

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
AND THE
STATE WATER RESOURCES CONTROL BOARD
AND THE
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
SAN FRANCISCO BAY REGION

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

WHEREAS, on February 16, 1977 the Secretary of Commerce, pursuant to Section 306 of the federal Coastal Zone Management Act of 1972, as amended, (hereinafter "CZMA"), approved the BCDC's coastal management program (hereinafter "Coastal Management Program") for the San Francisco Bay segment of the California coastal zone; and

WHEREAS, the Coastal Management Program consists of specific state and federal laws and policies, including the McAteer-Petris Act, the Suisun Marsh Protection Act of 1977, the San Francisco Bay Plan, the Suisun Marsh Protection Plan, the BCDC's administrative regulations, the federal Clean Water Act, the state Porter-Cologne Water Quality Act, and the California Environmental Quality Act; and

WHEREAS, the BCDC is the state agency responsible under the CZMA for management of that segment of the California coastal zone comprising San Francisco Bay and its adjacent shorelands (the area of BCDC permit jurisdiction); and

WHEREAS, Section 307(f) of the CZMA provides that "nothing in this title shall in any way affect any requirement...established by the [federal Clean Water] Act, as amended...[and] such requirements shall be incorporated in any program developed pursuant to this title and shall be the water pollution control...requirements applicable to such program," and

WHEREAS, the State Water Resources Control Board (hereinafter "State Board") has jurisdiction and is responsible for: (a) formulating and adopting state policy for water quality control pursuant to the state Porter-Cologne Water Quality Act, as amended, and the federal Clean Water Act, as amended; (b) adopting water quality control plans where appropriate;

(c) approving the water quality control plans of the nine regional water quality control boards; (d) issuing water quality certification for federal licenses and permits; (e) establishing salinity standards for San Francisco Bay and the Sacramento-San Joaquin Delta estuary to protect the beneficial uses of these waters; and (f) allocating water rights to state waters; and

WHEREAS, the California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter “Regional Board”) has jurisdiction and is responsible pursuant to the state Porter-Cologne Water Quality Control Act within the San Francisco Bay segment of the California coastal zone for: (a) designating, protecting, and enhancing the beneficial uses of the waters of the San Francisco Bay basin; and (b) stating the beneficial uses of the Bay waters, water quality objectives, and effluent limitations in its Water Quality Control Plan, San Francisco Bay Basin (hereinafter “Basin Plan”), which it carries out through numerous regulatory programs including adoption and enforcement of waste discharge requirements and recommendations to the State Board for issuance of water quality certification for federal licenses or permits; and

WHEREAS, the BCDC’s San Francisco Bay Plan (hereinafter “Bay Plan”) policies on Water Quality (page 8) provide that water quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the Regional Board’s Basin Plan; and

WHEREAS, the State Board’s evaluation and standard setting process for the Bay-Delta Estuary is ongoing, the BCDC’s Bay Plan policies on Fresh Water Inflow (page 10) recognize that the standards set by the State Board in Decision 15B5 (the 1978 Delta Decision) and the Delta Plan (1978) will help maintain adequate fresh water inflow into the Suisun Marsh, and the BCDC believes such standards will help maintain adequate fresh water inflow to the Bay, and these policies further recommend that the impact of diversion of fresh water inflow into Bay should be monitored by the State Board; and

WHEREAS, the State Board and the Regional Board have the primary role in regulating water quality under state and federal statutes, the BCDC must, under its state McAteer-Petris Act authority, independently consider the water quality impacts on San Francisco Bay of private, local, and state agency projects;

WHEREAS, the BCDC exercises authority pursuant to the McAteer-Petris Act over filling, substantial changes of use, dredging, and the disposal in the Bay of dredged materials and desires to assure that these activities are conducted in a manner that does not cause unacceptable or avoidable impacts on water quality; and

WHEREAS, the BCDC, in exercising its authority to protect San Francisco Bay water quality desires to rely on the expertise, advice, and policies of the State Board and the Regional Board concerning water quality and the State Board, the Regional Board, and the BCDC desire to assure that the State of California provides uniform and consistent protection for the water quality of San Francisco Bay;

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

1. For purposes of the CZMA, the State Board and the Regional Board recognize the BCDC Coastal Management Program, approved by the Secretary of Commerce on February 16, 1977, and as subsequently modified and approved by the federal Office of Ocean and Coastal Resource Management (hereinafter "OCEM"), as the State Coastal Management Program for the San Francisco Bay segment of the California coastal zone, which comprises San Francisco Bay and its adjacent shorelines (the areas of BCDC permit jurisdiction), and will exercise their regulatory authority, to the extent consistent with State Board orders and decisions, to assist in carrying out the BCDC Coastal Management Program to the maximum feasible extent, provided the Coastal Zone Management Program incorporates requirements established pursuant to the federal Clean Water Act.

2. The BCDC recognizes that the State Board and the Regional Board are the state agencies with 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. BCDC further recognizes that the State Board has the responsibility for the administration of water rights pursuant to applicable law.

3. The BCDC, the State Board, and the Regional Board agree that the policies, decisions, advice, and authority of the State Board and the Regional Board should be the primary basis for the BCDC to carry out its water quality responsibilities.

4. As required by Section 307(f) of the Coastal Zone Management Act, the BCDC must incorporate into its Coastal Management Program for San Francisco Bay, the appropriate provisions of any water quality control plans, policies, or decisions adopted or approved by the State Board pursuant to provisions of the federal Clean Water Act. The State Board agrees to provide to the BCDC authenticated copies of such appropriate provisions of such water quality control plans, policies, and decisions as well as amendments and changes thereto that may occur in the future. The water quality management segment of the BCDC Coastal Management Program for San Francisco Bay shall consist of, in addition to the water quality provisions and policies of the McAteer-Petris Act and the San Francisco Bay Plan, such plans policies and decisions of the State Board after incorporation into the Coastal Management Program.

5. In carrying out its Coastal Management Program for the Bay, the BCDC will, to the maximum feasible extent, exercise its powers and responsibilities under the McAteer-Petris Act to further the water quality objectives of the State Board and the Regional Board, including observing the following special procedures and requirements specified in the following attachments which are an integral part of this agreement: (a) "Attachment A: Vessel Waste Discharge;" (b) "Attachment B: Houseboat Waste Discharge;" (c) "Attachment C: Toxic Sites," (d) "Attachment D: Delta Outflow;" (e) "Attachment E: Enforcement and Surveillance;" and (f) "Attachment F: Nonpoint Source Procedures."

6. As a standard condition to all BCDC permits, the BCDC will require compliance with the requirements of the Regional Board.

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

8. This memorandum of understanding (MOU) as amended, should be reviewed periodically by the BCDC, the State Board, and the Regional Board and, when necessary, amended to bring it up to date and to further prescribe the arrangements between the BCDC, the State Board, and the Regional Board regarding the San Francisco Bay water quality management.

9. This memorandum of understanding, as amended, shall become effective upon execution by all parties thereto.