Public Resources Code, by the State Energy Resources Conservation and Development Commission to have greater relative merit than available alternative sites and related facilities for an applicant's service area which have been determined to be acceptable pursuant to the provisions of Section 25516 of the Public Resources Code.

**66646.1. Responsibility of Boards.**

The Legislature finds that the State Water Resources Control Board and the California Regional Water Quality Control Board for the San Francisco Bay Region have the responsibility for establishing the beneficial uses of the waters of San Francisco Bay and setting water quality objectives to protect these uses, and have the primary responsibility for coordination, control, and enforcement of water quality in San Francisco Bay. The policies, decisions, advice, and authority of these boards should be the primary basis for the commission to carry out its water quality responsibilities in San Francisco Bay.

**66647. Bay Fill Clean-Up and Abatement Fund.**

(a) There is in the State Treasury a Bay Fill Clean-up and Abatement Fund. All moneys from the following sources are to be paid into the fund:

(1) All moneys appropriated by the Legislature for the fund.

(2) All moneys contributed to the fund by any person or entity and accepted by the commission.

(3) All moneys collected civilly under any proceeding brought pursuant to any provision of this chapter or Division 19 (commencing with Section 29000) of the Public Resources Code.

(b) All moneys paid into the fund shall be available for expenditure by the commission or the executive director, when appropriated by the Legislature, for the purposes of removing fill, resource enhancement, or performing any other remedial cleanup or abatement actions within the commission's jurisdiction.

McATEER-PETRIS ACT

*As amended through the 1999 Legislative Session*

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## CHAPTER 5. THE SAN FRANCISCO BAY PLAN AND FURTHER REPORTS OF THE COMMISSION

**66650. Citation of Title.**

This title shall be known and may be cited as the McAteer–Petris Act.

**66651. Adoption and Submission of Plan; Contents; Interim Plan.**

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 the following:

- (a) The summary and objectives of the plan.
- (b) The bay, as a resource, including findings and policies upon: fish and wildlife; water quality; 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 policies upon: economic and population growth; safety of fills; water–related industries; ports; commercial fishing; airports; recreation; saltponds and other managed wetlands; transportation; other uses of the bay and shoreline; refuse disposal sites; public access; appearance, design, and scenic views.
- (d) The implementation provisions in the section on carrying out the plan.

This plan and any amendments thereto shall constitute the plan for the commission to use to establish policies for reviewing and acting on projects until otherwise ordered by the Legislature.

The plan may contain or incorporate by reference special area plans with more specific findings and policies for portions of the bay and its shoreline and other plans addressing special needs, such as seaports.

Any change to the plan shall be made exclusively in accordance with the procedures described in Section 66652 and any regulations the commission may adopt to implement Section 66652.

**66652. Amendment or Repeal and Adoption of New Plan; Notice and Hearing.**

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. Grant or Denial of Permits; Advisory Nature of Provisions Pertaining to Activities Outside Commission's Jurisdiction.**

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. Continuation of Existing Uses in Shoreline Band, Salt Ponds and Managed Wetlands; Application for Determination of Existing Use, Extent of Territory and Additional Territory Necessary for Use; Permit Not Required.**

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. Permit Not Required Where Vested Right Obtained Under Local Ordinance or Permit; Vesting of Rights.**

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. Claim of Exemption for Fills.**

(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 January 1, 1974, through reliance upon Section 66632.1 or 66655 shall, within 90 days after January 1, 1974, 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.

(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 is required to 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 January 1, 1974, 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. Influence of Bay Plan Inadmissible as to Value of Property for Condemnation Purposes.**

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 19 of Article I of the California Constitution, or the compensation provided in Chapter 9 (commencing with Section 1263.010) and Chapter 10 (commencing with Section 1265.010) of Title 7 of Part 3 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.

## McATEER-PETRIS ACT

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*As amended through the 1999 Legislative Session*

**66658. Powers and Duties of Commission: Studies.**

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. Term of Existence of Commission.**

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. Supplemental Reports.**

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. Inapplicability of Provisions to City Shoreline Where Work Commenced for Planned Community Development.**

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. Annual Supplemental Report.**

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.

## CHAPTER 5.5. SAN FRANCISCO BAY DREDGING

### Article 1. Findings and Declarations

#### 66663. Dredging.

The Legislature hereby finds and declares that because of the shallowness and high rate of sedimentation of the San Francisco Bay, dredging is essential to establish and maintain navigational channels for maritime commerce, which contributes substantially to the local, regional, and state economies, as well as for military navigation, flood control, recreational boating, and other public purposes.

#### 66663.1. Prospective Accomplishments Regarding Dredging.

The Legislature further finds and declares that it is in the interest of the state to accomplish the following:

- (a) Establish the relative importance of dredging needs so that the most important projects can be prioritized and accomplished quickly and unnecessary dredging activities are eliminated.
- (b) Examine the potential for and promote using dredged materials as a resource, such as creating new wetlands and maintaining existing levees.
- (c) Establish a broad range of environmentally sound and economically feasible disposal options in order to protect fish and wildlife resources and other beneficial uses of the bay and the ocean.
- (d) Identify how disposal sites can best be managed and assure adequate monitoring of dredging and disposal activities.

#### 66663.2. Long-Term Management Strategy.

The Legislature further finds and declares that the United States Army Corps of Engineers, the Environmental Protection Agency, the State Water Resources Control Board and relevant California regional water quality control boards, and the San Francisco Bay Conservation and Development Commission have agreed to participate in a joint effort known as the Long Term Management Strategy (LTMS) to formulate a federal/state management strategy for bay dredging that concentrates federal efforts toward studying and possibly designating ocean disposal sites, and state efforts towards inbay and upland disposal options. This chapter is intended to reflect the commission's role in the Long Term Management Strategy, including all of the following:

- (a) Evaluation of the use of upland, diked bayland, and delta areas for reuse of material dredged from the bay, regulatory constraints and opportunities involving upland disposal, and potential project sponsors and methods to implement those uses.

(b) Participation with the United States Geological Survey to make a detailed study of bay sediment processes affecting the need for bay dredging and the physical impacts of inbay disposal to augment the modeling work on bay sediment dynamics being performed by the State Water Resources Control Board and the United States Army Corps of Engineers.

(c) Participation in the studies of the economic and environmental impacts of the array of disposal options, and assistance in the identification of feasible and environmentally acceptable disposal sites for material dredged from the bay in the ocean, bay, upland, and delta areas, with particular attention given to identifying sites suitable for the reuse of dredged materials.

(d) Participation in the development of a joint agency comprehensive dredging management plan to implement the Long Term Management Strategy, which shall include all of the following:

(1) Prioritization of dredging needs, taking into account technical requirements, geographic factors, costs, and economic investments affecting, and environmental impacts resulting from, maritime, recreational boating, and other dredging projects, and the monitoring and evaluation of regulatory compliance, the environmental effects of dredging and disposal, and the effectiveness of designated disposal sites.

(2) Guidelines for dredging and disposal.

(3) The establishment and implementation of an office of dredged material management, that includes at a minimum the agencies identified in Section 66663.2, and which will simplify and expedite the processing of permit applications for the dredging and disposal of dredged material using the Long Term Management Strategy goals and policies.

(4) The development of alternatives to open water disposal of dredged sediments.

**66663.3. Avoidance of Duplicated Efforts.**

The Legislature finds and declares that the commission should avoid duplication of effort in carrying out its role in the Long Term Management Strategy by making maximum use of information available from other portions of the strategy, the San Francisco Estuary Project, and other federal, state, and local agencies and private organizations.

**Article 2. Definitions**

**66664. "Bay."**

"Bay" means all portions of San Francisco Bay, as defined in subdivision (a) of Section 66610.

66664.1. "Commission."

"Commission" means the San Francisco Bay Conservation and Development Commission.

66664.2. "Delta."

"Delta" means the Sacramento-San Joaquin Delta, as described in Section 12220 of the Water Code.

66664.3. "Dredged Material Disposal."

"Dredged material disposal" means the placement of material extracted by dredging.

66664.4. "Dredging."

"Dredging" means the extraction of sand, mud, or other materials from San Francisco Bay, its tributaries, the delta, or coastal state waters.

66664.5. "Reuse."

"Reuse" means the use of dredged material as a construction material or for some other beneficial purpose.

66664.6. "Upland Disposal."

"Upland disposal" means disposal of dredged material in areas not subject to tidal action.

**Article 3. Implementation**

**66666. Construction of Chapter.**

No provision of this chapter shall be construed to change any existing regulatory authority under Division 6 (commencing with Section 6001), Division 7 (commencing with Section 8600), or Division 13 (commencing with Section 21000) of the Public Resources Code, or the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code), all of which shall remain in full force and effect. Nothing in this chapter shall be construed to remove or otherwise affect certifications, waivers of certifications, waste discharge requirements, or commission or State Lands Commission permits now or hereafter issued for dredging and disposal projects pursuant to this title or any other applicable provision of state or federal law.

**66667. User Fee; Long-Term Management Strategy Study Fund.**

(a) Until January 1, 1996, the commission may impose a user fee not to exceed ten cents (\$0.10) per cubic yard of material upon any public agency or person who proposes to dredge material from, or dispose of dredged material in, the area described in subdivisions (a) and (e) of Section 66610. As needed, the commission shall, after a public hearing, set the fee at an amount which it finds necessary to meet its cost for participating in the Long

Term Management Strategy. Prior to setting the fee, the commission shall consult with affected public agencies or persons proposing to dredge in the area described in subdivisions (a) and (e) of Section 66610 in an attempt to obtain funding for these costs from alternative sources, including, but not limited to, the General Fund, federal agencies, and voluntary industry funding. To the extent alternative funding is accepted by the commission to carry out the purposes of this chapter, the commission shall reduce on a commensurate basis, or shall not impose, the user fee authorized by this subdivision. Funds annually appropriated to the commission for Long Term Management Strategy related expenses, equal to the level of funding for that purpose appropriated to the commission in the 1991-92 Budget, shall not be considered alternative funding. In no event shall the sum of all of the fees collected by the commission pursuant to this subdivision and the funding obtained from alternative sources exceed the sum of six hundred fifty thousand dollars (\$650,000). Funds from fees and alternative sources shall be deposited in the Long Term Management Strategy Study Fund, which is hereby created in the State Treasury. All moneys in the Long Term Management Strategy Study Fund shall be available to the commission, upon appropriation by the Legislature, only for costs associated with its participation in the Long Term Management Strategy. The commission shall include a detailed accounting of funds imposed, collected, and expended in the annual report required by Section 66661.

(b) On and after January 1, 1996, the commission shall impose a user fee of seven cents (\$0.07) per cubic yard of material upon any public agency or person who proposes to dispose of dredged material in the areas described in subdivisions (a) and (e) of Section 66610. No such fee shall be imposed for dredged material disposed in areas outside of the commission's jurisdiction, or for beneficial use projects such as the Sonoma Baylands Project. In no event shall the sum of all of the fees collected by the commission pursuant to this subdivision exceed the sum of two hundred ten thousand dollars (\$210,000). Funds from fees collected pursuant to this subdivision shall be deposited in the Long Term Management Strategy Completion Fund, which is hereby created in the State Treasury. If the total of fees paid exceeds two hundred ten thousand dollars (\$210,000), fees shall be refunded in reverse chronological order of receipt until the total received equals two hundred ten thousand dollars (\$210,000). The money in the Long Term Management Strategy Completion Fund shall be available to the commission, upon appropriation by the Legislature, only for costs associated with implementing Section 66663.2. The commission shall include a detailed accounting of fees imposed, collected, and expended in the annual report required by Section 66661.

(c) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute which is enacted before January 1, 1999, deletes or extends that date.

McATEER-PETRIS ACT

*As amended through the 1999 Legislative Session*

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**CHAPTER 6. WHITE SLOUGH PROTECTION AND DEVELOPMENT****66670. Citation of Chapter.**

This chapter shall be known and may be cited as the White Slough Protection and Development Act.

**66671. Legislative Findings and Declarations Regarding Value.**

The Legislature hereby finds and declares that the area of White Slough, consisting of at least 336 acres of tidal wetlands, 132 acres of tidally influenced wetlands, and 103 acres of adjacent upland, comprises a valuable wetland and urban resource in western Solano County, provides diverse habitat for waterfowl and endangered species, includes degraded areas which can be improved for both wildlife and the public, and is adjacent to developed areas that need adequate transportation and protection from flooding.

**66672. Legislative Findings and Declarations Regarding Jurisdiction.**

The Legislature further finds and declares that the area of White Slough was not within the jurisdiction of the San Francisco Bay Conservation and Development Commission from the time the commission was established in 1965 until the winter of 1976-77, when storms and other natural forces caused levees along the Napa River to breach, allowing greater and more frequent inundation by the tides into much of the area of White Slough. Because neither the owners of the property in the area of White Slough, nor any public agency repaired the levees in a timely manner, subsequently in 1977, most of the area of White Slough became subject to the jurisdiction of the commission and thereby subject to this title.

**66673. Legislative Findings and Declarations Regarding Sewerline Under Tidal Waters.**

The Legislature further finds and declares that the breaches in the Napa River levees have caused a major sewerline to be covered by tidal waters, which could lead to serious water pollution in sensitive wildlife habitat areas in the event of leakage or breakage, to problems of infiltration of tidal waters into the sewerline, and to damage of wetlands during the normal maintenance of the sewerline. The breaches also allow the flooding of State Highway Route 37 and nearby developed areas which has already caused damage in excess of one million dollars (\$1,000,000) and threatens to cause additional damage in the future.

**66674. Legislative Findings and Declarations Regarding Flood Protection.**

The Legislature further finds and declares that it is in the public interest to provide flood protection to the residents and property surrounding White Slough, to relocate the flooded sewerlines in White Slough, and to enhance the ecological values of South White Slough, even though those improvements require some fill in tidal and tidally influenced wetlands. The Legislature further

finds and declares that the United States Army Corps of Engineers has studied the flooding problems of White Slough and has identified the construction of levees protecting existing filled or developed lands north and south of State Highway Route 37 as an environmentally sound and economically feasible method of providing flood protection, together with a combined improved transportation route and flood control levees along State Highway Route 37.

**66675. Legislative Findings and Declarations Regarding Widening of Highway Route 37.**

The Legislature further finds and declares that use of State Highway Route 37 now exceeds the highway's capacity, and that widening of the highway to four lanes with a minimum amount of fill may only be accomplished in the context of a project to relocate existing sewerlines, to protect private property, and to enhance the ecological values of South White Slough. The Legislature further finds and declares that, because of the unusual circumstances by which tidal influence was returned to White Slough, a combined project may be approved only if all adverse impacts to the environment are mitigated, and the overall effect of the project will be to improve the ecological value of the area.

**66676. Legislative Findings and Declarations Regarding Resolution of Problems.**

The Legislature further finds and declares as follows:

- (a) The provisions of this chapter are required because of extraordinary circumstances which have developed in the area of White Slough caused by the breaches of the Napa River levee.
- (b) Existing public access to the waters of White Slough is inadequate and may be improved along the periphery of South White Slough as part of an ecological enhancement project.
- (c) It is in the public interest to devise a resolution of these significant problems that is specific to the area of White Slough.
- (d) It is not the intent of the Legislature, in enacting this chapter, to modify any provision of this title except as otherwise expressly provided in this chapter.

**66677. Legislative Findings and Declarations Regarding Wildlife Use, Flood Protection, Air Pollution, and Transportation Facilities.**

The Legislature further finds and declares that, in order to preserve the integrity and to assure the continued wildlife use of White Slough, to provide adequate flood protection, to reduce air pollution, and to complete a necessary transportation facility, there is a need for all of the following:

- (a) The establishment and maintenance of adequate waterflow and water quality and the improvement of present water management practices, including drainage and upland flood protection.

(b) The permanent protection by local agencies of tidal wetlands and tidally influenced areas of White Slough, adjacent wetlands, and upland habitat areas.

(c) Implementation of a plan to enhance the wetland values of White Slough, permanently protect wetland, tideland, marsh, and upland habitat areas, provide for an improved transportation link, provide flood protection for already developed upland areas, assure compatible upland development, and provide new public access to and along tidally influenced areas of South White Slough.

(d) Assurance that state interests in the area of White Slough, including water quality, waterflow, habitat protection and enhancement, public access, transportation, and flood protection, will be protected.

**66678. Definitions.**

As used in this chapter, the following terms have the following meanings:

(a) “City” means the City of Vallejo.

(b) “Commission” means the San Francisco Bay Conservation and Development Commission.

(c) “County” means the County of Solano.

(d) “Department” means the Department of Transportation.

(e) “Plan” means the White Slough Specific Area Plan adopted pursuant to this chapter.

(f) “South White Slough” means all tidally influenced areas south of State Highway Route 37 which would naturally drain northerly to the Napa River, any areas within the tidally influenced portions of the slough that have been filled pursuant to a commission permit, and any areas within the tidally influenced portions of the slough which have been filled after January 1, 1977, without a permit from the commission.

(g) “White Slough” means, within the county and the city, the historic, unfilled bed of White Slough, all lands surrounding the historic bed of White Slough that have been touched by tidal waters since January 1, 1977, any areas within the tidal and tidally influenced portions of the slough that have been filled pursuant to a permit from the commission, and any areas within the tidal and tidally influenced portions of the slough which have been filled after January 1, 1977, without a permit from the commission.

(h) “White Slough Project” means, within the county and the city, the restoration and enhancement of the habitat values of South White Slough, the widening of State Highway Route 37 between Sacramento Street and State Highway Route 29 to not more than four traffic lanes with medians and shoulders of the minimum width possible, the construction of new tidal

channels and control structures underneath the existing and the widened portions of State Highway Route 37, the construction of new interchanges between State Highway Route 37 and State Highway 29 and Sacramento Street, the covering with fill of an existing sewerline on the south side of the highway widening, and the relocation of the existing sewerline north of State Highway Route 37 within the area required for the widening of State Highway Route 37.

**66679. Joint Adoption of Final Plan; Submission for Review; Approval; Amendment.**

(a) The city, in consultation with the county, the commission, the department, and other affected local, state, and federal agencies, has previously prepared a draft White Slough Specific Area Plan proposal as a first step toward the orderly, long-range conservation, use, and management of the natural, scenic, recreational, and manmade resources of White Slough.

(b) On or before January 1, 1996, the city and the county shall jointly adopt a final plan which shall include a specific wetlands enhancement segment for the area of White Slough. Provided that no other feasible measures are devised during the environmental review process which have fewer environmental impacts and which accomplish the goals of this chapter, this plan shall include the permanent protection and enhancement of at least 336 acres of tidal wetlands within White Slough and 132 acres of tidally influenced areas in South White Slough, provide for the minimum amount of fill, not to exceed 13 acres, necessary to widen State Highway Route 37 to a four-lane highway and to construct interchanges between State Highway Route 37 and State Highway Route 29 and Sacramento Street, provide flood protection for upland areas, provide for suitable water quality, and provide for wetlands enhancement for all tidally influenced areas of South White Slough, including a program for the acquisition, enhancement, and permanent preservation of those areas.

(c) Not later than 30 days after adoption of the final plan by the city and the county, the city and the county shall submit the plan to the commission for review. The commission shall approve or disapprove the plan within 45 days of submittal on the basis of whether the plan meets the objectives of Sections 66677 and 66680 and includes changes to the relevant city and relevant county general and specific plans and includes proposed city ordinances and county ordinances necessary to implement the plan.

(d) Upon approval of the plan by the commission and the adoption by the city and the county of necessary changes to the general and specific plans and implementing ordinances, the plan shall be the primary basis for reviewing applications for state and local permits for projects affecting White Slough. A permit shall be issued only if the permitting entity finds that the proposed project is consistent with the plan and the requirements of this chapter.

(e) After adoption, no changes shall be made in the plan or the implementing ordinances without the prior notification and approval of the commission.

**66680. Basis for Commission's Review and Approval.**

The commission shall review and approve, or disapprove, the plan on the basis of whether the plan provides all of the following:

(a) Permanent protection and enhancement of marshes, tidelands, tidally influenced wetlands, and upland habitat sufficient to assure the long-term usefulness of White Slough as a wildlife habitat, a flood basin consistent with wetland enhancement goals, and a wetland resource for the city and the region, including the establishment, operation, and maintenance of adequate tidal action and water quality to preclude algal blooms, to provide a fishery, and to provide waterfowl feeding, resting, and breeding areas.

(b) Location and siting for a project that consists of a State Highway Route 37 widened to not more than four lanes, with the minimum medians and shoulders necessary to assure highway safety, interchanges between State Highway Route 37 and State Highway Route 29 and Sacramento Street, the covering of the flooded sewerline south of State Highway Route 37 and the relocation of the flooded line north of State Highway Route 37 within the area required for the widening of State Highway Route 37, and that provides for all of the following:

(1) A tidal control structure or structures or open channels, sufficient to assure adequate waterflow for suitable water quality, wetland enhancement of South White Slough, and flood protection, between the wetlands north and south of the State Highway Route 37 corridor.

(2) Adequate height and design to protect developed areas of the city from flooding.

(3) No access from the widened State Highway Route 37 to tidal wetlands north of the highway.

(4) The minimum wetland fill necessary, but in no event more than 13 acres.

(5) Mitigation measures, specifically including the following:

(A) Prior to the placing of fill or commencement of other highway construction work, acquisition of upland areas in the vicinity of White Slough which do not presently provide unique or especially significant wildlife habitat and which are four times the size of the area to be filled.

(B) The conversion of these lands to wetlands during highway construction.

(C) The hiring of an independent biologist to assess current conditions on the wetlands to be filled and to monitor the conditions of the newly created wetlands over time.

(D) The permanent protection of the created wetlands.

(E) Assurances that the created wetlands will be functioning in a manner which fully replaces the filled wetlands within five years. If, after three years it does not appear that the created wetlands will be fully functioning within the five-year period, then the wetlands shall be further improved in a manner which ensures full replacement of the filled wetlands or which provides additional new wetlands. After the five years, the department shall no longer be required to maintain the created wetlands, but may transfer the created wetlands either to the Department of Fish and Game or to another appropriate resource agency for the wetlands' permanent management for wildlife habitat purposes.

(c) Levees within and adjacent to South White Slough necessary for flood control, wetland habitat enhancement, and public access purposes. The department shall not be responsible for the construction and maintenance of the levees within and adjacent to South White Slough, except for the White Slough Project. Fill for flood control and public access purposes shall be the minimum necessary and shall be mitigated by the acquisition, excavation, and conversion to wetlands of uplands in the vicinity of the project and which do not presently provide unique or especially significant wildlife habitat, to provide an area of wetland habitat at least twice the area to be filled.

(d) Acquisition of interests in real property sufficient to preserve and maintain permanently the wetland, tidal, water-covered, and public access areas of White Slough.

(e) Recognition that the project constructed in accordance with the plan is required to meet the requirements of the federal Clean Water Act and the Rivers and Harbors Act, if applicable.

**66681. Implementation of Plan.**

The plan shall be implemented as follows:

(a) The city and the county shall adopt the relevant provisions of the plan into their general and specific plans, shall adopt land use ordinances that implement the policies of the plan, and shall review and issue or deny any necessary local permits for projects within White Slough based on the requirements of the plan and implementing ordinances.

(b) In addition to obtaining any other permit required by law from the city or county or any state, regional, or local agency, any person placing fill,

extracting materials, or making any substantial change in use of any area within White Slough shall obtain a permit from the commission. The commission shall issue a permit for these activities only if it finds the project consistent with the plan, this chapter, and, where not inconsistent with the plan and this chapter, this title, the San Francisco Bay Plan, and other relevant state and local law.

(c) The Department of Fish and Game, the Wildlife Conservation Board, the State Lands Commission, the State Coastal Conservancy, and the Department of Transportation shall exercise their powers and allocate available resources to acquire, enhance, or manage wetlands and public access areas within White Slough in a manner consistent with the plan, subject to statewide goals and priorities of the agencies.

**66682. Requirements for Issuance of Permits.**

The commission shall issue a permit for all, or any portion, of the White Slough Project only if the commission finds that the work is consistent with the plan, subdivision (b) of Section 66681, and all of the following requirements have been met:

(a) The city and the county have adopted the necessary implementing ordinances and have amended their general and specific plans.

(b) The department limits the project to a four-lane highway with the minimum medians and shoulders necessary to assure highway safety, and the project does not permit access to the wetlands north of State Highway Route 37.

(c) A minimum fill of tidal areas will result from construction of the combined flood barrier, new sewerline, and widened State Highway Route 37 and associated interchanges, which in no event will result in the loss of more than 13 acres of tidal areas.

(d) Fill of tidal and tidally influenced wetlands will be mitigated on a four-to-one basis in the vicinity of the project, and the mitigation will consist of the acquisition of upland areas which do not presently provide unique or especially significant wildlife habitat and the creation and permanent protection of new wetlands for habitat purposes. The acquisition of the upland areas will take place before construction of the highway project. Creation of new wetlands will be done concurrently with the construction of the highway project and will be monitored by an independent biologist. There shall be assurances that the created wetlands will be fully functional or additional measures shall be taken as described in paragraph (5) of subdivision (b) of Section 66680.

(e) The project will provide a barrier to protect already developed areas of the city from flooding.

## McATEER-PETRIS ACT

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*As amended through the 1999 Legislative Session*

(f) The project will include the covering of the flooded sewerline south of State Highway Route 37 and the relocation of the flooded line north of State Highway Route 37 within the area required for the widening of State Highway Route 37.

(g) The project will provide improved water circulation and waterflow throughout South White Slough, so as to minimize algal growth and air pollution and to improve wetland habitat values.

(h) The White Slough Project is the least environmentally damaging, feasible alternative identified pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

**END**

January 2000

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