BAY PLANNING COALITION
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BCDC
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OOC

May 9, 1996

Mr. Lee Grissom, Director
Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

Subject: Governor's Regulatory Improvement Initiatives; California Regulatory Review Roundtables, May 2, 1996

Dear Mr. Grissom,

The members of the Bay Planning Coalition, which comprise a broad, cross-section of the maritime industry and related shoreline businesses, property owners and local government in San Francisco Bay, appreciate the opportunity to comment in support of your efforts and those of the Governor in his Regulatory Improvement Initiative. The importance of your efforts, both to support environmental progress and enhance economic vitality, cannot be overstated.

We have been actively involved in the implementation of this Initiative since its inception with the September 1, 1995 Executive Order primarily in the review and recommendations pertaining to the body of regulations under the jurisdiction of the State Water Resources Control Board and the S. F. Bay Regional Water Quality Control Board and the S. F. Bay Conservation and Development Commission (BCDC). We have selected 6 topics to present at the May 2 Roundtable which have not received the necessary attention in the specific areas of the agency reform process thus far. Our goal is to eliminate overlapping, duplicative and cost burdensome requirements.

1. Dredging (Resources Agency, CAL-EPA, and State Lands Commission) - 5-6 mcy of sediment must be dredged and disposed of annually in S.F. Bay to support navigation and international trade and commerce Through the joint, federal-state program, the Long Term Management Strategy for Dredged Material Disposal (LTMS) begun in 1990, we have made some progress towards the LTMS' goals to identify disposal sites and to establish a coordinated dredging permit process. We need a one-stop dredging permit process with one consolidated permit application and one set of disposal criteria to guide agency

decisionmaking on dredging projects.

However, while the LTMS state agencies, the S. F. Bay Regional Water Board , BCDC and the State Lands Commission and the LTMS federal agencies, the U. S. Army Corps of Engineers and the US EPA have been meeting for over a year to effect a coordinated permit process, there is not much to show for these efforts. It appears at the moment that the state agencies, in particular, are not interested in a one-stop process but would rather continue the status quo of agency-by-agency permitting. We think that dredging disposal is primarily a water quality matter , and that there should ONLY be one state agency in charge of dredging. The most likely candidate is the S.F. Bay Regional Water Quality Control Board because of its water quality authority under the Porter-Cologne Water Quality Act and Clean Water Act, respectively. Legislative or regulatory changes are needed to eliminate the duplicative permits authorized by BCDC and the State Lands Commission or an administrative agreement or MOU should be constructed whereby these agencies defer to the Water Board.

Another regulatory issue related to dredging and disposal that has received hardly any attention is the state procedures for sediment contaminant testing of dredging projects and the problems related to the lack of uniform, consistent and practical guidance on how to interpret the scientific data, in an environmentally relevant way, for the purpose of making disposal decisions. Dredging is frequently stalled because of the lack of interpretive criteria on what the numbers mean. Under SB 1082, OEHHA was to convene a scientific panel to review policies, methods, and guidelines used by CAL-EPA agencies for assessing risk to assure that they are based on sound science and to assess the appropriateness of any differences between state and federal methods, policies and guidelines. We encourage this scientific panel to include the matter of sediment testing for the purpose of making disposal decisions in its agenda to ensure a more reasonable, predictable, scientifically-justified and environmentally relevant approach in state permitting procedures.

II. Routine Repair and Maintenance: (Resources Agency and CAL-EPA) - Our businesses are unable to complete routine repairs and maintenance of our shoreside facilities including docks, bridges, and other transportation and flood-control structures in an expeditious manner due to a couple of problems. We have a duty to keep our facilities maintained and in timely repair in the interests of the health and safety of the public; and therefore, it is essential that permits are issued expeditiously.

One problem is that the State Water Resources Control Board has declined to certify an important federal program, entitled the Nationwide Permit Program, whose essential purpose is to provide an expeditious process for accomplishing repair and

maintenance for about 40 categories of projects that have a de minimis effect on the environment.The SWRCB declined certification because it believes that CEQA requires it first to prepare an EIR for the entire program–an expensive undertaking for which there has been no funding to date.

It is our position that CEQA does not apply to the act of program certification because Federal law limits the State Board to only certifying whether such discharges comply with water quality standards, and CEQA is not such a standard. We think that the most direct way to address this problem is to exempt from CEQA the act of program certification by the SWRCB. It is important to clarify that this would not exempt any project from permitting and environmental review that is otherwise required under CEQA This exemption would merely enable the SWRCB to reach a decision (without first conducting a CEQA review) whether, and on what conditions, to certify the discharges authorized by each of the nationwide permits.

creosote

Another factor affecting business' ability to maintain its facilities cost-effectively, is the existing moratorium, unsubstantiated by any particular environmental evidence, on the use of creosote treated wood. The public has not been presented with any scientific documentation that creosote-treated pilings placed in marine environments causes adverse effects. Further, the cost of using pilings with other materials such as plastic or cement has tripled from $8.00 to $30.00. We encourage both CAL-EPA and the Resources Agency to work together to lift this moratorium unless the environmental affects can be documented.

III. Bay Protection and Toxic Cleanup Act - This program should be eliminated. It duplicates the existing authority of the State and Regional Water Boards to appropriately identify and order cleanup of toxic areas as currently provided under the Porter-Cologne Act. Our participation as a member of the Public Advisory Committee for two years has made us all the more aware that the fees charged to business to administer the program are inequitable and unfair and that the revenue is primarily being used to fund staff positions. A recent agenda item of the one of the program's task forces indicated that the funds may even be diverted to fund another program of the State Board, the Water Rights program.

IV. Surface Mining and Reclamation Act (SMARA) and AB 3098 - Under SMARA except as exempted, State agencies are prohibited by the State Contracts Act from accepting mined mineral aggregate material that is not SMARA compliant, i.e. material from a surface mine not on the list published by the Department of Conservation, and to be on this list, a source must have an approved reclamation plan certified by a lead agency.

Sand mining companies who dredge sand from naturally occurring and naturally

replenished sand shoals in S.F. Bay are not presently on the approved list of sources because no one can figure out how to develop mine closure and reclamation plan for a naturally replenished submerged sand shoal.

The S.F. Bay sand companies have been the primary source of sand from the region for Cal-Trans and their contractors for over 40-years. Also, with one exception, all of the natural sand shoals are owned by the State which receives royalties for the sand dredged.

It is important to either amend SMARA to exempt naturally-replenished sand shoals from the Act or establish an administrative remedy that allows these companies to be on the approved list.

All of the sand shoals are permitted by BCDC to be dredged and BCDC agreed to be the "Lead Agency" for SMARA purposes. BCDC's permit review is also the functional equivalent of CEQA. Please let us know if you can assist us in developing either a legislative exemption for sand mining or a possible administrative remedy whereby if BCDC certifies that as long as the sand dredging is authorized by BCDC then that constitutes an approved reclamation plan for purposes of SMARA compliance.

V. Porter Cologne Water Quality Control Act, Section 13267 Board's - Investigations: Requiring technical or monitoring program reports. NPDES, WQC's and WRD permit holders are being required to financially participate in a program sponsored by the S.F. Bay Regional Water Quality Control Board in conjunction with S.F. Estuarine Institute entitled the "Regional Monitoring Program" under the authority of Section 13267. It appears highly unusual (legally) that the Board is requiring funds for a "report" which will be implemented by other parties and not the permit holders individually. Further, the port permit activity upon which the report of discharge and report fee is based is dredging. For dredging projects, applicants are granted a Section 404 permit from the Corps and a water quality certification from the Board. Dredging permits in S.F. Bay have not been conditioned to require RWQCB individual monitoring reports, similar to other dischargers such as the POTW's. The U.S. Army Corps of Engineers monitors the Bay disposal sites. Thus, this new requirement seems even more so unusual. Also, is there any legal limitation to how many reports and fees that can be required for such reports under Section 13267? We think the Board has overstretched its authority by requiring us to pay for a report someone else does. We already submit reports to the Corps and the Board in the form of sediment characterization (chemical and biological toxicity) tests.

Moreover, Section 13267 states that the costs for such a report must bear a reasonable

relationship to the need for such a report. The monitoring points are in many cases far removed from the ports point of discharge, i.e. dredging. We are also concerned about the equity of the budget and the duplication of fees and monitoring required under the BPTCP.

The ports and other commercial and recreational maritime organizations question whether this requirement is an "underground regulation" and would like this investigated.

Sincerely yours,

Ellen Johnck

Ellen Johnck
Executive Director

cc: John Smith, Executive Director, Office of Administrative Law
Douglas Wheeler, Secretary, The Resources Agency
Jim Strock, Secretary, Cal-EPA, Attn: Mr. Siegel

Historical Resources Information System

ALAMEDA
COLUSA
CONTRA COSTA
DEL NORTE
HUMBOLDT
LAKE
MARIN
MENDOCINO
MONTEREY
NAPA
SAN BENITO
SAN FRANCISCO
SAN MATEO
SANTA CLARA
SANTA CRUZ
SOLANO
SONOMA
YOLO

Northwest Information Center
Sonoma State University
1801 East Cotati Avenue
Rohnert Park, California 94928-3609
(707) 664-2494 • Fax (707) 664-3947
E-mail: nwic.center@sonoma.edu

May 24, 1996 File No.: 96-SF-41B

LTMS EIS/EIR Coordinator
C/O U.S. Environmental Protection Agency
Region 9 (W-3-3)
75 Hawthorne Street
San Francisco, CA 94105-3901

re: Long Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region.

Dear LTMS EIS/EIR Coordinator:

Records at this office were reviewed to determine if this project could adversely affect historical resources. The review for possible historic structures, however, was limited to references currently in our office. The Office of Historic Preservation has determined that any building or structure 45 years or older may be of historic value. Therefore, if the project area contains such properties they should be evaluated by a historian prior to commencement of project activities. **Please note that use of the term historical resources includes both archaeological sites and historic structures.**

____ The proposed project area contains or is adjacent to the archaeological site(s) ( ). A study is recommended prior to commencement of project activities.

X____The proposed project area has the possibility of containing unrecorded archaeological site(s). A study is recommended prior to commencement of project activities.

____ The proposed project area contains a listed historic structure ( ). See recommendations in the comments section below.

____ Study # identified one or more historical resources. The recommendations from the report are attached.

____ Study # identified no historical resources. Further study for historical resources is not recommended.

____ There is a low possibility of historical resources. Further study for historical resources is not recommended.

_X___Comments: The policy in section 4.4.5.2 on pg. 4-141 states archaeological and cultural surveys need to be conducted on all projects.

If archaeological resources are encountered during the project, work in the immediate vicinity of the finds should be halted until a qualified archaeologist has evaluated the situation. If you have any questions please give us a call (707) 664-2494.

Sincerely,

Liz Black

Liz Black for
Leigh Jordan
Coordinator

STATE OF CALIFORNIA PETE WILSON, Governor
SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
THIRTY VAN NESS AVENUE, SUITE 2011
SAN FRANCISCO, CALIFORNIA 94102-6080
PHONE: (415) 557-3686

May 23, 1996

Mr. Lee Grissom
Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

Subject: California Regulatory Reform Roundtable Testimony

Dear Mr. Grissom:

Thank you for the opportunity to comment on the Regulatory Reform Roundtable testimony applicable to the Commission. Although the Commission has not had the opportunity to review the testimony you provided to us, these staff comments are based on the Commission's law, the McAteer-Petris Act, the Commission's *San Francisco Bay Plan*, and the Commission's long-standing support for and involvement in the LTMS program. Our staff has no substantive concerns with the testimony you forwarded to us, with the exception of the comments of Ms. Ellen Johnck of the Bay Planning Coalition (BPC), contained in a May 9, 1996, letter to you regarding dredging regulation in the San Francisco Bay Area and the pilot Dredged Material Management Office (DMMO). We respectfully disagree with the comments submitted by Ms. Johnck regarding this topic and would like to clarify the Commission's role and activities regarding the regulation of dredging and dredged material disposal in San Francisco Bay.

Testimony Regarding Regulation of Dredging and Dredged Material Disposal

The Commission has been regulating dredging and disposal of dredged materials in the Bay pursuant to its McAteer-Petris Act authority since the Commission's inception over twenty-five years ago. Since 1977, the Commission has reviewed the consistency of federal dredging and disposal activities for the San Francisco Bay segment of the California coastal zone, pursuant to the federal Coastal Zone Management Act. It is true that the State Water Resources Control Board (State Board) and the San Francisco Bay Regional Water Quality Control Board (Regional Board) regulate the water quality aspects of disposal activities. The Commission and the Boards have historically coordinated their activities to minimize duplication of the agencies' efforts. This coordination was formalized in a Memorandum of Understanding (MOU) between the two agencies in 1976, which was updated in 1988. The Commission relies on the policies, decisions, advice, and authority of the two water boards regarding water quality matters. However, there is sound public policy underlying the Commission's involvement in dredging and disposal of dredged materials. Both of these activities can result in impacts to the Bay that are broader than their water quality implications. Much of the current Bay shoreline was created through the filling of the Bay's historic tidal wetlands with material dredged from the Bay. It was this uncontrolled filling of the Bay that led to the creation of the Commission. Even the Alcatraz disposal site—from which disposed dredged material was supposed to disperse to the ocean—has formed a large underwater mound that poses a threat to navigation. Dredging can also have significant environmental impacts; for example, dredging of tidal marsh or eelgrass beds can result in losses to fish and wildlife habitat and nursery grounds in the Bay.

As you may know, in recent years dredging and dredged material disposal has become highly controversial. The Long Term Management Strategy (LTMS) was formed in 1990 by the agencies regulating dredging and disposal activities to provide a long-term plan for managing dredging and disposal. The member agencies are the U.S. Army Corps of Engineers (Corps), the U.S. Environmental Protection Agency (USEPA), the State Board, the Regional Board, and the Commission. The Commission has been an active and committed member of the LTMS since its inception. Amendments to the McAteer-Petris Act, enacted with the full support of the Commission, direct and fund Commission involvement in the LTMS and the DMMO. The Commission, in concert with the other LTMS agencies, has consistently taken a lead-

ership role to resolve long-standing controversies surrounding dredging and disposal activities. A combined draft federal Policy Environmental Impact Statement and state Programmatic Environmental Impact Report for the LTMS program is now being circulated for public review and comment. All of the action alternatives included as part of this document would include coordinated processing of dredging and disposal permit applications as part of a "Dredged Material Management Office" or "DMMO" that is further explained below.

We must, therefore, sharply disagree with the allegation by the BPC that the state is "apparently uninterested in a one-stop process" and would rather "continue the status quo of agency-by-agency permitting." Actually, one of the main goals of the LTMS is to establish a cooperative framework for regulating dredging and disposal activities. It was through the LTMS that the DMMO was conceived as a joint program by the agencies to simplify the permitting process for applicants. The DMMO is intended to provide a single permit application form and processing procedure for dredging and disposal activities. Even though the LTMS has not been completed, the LTMS agencies unanimously agreed to move ahead to establish a pilot DMMO pursuant to their existing authorities.

The member agencies of the DMMO are the Corps, the USEPA, The Regional Board, the State Lands Commission, and our Commission. Although the hallmark of the DMMO is a cooperative approach, I believe that the participants will agree that the Commission staff has often taken a leadership role in the DMMO. We wrote, based upon the input of the member agencies, much of the *General Operating Principles* that have been agreed to by the DMMO agencies and took the lead in coordinating the preparation of a draft Memorandum of Understanding between the agencies (enclosed). We have attended every meeting and invariably taken a constructive stance to move the process forward. The same strong support and leadership has been provided by the other member state agencies.

We are particularly puzzled by the BPC testimony, because Ms. Johnck was the chair of the LTMS Implementation Subcommittee that first devised the DMMO structure and process. Since the time that the agencies took over implementation of the pilot DMMO, we have consulted often with Ms. Johnck and have heard only support for the Commission's efforts. Although she has expressed concern about the progress of the DMMO, the testimony submitted to you concerning the state's alleged lack of interest in permit coordination appears to be at odds with the informal comments and advice that she has been providing to us directly.

We suggest that the DMMO may well prove to be a model for the state and the country on how to improve and streamline the regulatory process, but that at the present time it is premature to draw conclusions about the effectiveness of the program. A combined application form has been prepared and two permits have been processed cooperatively by the DMMO using that application form. But we note that the MOU formally establishing the pilot DMMO is only now about to be signed. The pilot DMMO will run for one year and the lessons learned from that pilot program should form the basis of a permanent program. The present LTMS and DMMO initiatives are the result of years of efforts at the state and federal level and have been prepared with the participation of all those interested in the issues surrounding dredging and disposal in the Bay. I believe it would be counterproductive to take actions prior to completion of the LTMS strategy and the pilot DMMO that could potentially complicate or even derail resolution of long-standing dredging controversies in San Francisco Bay.

We are also concerned about the recommendations submitted by the BPC regarding the State and Regional Boards' regulation of water quality in San Francisco Bay. These recommendations appear to be misinformed and misguided and could potentially undermine the Boards' ability to manage water quality in San Francisco Bay. By extension, they could impede the Commission's ability to rely on the advice and

authority of the Boards regarding water quality matters. However, it is my understanding that the Boards will be responding directly to the BPC comments.

Conclusion

We suggest that the report to the Governor should recommend that the pilot DMMO be used to test an innovative approach to regulatory reform and that the results of the pilot program be used to determine what further regulatory reform actions are needed in regards to dredging and disposal regulation in San Francisco Bay.

Thank you again for the opportunity to comment. Should you have any questions regarding our comments, please contact Will Travis or me.

Sincerely,

STEVEN GOLDBECK
Acting Executive Director

SG/gg

cc: Robert Tufts, Chairman
LTMS, Management Committee
Robert Hight, State Lands Commission